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THE ROMAN SENATE AND THE POST-SULLAN *RES PUBLICA**

ABSTRACT: This article assesses the significance of the modifications to Sulla's constitution introduced during the 70s. It argues the post-Sullan senate was in effect divided into two groups, those who sought and held imperium-bearing magistracies and those who did not: the latter group's experience of senatorial status was of jury service and senatorial debate. The 70s seemed to mark the decisive triumph of the former group within the Senate, but as the membership of the Senate remained unchanged the Senate's overall weakness within the *res publica* persisted.

The changes to the Roman *res publica* which L. Cornelius Sulla introduced during his dictatorship were extensive and profound.¹ Their effects on subsequent political practice remain, however, debated. In particular, the significance of a series of modifications to the Sullan framework which took place during the 70s B.C. has been subject to widely differing assessments. Gruen concluded that 'The Sullan constitution had been altered only slightly in form, not at all in intent.'² His analysis emphasised the emergence of a Sullan oligarchy whose members were successful in elections, controlled senatorial debate and legislation, and were willing to make small compromises in order to maintain their position.³ Though Gruen's position is a minority view, its critics also rely on the legislative changes of the 70s, particularly those which removed restrictions on the tribunate of the plebs and its holders and altered the composition of juries in the *iudicia publica*.⁴ Such an approach confirms the prominence of legislative change in assessing the effects of

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1 Badian 1970; Gruen 1974: 7-12; Hantos 1988; Letzner 2000: 271-294; Christ 2002; Santangelo 2007; Flower 2010: 117-134

2 Gruen 1974: 46.

3 There is in Gruen's formulation discernible continuity with Syme's *Roman Revolution*, which (1939: 17) ascribed ongoing political power to the *nobiles* in the post-Sullan period whilst identifying, in 70, a coup which 'destroyed Sulla's system'.

4 Meier 1980; Millar 1998: 49-72. The relevant pieces of legislation were a *lex Aurelia* in 75, which permitted tribunes of the plebs to hold magistracies subsequently, and in 70 a *lex Pompeia Licinia* which restored the rights of the tribunate and a *lex Aurelia* on the composition of juries.

Sulla's programme: the scale of the alteration to the *res publica* in the 70s then depends on the relative importance of those measures which were repealed or modified (such as the restriction on the tribunate and the composition of juries) in comparison with those which remained intact (such as the organisation of the *iudicia publica* and the increase in number of magistrates and priesthoods).⁵

Modern analyses of the political history of the 70s B.C. at Rome thus focus on 'the Sullan constitution' as a collection of laws subject during this decade to partial repeal. But Roman political life was not determined solely by its rules; it was the product of rules interpreted in practice.⁶ Flower, indeed, has argued that Sulla conceptualised himself as a law-giver, who attempted to replace custom (*mos*) with law (*lex*).⁷ As she notes, in this respect he failed: 'the Romans...had never had a political system principally or formally based on law rather than on custom, and they were not ready or willing to make that fundamental and revolutionary change'.⁸ This insight points towards a new approach to understanding Sulla's legacy, and potentially the wider problem of late Republican politics. But some caution is needed. Sulla did not write a single integrated constitution for Rome. Instead, he imposed his will through a series of laws which were often in dialogue with earlier legislation.⁹ The way in which his laws came into being was clearly very different from what happened earlier: Sulla legislated by virtue of his position as dictator, and had pre-approval for anything he might propose. Earlier legislators were annually elected magistrates and tribunes of the plebs whose proposals required specific popular approval. But legislation itself as a method of government was well-established, and the potential conflict between *lex* and *mos* was already embedded in Roman public life.¹⁰ The history of the previous half-century could well be written in terms of tribunes seeking to create a legal basis for actions which challenged existing practices.¹¹ Moreover, the passage of a law was only one stage in what should be seen as a process; implementation depended on magistrates, and increasingly on the jurors in the *iudicia publica*.¹² Despite Sulla's overhaul of the *iudicia publica* and codification of individual progression through public office, his laws still depended on these mechanisms for their effectiveness.

From this perspective, Sulla's changes should be judged not simply by the extent to which they were repealed or modified in subsequent legislation but also through the response to them of those involved in public life. Did political actors in the post-Sullan environment behave as though they were committed to his *res publica*? How did the choices which individuals and groups made modify or confirm Sulla's decisions? The decade between Sulla's dictatorship and the consulship of Pompeius and Crassus can be interpreted

5 Flower 2010: 135-142

6 Meier 1980: 168-174.

7 Flower 2010: 119-130.

8 Flower 2010: 137.

9 Williamson 2005: 335-344.

10 Bleicken 1975: 347-396; Hölkeskamp 2010: 23-43.

11 Wiseman 2009: 7-16.

12 Sumptuary and bribery laws regularly remained dead letters. Poor drafting was a further, practical problem: the *lex Appuleia de maiestate* was a notable example. See further Williamson 2005: 80-94.

as an ongoing debate about the form and function of the *res publica* in which ideological positions were articulated through action as well as legislation. Initially, this process involved the members of Sulla's enlarged and transformed Senate; Sulla's programme had severely restricted citizen capacity to participate and eliminated the equestrian class, even if the dominance of the Senate as an organ was not as powerful as most interpretations of his programme argue.¹³ It is primarily through the behaviour of senators that the ways in which Sulla's *res publica* was accepted, established and rejected can be traced. (The one major exception to this observation, namely the behaviour of Cn. Pompeius Magnus, can itself be read as an extended comment on Sulla's reforms and the nature of the post-Sullan Senate.) The argument of this paper is that the changes that Sulla made had a profound effect on the way that the Senate operated, and created a much sharper distinction than had been the case in the pre-Social War Senate between those senators who aspired to and held *imperium*-bearing offices and those who did not. The 70s involved a process by which the position and influence of this second group of senators was curtailed; the *nobiles* appeared to be the beneficiaries, but at the price of re-establishing other, and more significant, checks on their capacity. Moreover, Sulla's two-tier Senate was unchanged after 70 B.C., and with it a fundamental weakness in the *res publica*.

One consequence of Sulla's victory was a wholesale shift in power and resources to his adherents. Roman politics was deeply factional in the decade before his return to Rome in 82, and factional adherence had become newly lethal among the elite, through the identification of political *inimici* as *hostes*.¹⁴ Sulla's supporters in 82, however, unlike those of Marius and Cinna, found their political pre-eminence bolstered by the transfer of wealth through the proscriptions. This process is impossible to quantify but the sources reveal again and again the figure of the enriched Sullan.¹⁵ Moreover, the ongoing economic power of this bloc was supported by the composition of Sulla's Senate. Sulla recruited around 300 men directly into the Senate; although a census, with a *lectio* of the Senate, was due (the last previous census had been in 86) only a proportion of Sulla's recruits can have held office in the interim, and given the losses among its members that the Senate had suffered since 86, perhaps as many as half its members in 80 were direct appointments by Sulla of men who previously had had no intention of standing for public office and thus entering the Senate.¹⁶ These new senators acted as a powerful pro-Sullan

13 Steel (forthcoming).

14 The Senate declared twelve men *hostes* in the aftermath of Sulla's armed return to Rome in 88 (Liv. *Ep.* 77; Cic. *Brut.* 168; Vell. Pat. 2.19); the formal mechanism through which Marius and Cinna declared their opponents' outlaw status is less clear. On Cinna's terrorising of his opponents, Hinard 2006. These episodes were not the first occasions on which political violence had claimed large numbers of lives: many died during the repression of the Gracchi and of Saturninus. But the 80s were the first period in which a significant number of senators died in civil violence.

15 Cicero's early speeches are a rich source, with their descriptions of the behaviour of Magnus and Capito at Ameria and Oppianicus at Larinum. In these cases, Sullan adherence brought a decisive edge within local politics as well as wealth. Within the senatorial class, Crassus' wealth was apparently much bolstered by his gains through the proscriptions; Verres and Catiline could at least plausibly be presented as gainers.

16 Santangelo 2006.

bloc within a body profoundly damaged by the recent civil war, whose new political prestige and – in many cases – newly enhanced economic position depended on the maintenance of Sulla's changes. In addition, Sulla legislated to control the character of the Senate for a half-century or more to come, by excluding the descendants of the proscribed from office-holding for two generations. This striking intervention in the nature of citizen status remained in place until 49.¹⁷

The recruitment of new members to the Senate is one of a range of ways in which Sulla demonstrated his capacity to reshape Roman society.¹⁸ In the case of the Senate, the act of reshaping was long-lasting but not permanent: Sulla's senators would, in theory at least, retain that status until their deaths, but the ongoing mechanism by which future losses would be made up was not to be a series of single moments of adlection but the annual recruitment of twenty quaestors. How closely Sulla calibrated his decision about the number of quaestors to what he envisaged as the ongoing size of the Senate is opaque. Nor is it really clear in what ways the increase in the number of quaestors also expanded the group of men from whom candidates for this office were drawn. But it seems likely that this substantial increase did involve an expansion in senatorial families, even if other developments, such as participation by relatively newly enfranchised *domi nobiles*, are not easy to demonstrate.¹⁹ Sulla's appointees had a stake in defending his changes, since their enhanced prestige depended directly on him; whether, after 81, quaestors from backgrounds which had not supplied senators before the Social War felt a similar loyalty towards Sulla's memory is very unclear. A strongly pro-Sullan Senate in 81 is likely to have lost some of its fervour as the years went by.

Sulla's expansion of the Senate was a demonstration of his unique power; and provided an opportunity to reward his followers. It was also driven by his reforms of the *iudicia publica*. The seven *iudicia publica* established by *leges Corneliae* each required an *album* of between fifty and seventy jurors, even though a number could be rejected by prosecution and defence during the trial preliminaries.²⁰ Magistrates, of whom there were now thirty-four each year (excluding tribunes of the plebs), could not serve as jurors; proconsular *imperium* holders and others absent from Rome on official business were also, *de facto*, ineligible, and there were also presumably always a few senators whom age and infirmity excluded. An enlarged Senate was therefore essential if this aspect of the Sullan *res publica* was to function; and senators who were not exempted through official business could expect almost always to be on the *album* for one of the *iudicia publica*.²¹

17 The measure is best attested in the evidence of the attempt in 63 to repeal it: Crawford 1994: 201-207.

18 It can be compared most readily to the large number of slaves of the proscribed whom Sulla freed and settled in Rome – all now bearing the gens name Cornelius – 'so that he might have among the people ten thousand willing men to carry out his orders' (App. *B Civ.* 1.100).

19 Wiseman 1971: 13-19; Galsterer 2006; Bispham 2007: 424-442

20 Greenidge 1901: 433-442.

21 There is no sign that jury duty was regarded as particularly the responsibility of the more junior; three consulars are attested on the *album* at Verres' trial, for example (Alexander 1990: 88).

The expansion of the size of the Senate was thus accompanied by a significant shift in the role of a senator.²² For the decade after Sulla, being a senator involved jury service and attendance at Senate meetings; but for a substantial group of senators, it involved little else. This transformation is linked to changes in what we could describe as ‘career aspiration’ of senators – that is, the expectations that they might form as individuals around their likely experience of the *cursus honorum*. These had of course always been moulded by family background, traditions and resources. But in the century between the rise in the number of praetors to six and the outbreak of Social War, the demography of the Senate suggests that the praetorship was a not unreasonable goal for every senator. Many would of course fail to attain the office, because of early death, or indeed electoral failure: achieving the office involved competitive success. At the same time, the odds were good: even if the average length of senatorial membership, between adlection and death, was only twenty-five years, every other pre-Sullan senator would reach the praetorship, and the proportion of those actually sought the office successfully would have been higher (because some potential praetors would have been eliminated by death by the time they could seek election). The successful were likely to have come disproportionately from families whose members had already achieved *imperium*-holding office, so the odds were not distributed evenly. But the framework supported aspiration, even though there would always be older senators who had not reached the praetorship and had realised that they would not do so. The pre-Sullan Senate could feel itself to be a group of senior and potentially senior men.²³ Sulla raised the number of praetors by a third to eight, but nonetheless, with twenty new senators a year, the odds had worsened.²⁴

The question which follows is whether or not the process of selecting eight praetors from the twenty who had entered as quaestors – allowing for some variation in the number due to mortality and the vagaries of individual careers disrupting the age-classes envisaged by the *lex annalis* – involved, in practice, the decision of the Roman people at elections. That is, either we must expect there to have been an increased number of electoral failures in the competition for the praetorship; or some senators limited their ambition to entering the Senate itself, and never sought office after the quaestorship. There simply is not enough evidence about electoral failures to know which pattern predominated, though the answer would reveal a great deal about the internal dynamics of the Senate after Sulla.²⁵ But on either scenario the Sullan Senate was a divided body. Considerably fewer than half of its members would ever hold high office; initially, these

22 Flower 2010; Vishnia 2012: 16-17

23 The *lex Atinia*, which made tribunes of the plebs senators, complicates but does not necessarily undermine this argument; see further Vishnia 1989.

24 Hopkins and Burton 1983: 47-48. They assume that there were 12 quaestors before Sulla; if there were only eight, then the relative odds became very much worse in the Sullan Senate (dropping from 75% to 40%). The aedileship in the post-Sullan Senate had certainly become a matter of some distinction, with the number of positions remaining at four: only one in five quaestors could hold the position. This proportion throws useful light on what was at stake in Cicero’s speech *pro Plancio*.

25 For the available evidence, Pina Polo 2012.

men were Sullan appointees who had never held any magistracy and would never do so; as their numbers dwindled through death, this group's size was maintained by men who, willingly or otherwise, renounced further ambition after securing the quaestorship. The other group continued to pursue the *cursus honorum* after their entry, with some hope of further electoral success. The expansion of the Senate was not – with the exception of jury duty – accompanied by an expansion in its duties; the increase in its size thus drew in a group of men who not only would not have joined it in earlier period but also, having joined, found only a limited range of tasks for them to undertake.

I suggest, therefore, that the Sullan Senate bifurcated, with a prestigious inner circle of those who held or would hold high office, and a penumbra of those who did not. Moreover, there appears to be a striking familial continuity between the senatorial class prior to the Social war and the emerging inner circle of the Sullan period. *Nobiles* continue to dominate the consulship in the post-Sullan period; indeed, the proportion of patrician consuls rises.²⁶ The data on holders of the praetorship is incomplete, but there is no firm evidence that it became easier for non-*nobiles* to reach the office after Sulla.²⁷ Individual noble families had been wiped out or otherwise excluded during the violent period of transition, but the gaps at the top were for the most part filled by other nobles.²⁸ Sulla himself was complicit in this: he promoted *nobiles* among his followers and differentiated the treatment of his enemies according to their rank and status.²⁹ Relatively few individuals made the transition from one régime to another safely, but the new elite could bolster its attempt to maintain the authority of the Senate through its fathers and grandfathers who had belonged to its pre-Sullan incarnation. The two consular survivors from before the civil wars who were active in the Senate after 81, namely L. Valerius Flaccus (cos. 100) and L. Marcius Philippus (cos. 91), were joined by a growing band of post-Sullan consulars who initially brought the *auctoritas* of their office to maintenance of a stable *res publica*. Of the twenty-two consuls elected between 81 and 71, seven were patrician, and

26 Develin 1979: 96-101; Badian 1990.

27 Brennan 2000: 759.

28 At first sight, this claim might seem to be undermined by the existence of post-Sullan consular *nouii*: L. Gellius (cos. 72), M. Tullius Cicero (63), and perhaps L. Afranius (60) and A. Gabinius (58). Only Gellius' consulship dates from the decade that is the particular focus of this paper; and it, twenty-two years after his praetorship, is such an oddity that it probably does not support any general conclusions, though it may be that his personal venerability by 73 went some way to make up for the lack of senatorial ancestors. Cic. *Leg Ag.* 2.3 implies – at the very least – that Gellius was not a memorable example of a *consul nouus*. Later, the consulships of Afranius and Gabinius are the direct result of Pompeius' dominance (and both men may have had senatorial ancestors); Cicero's victory was the product of an unusually open election in a tense situation which encouraged electoral suspicion of his two main rivals. Wiseman (1971: 276) convincingly argues against the *nouitas* of L. Volcatius Tullus (cos. 66). On the difficulty of defining a *homo nouus*, van der Blom 2010: 35-59.

29 We can contrast Sulla's lenient treatment of Scipio Asiagenes with that of his other opponents, hunted down and killed; and his execution of Ofella with his acquiescence, however grudging, in Pompeius' rise.

a further eleven had consular ancestors.³⁰ The symbiosis between Sullan support and a distinguished family background can be traced too in the careers of his younger adherents as well, such as Crassus and Catiline, who joined his forces as legates during the Civil War, were rewarded in the proscriptions, and then began their senatorial careers during the 70s.³¹ Crassus was the son of a consul; Catiline from a decayed patrician background very similar to Sulla's own. A distinguished background was not absolutely essential in the Sullan *res publica*, but it appears still to have been a very considerable advantage.³²

The outer circle looked for a different kind of reward.³³ One feature of the Sullan *res publica* was the disappearance of those mechanisms by which the behaviour of the Senate and of its members could be scrutinised. The tribunate of the plebs had been by far the most important of these, with its capacity to veto senatorial decisions, introduce legislation, and institute enquiries into matters of urgent public interest. But equestrian juries had a role, too, inherent, it seems, in Gaius Gracchus' choice of their order to adjudicate his *repetundae* legislation, and evident too in the subsequent conflicts over the composition of juries. The censorship's abeyance after Sulla, to which I return below, is also relevant. The result was that senators had very little reason to fear that close attention might be paid to their affairs and actions. It is, I suggest, no coincidence that the 70s were a decade of significant public corruption in the two activities, jury service and senatorial debate, which involved all members of the Senate.³⁴

A senatorial juror who accepted a bribe was liable to prosecution; but the deterrent effect was apparently limited. The difficulty in assessing the extent of bribery in this dec-

- 30 Servilius Vatia (cos. 79) is plausibly identified as the son of the undated praetor mentioned by Cicero (*Ver.* 2.3.211, cf *MRR* 2.465); he had also celebrated a triumph in 88 and his mother was a Metella; Scribonius Curio's (cos. 76) father had also reached the praetorship. Tullius Decula's 'election' in 81 probably reflects his availability and his service to Sulla; it does however imply that Sulla had no-one more prestigious to hand and suggests – *inter alia* – that Metellus Pius did not return from Gaul in time for these elections.
- 31 It is not inconceivable that Crassus was among Sulla's senatorial appointments, though Plutarch's account of Sulla's anger at the way that Crassus profited from the proscriptions (*Crass.* 6.6-7) may suggest otherwise.
- 32 C. Verres is an interesting case, whose career is very well-documented and who, despite his lack of senatorial ancestry, entertained credible ambitions to reach the consulship. He had supported Sulla and offered to the electorate a sound military reputation combined with the support of the Metelli. One of the compelling aspects of his clash with Cicero was the similarity of both men's background.
- 33 Ryan's attractive hypothesis that the word *pedarii* comes into use to describe junior senators at precisely this point 'to distinguish between *senatores* who had held office and *senatores* who had never held office' (1998: 86-87) would support the notion of clearly identifiable categories within the post-Sullan Senate. I am sceptical, however, of the implication of his n. 210, that Sulla's nominees regularly sought the quaestorship, and that most if not all of the quaestors of the seventies were from this category.
- 34 Wiseman 1994: 329-330. On corruption in Roman political life more generally, Rosillo Lopez 2010. It was not a new phenomenon in the period after Sulla: the crises at the end of the second century contributed to widespread rumours and popular feeling about bribery in public life, as documented by Sallust in the *Jugurtha*. Nonetheless, the alleged scale of judicial bribery in this period is striking.

ade is that the detailed evidence is preserved almost exclusively by Cicero in the speeches that he delivered when he prosecuted Verres in 70 and defended Cluentius in 66. In both cases, Cicero stresses the prevalence of bribery, to the extent that in the *First speech against Verres* he describes the previous ten years as a period in which, ‘after the transfer of the courts to the Senate, shocking criminal behaviour has taken place in the process of reaching verdicts’.³⁵ *For Cluentius* is more specific in its approach, with an extensive analysis (48-116) of the judicial history of the disputes between Cluentius and his alleged victim, Oppianicus, which nonetheless covers a number of trials in which bribery was alleged or even proven. In both cases, unsurprisingly, the treatment of bribery supports the argument which Cicero is attempting to make. In the *Verrines*, it was that senatorial jurors were now so distrusted that the only way that they could preserve their monopoly on juries was to demonstrate their probity by convicting Verres; in *For Cluentius*, that verdicts which might appear to cast doubts on his client’s story were reached improperly.³⁶ We should assume, then, that Cicero has gathered together any and all material which demonstrates that bribery had taken place. But even though these speeches may well give us a comprehensive picture of bribery in the 70s, it is not plausible to conclude that Cicero simply invented these accusations or the trials to which he refers. His evidence reflects a period in which indignation could be stirred up through reference to well-known judicial scandals, even if the amount of illegal behaviour was in fact less than he implies.³⁷

There is also some evidence that senators exchanged their votes in the Senate for a variety of benefits. Bribery may have been involved in the allocation of the command against Mithridates to the consul Lucullus in 74.³⁸ The Senate’s support on this occasion was allegedly secured through the actions of Cethegus: the sources concentrate on the indignities undergone by Lucullus to get Cethegus’ support (including the promise of money) but Cethegus’ use of bribery among a variety of tactics he used to control his voting bloc is a reasonable inference. Even clearer are the implications of the law which the tribune Cornelius proposed unsuccessfully in 67, to end the Senate’s capacity to exempt individuals from laws.³⁹ The compromise, which demanded a quorum of 200 for such exemptions, was passed despite opposition from those whom Asconius describes at the *optimates*, ‘who were accustomed to do favours to their friends, using a few people’.⁴⁰ *Gratificari* need not involve exchange, but is certainly compatible with it. Another well-

35 Cic. *Verr.* 1.38, *posteaquam iudicia ad senatum translata sunt, in rebus iudicandis nefarie flagitioseque facta sunt.*

36 In the case of the *Verrines*, it is not necessary to think that Cicero really believed that this argument might work – or even that it had a chance of working, that is, that plans for what emerged as the *lex Aurelia* might be disrupted. Instead, the dissemination of the speech gave Cicero an opportunity to align himself with Pompeius’ popular reform movement.

37 Pace Gruen 1974: 29-34.

38 Cic. *Parad.* 5.40; Plut. *Luc.* 5-6. Plutarch talks also of the role of Cethegus’ mistress Praecia in the bestowal of his support, and the occurrence of this trope of invective is grounds for some suspicion.

39 Asc. *Corn.* 58C-59C.

40 Asc. *Corn.* 59C, *qui per paucos amicis gratificari solebant*; *amicis* is Clark’s supplement to a lacuna in all MSS.

documented senatorial scandal occurred in 57, when the deposed king of Egypt, Ptolemy XII, engaged in massive bribery to ensure senatorial support for his restoration.⁴¹ Varro refers unflatteringly to the character of the Senate in *Serranus*, one of his *Menippean Satires*: a new senator has been called from a decent life ‘into the cess-pit of your Senate House’.⁴²

It would be wrong to conclude that only the ‘penumbra’ sought to make money out of their position as senators; those accused of accepting bribes in the courts are, in general, otherwise obscure, but the power and cohesion of the *nobiles* could well explain why the less important might feature disproportionately among those who actually paid a penalty for corruption. And it is evidently the more eminent who sought to influence senatorial debate. One question is whether the effects of a reduction in oversight were compounded by the increase in size of the Senate. That is, did the cruder forms of enticement that can be characterised as ‘bribery’ become more widespread in part because other ways of influencing behaviour, dependent on close social networks, were more difficult to use in the much more heterogenous post-Sullan Senate? Many familial links already existed, of course, between old senatorial families and the wider equestrian class from which many of the new senators came; the groups were already socially integrated to some extent.⁴³ Nonetheless, the task of controlling the Senate had undoubtedly become more complex because of the increase in size; and if I am correct in assuming that many senators did not seek election to the more senior magistracies, then more traditional exchanges of favours around electoral campaigning were often of little use in influencing their behaviour.

Other changes in senatorial procedure took place at this time, which made debate more unpredictable and less easy to control. The position of *princeps senatus* underwent, at least, considerable change, and may well have vanished altogether. The last pre-Sullan holder of the position was L. Valerius Flaccus; it is unclear whether or not Sulla formally removed him from office. In the absence of a census, there was no method of identifying the next *princeps*; and the censors who did complete a *lectio* in the period between Sulla’s dictatorship and the 49-45 Civil War probably did not identify a *princeps*.⁴⁴ The distinctive role of the *princeps* in senatorial debate was replaced by the custom of consuls establishing a fixed order of speaking among consulars at the outset of their year of office, to which they adhered but which was not binding on the next year’s consuls.⁴⁵ Authority within senatorial debate thus became more fleeting and more changeable. This shift can be connected to the presence of *imperium* holders in Rome. Before the Social War, consuls, and praetors with external responsibilities, proceeded to their province during their

41 Siani-Davis 1997

42 *In curiae uestrae faecem*: see Kunkel 2002: 842-843.

43 Wiseman 1971; Nicolet 1974: 253-269; Deniaux 1993: 287-384; Lomas 2012.

44 The evidence for the identification is Mam. Aemilius Lepidus as *princeps senatus* by the censors of 70 is very weak: see Ryan 1998: 194-196. On the position of *princeps senatus* and its implications for senatorial debate, Meier 1984.

45 Cic. *Att.* 1. 13.2 reveals his acute interest in the order and implies that it could be unexpected.

year in office.⁴⁶ After Sulla's reform of the courts, all the praetors were required in Rome and the consuls, for reasons that are not entirely clear, tended to remain for at least most of the year, though both remained free to depart for their province while still consul if they chose.⁴⁷ As a result, meetings of the post-Sullan Senate regularly contained 10 *imperium*-holding magistrates, whereas prior to the Social War the comparable figure each year after the *feriae Latinae* was between two and four.⁴⁸ In addition, the holding of elections in July gave much greater prominence to the magistrates-elect, particularly consuls-elect, than had been the case when elections tended to be held towards the very end of the calendar year. This was a different world entirely from one in which senatorial meetings were convened by the urban praetor, with perhaps a single praetorian colleague in attendance, and the *princeps senatus* led debate over a period of years. Senatorial debate now became politicised in a novel kind of way, as consuls in particular seized the opportunity to direct debate and promote particular issues; and conflict or disagreement between the consuls became much more likely, with important consequences for the effectiveness of debate.⁴⁹ The post-Sullan Senate became prone, it seems, to jamming over particular issues which then prevented the discussion of other, urgent, issues.⁵⁰

The post-Sullan Senate was, in short, a more complex environment than its earlier incarnation had been, one in which senatorial careers were more variable and in which the ambitious had to speak better and network more effectively if they were to outperform their rivals. But amidst all these manoeuvrings for advantage by members of the Senate, Gnaeus Pompeius stood out as a continual exception and challenge. One of the most extraordinary aspects of his extraordinary career during the 70s was that it took place outside the Senate; this positioning was careful and deliberate, and his decision to end the anomaly in 71 is one of the strongest arguments in favour of treating the year 70 as one of decisive change.⁵¹

Pompeius had been one of Sulla's most favoured subordinates in the conquest of Italy, a position which can be explained by his talent, the military forces he commanded, and his status as the son of a consul.⁵² As a result Sulla gave him *imperium* and permitted him to triumph, embedding, as is frequently noted, a contradiction at the heart of his *res publica*. Nonetheless, Pompeius did not enter the Senate at this point, a decision which

46 Some consuls did not take a province, but such cases are exceptions: Pina Polo 2011: 211-215. Praetors whose *provincia* was outside Rome did not have an opportunity to decline, though the possibility of manipulating the lot which allocated praetorian tasks *may* have helped the unwilling towards one of the two (and after Gaius Gracchus' establishment of a *repetundae* court with a praetorian president, three) city jurisdictions.

47 Balsdon 1939; Giovannini 1983.

48 On the magistrates' presence at the *feriae Latinae*, Marco Simón 2012: 117

49 Millar 1998: 18-19

50 The best-documented examples come, *via* Cicero's letters, from the late 60s and early 50s, such as the blockage in 61 over Clodius' trial and in 56 over the restoration of Ptolemy XII.

51 Cf. Djino 2002.

52 He was ahead of Crassus, for example, in the second and quite possibly the first criterion. On his early career, Seager 2002: 25-39.

may not have been Sulla's alone.⁵³ Pompeius certainly chose to continue his anomalous status throughout the seventies.⁵⁴ After returning to private life after his triumph, he re-acquired *imperium* in 77 by a senatorial grant to assist the proconsul Catulus to put down Lepidus' revolt.⁵⁵ Then, with further support from the consular Philippus and a threat not to disband his forces, he turned his contribution to Lepidus' defeat into a further military command in Spain. Pompeius stayed in Spain for over five years; the campaign against Sertorius was undoubtedly demanding, but his extended command – and that of Metellus Pius (whose *imperium* was prorogued eight times) seem incompatible with Sulla's desire to restrict the capacity of *imperium*-holder to accumulate personal power. Senatorial decision-making was here caught between a variety of pressures. One was the number of crises which required a military response: in addition to the war in Spain, Mithridates demanded proconsular attention from the mid-70s, piracy was a major issue, and the slave-revolt led by Spartacus turned out to be much more serious than the Senate expected. In addition, consuls were more reluctant to take a provincial command, a phenomenon which may have been linked to their presence in Rome for most of their year of office; the exercise of *imperium* was largely a proconsular rather than a consular (or praetorian) function, and may therefore have been a task easier to decline. The reluctance of either consul to be sent to Spain in 77 fuelled Philippus' quip that Pompeius went *non pro consule sed pro consulibus*; and the ravages among senior members during the Social war and the internecine conflicts of the 80s had radically reduced the number of possible commanders. It was not clear who the alternatives to Pompeius in 77, once a non-standard response had become necessary, might have been.

One recurrent element in these problems is the legacy of Sulla: he had left the war against Mithridates largely unfinished, had permitted Pompeius' ambitions, and had, wittingly or not, created a political culture in which domestic affairs at Rome were becoming increasingly distinct from military activity.⁵⁶ Another is the Senate's flexibility in responding, not simply in authorising the continuation of Pompeius' *imperium* but also in its framing of the scope of Antonius' *imperium* against the pirates in 74, its willingness to ignore the *lex Sempronia de prouinciis consularibus* and perhaps even in the choice of Crassus to take over the forces facing Spartacus in 72.⁵⁷ Senatorial decisions over foreign policy

53 Ryan 1998: 86 n.210 suggests that this was because Sulla only enrolled those aged thirty or above in his *lectio* in 31. That is possible; but senatorial status seems comparatively minor compared with *imperium* and a triumph, and so the question must at least be asked whether his exclusion reflects Pompeius' wishes more than Sulla's.

54 His emphasis on his equestrian status emerges strikingly during the equestrian review conducted by the censors in 70 (Plut. *Pomp.* 22.3-6), which is also notable for the censors' participation in the popular acclaim of Pompeius.

55 The speech which Sallust gives Philippus in his *Histories* (1.77M) suggests that the Senate was reluctant to authorise military activity against Lepidus; it includes nothing about Pompeius, and Pompeius' command may belong to a later debate.

56 Another aspect of this development was the increasing importance of legates in the conduct of military campaigns.

57 The sources suggest that Crassus was specially appointed against Spartacus, but his command may have been a regular proconsular one following a praetorship in 73: *MRR* 2.121.

in this decade regularly exploit the possibilities which followed from Rome-based consuls and the concomitant emergence of proconsular *imperium* as a distinct form of activity.

The shifting mechanics of Roman foreign policy are demonstrated not only by Pompeius; Metellus Pius' position was also noteworthy. He had reached the consulship in 80 among the first wave of Sullan victors; his cousin, Scaurus' widow, was Sulla's wife, and his prominence was confirmed by his appointment as *pontifex maximus* in succession to the murdered Scaevola. Earlier *pontifices maximi* had been absent from Rome and held provincial commands, but Pius' absence was notably longer than any of his predecessors. (Even setting his religious office aside, the length of his command, at over nine years, was unusual). The absence of the chief pontiff from Rome for nearly a decade points either to a deep-seated crisis in manpower and decision-making – or is further evidence for a significant shift in how the *res publica* worked. But Pompeius' position is even more striking, not least because it was so obviously incompatible with Sulla's plans, insofar as they can be discerned. His extra-senatorial position was justified throughout his absence in Spain by being at the request of the Senate; when he returned to Italy, it became a loaded symbol for observers of what he might then hope to gain. There was anxious speculation about his intentions: the other side of the Sullan example, namely an armed assault on Rome, was still present. Pompeius turned relief at his disavowal of such ambitions into a further set of public acknowledgements of his singularity: a second triumph and the opportunity to stand for the consulship, seven years before the Sullan *cursus* permitted and with none of the preceding offices held. In return, he offered those attempting to maintain Sulla's *res publica* a powerful stamp of approval through his decision to enter the Senate and finally become part of the governing *nobiles*. His commissioning of Varro to write him a handbook of senatorial procedure should be seen in this context: not a naive cry for help from a man who feared being out of his bureaucratic depth, but a signal that he would respect and adhere to the traditions of the Senate.⁵⁸ It was balanced by Pompeius' vigorous support for reform, with his *contio* speech in favour of the full restoration of the tribunate. In Pompeius' re-entry into political life in 71, we can see his deft positioning of himself both as a bridge between government by the *nobiles* and the people's desire to re-establish their participation and as a magistrate whose personal popularity both confirmed and modified senatorial authority. At the same time, however, we should not confine the significance of the events of 71 to their impact on Pompeius' career, nor regard them as merely a highly skilled exercise in political communication. Pompeius faced a genuine choice in 71, between attempting to maintain the extra-senatorial exceptionalism of his public career so far on the one hand, or alternatively to give it up by holding office and entering the Senate. That he chose the latter option – albeit with considerable remaining marks of distinction – was a crucial moment in the confirmation of the shape of the post-Sullan *res publica*.⁵⁹

58 Gell. *NA* 14.7.1-2.

59 These included the stage-managing of Pompeius' participation in the census of 70 to emphasise his equestrian status: Plut. *Pomp.* 22.3-6 and see Millar 1998: 63-66.

The early career of Cn. Pompeius is very obviously an anomaly within any understanding of Republican political life; in the context of Sullan order, it was an astonishing, and pointed, rejection of much of what Sulla had been attempting to achieve, which in turn made his decision to integrate into the Senate in 71 all the more marked. That decision also throws light on the final changes to the powers of the tribunate, which Pompeius vigorously supported at *contiones* in the autumn of 71. Thus the complete restoration of the powers of the tribunate to their pre-82 form took place at a moment when one of the major post-Sullan problems was reaching solution, and in tandem with that resolution. The restoration of tribunician rights cannot, therefore, simply be interpreted as anti-Sullan; it took place as part of a ‘fresh start’ which appeared to offer continuity with the previous decade and indeed its strengthening, as even Pompeius accepted the parameters of Sullan public life.

The sense that the year of Pompeius’ and Crassus’ consulship would mark a fresh start was confirmed by the Senate’s decision to hold elections to the censorship. The previous census had been in 86-85 B.C.; the gap had therefore stretched to three times the normal pre-Sullan interval. Sulla’s victory and subsequent dictatorship had coincided with the date at which censors would normally be elected, in 81 B.C.: the absence of such an election should be seen as a deliberate act by Sulla. His reasons cannot be identified securely (and do not provoke comment in any ancient source) but some suggestions can be offered. One important function of the censors was to review senatorial membership, and Sulla was doing that himself with his adlection of new senators.⁶⁰ In addition, he may not have wished to share his dominant position within the *res publica* with the authoritative figures of the censors; moreover, it would not have been an easy office to fill in 81, given the shortage of consulars.⁶¹ It is also conceivable that Sulla was unwilling to deal with the problem of new citizens enfranchised under the *lex Iulia* and the other citizenship legislation passed at the conclusion of the Social War; the census of 86 had not completed this job, and the next revision of the citizen lists would be faced with a series of potentially divisive choices. The absence of a censorship in 81 or 80 is thus relatively easy to explain. That Sulla abolished the censorship entirely is more difficult to accept. His changes arguably made the *lectio senatus* unnecessary, since Senate membership, or at least participation, now followed automatically from electoral office, and the position of *princeps senatus* appears to have fallen into abeyance; but the censors had many other duties, and we have no evidence of alternative structures created by Sulla to fulfil these.

60 Quaeſtors automatically now had right to participate so – even if required earlier – censors were no longer necessary to replenish the Senate’s membership.

61 Curiously, the censors of 86 were both among the handful of consular survivors in the Sullan Senate. The only other consulars available for election in 81 were Sulla’s master of his horse, L. Valerius Flaccus, and – depending on the date of his return from Gaul – his cousin C. Valerius Flaccus; both of whom were patrician. There were some non-consular censors from the period of the second war against Carthage in the late third century B.C. (P. Licinius Crassus in 210, P. Sempronius Tuditanus and M. Cornelius Cethegus in 209), which could have provided a precedent for non-consular censors at a period of crisis.

It is possible, as Astin suggests, that *ad hoc* arrangements were developed to enable the negotiation of public contracts; and perhaps the citizen lists could have been updated at the *villa publica* by reports from individuals.⁶² But there was no distributed way of carrying out the *lustrum*, and no substitute for it emerged during the decade. As a result, it is more likely that the census remained a possibility open to the Senate; but that throughout the seventies it chose not to initiate one through the simple device of not declaring censorial elections. Its reasons for this are again a matter of speculation, but the censors' task of conducting a *lectio senatus* seems the aspect of the census most likely to have met with opposition from senators, given the reasons that many of them might well have to be anxious about their position. In addition to the rumours and allegations of corruption, Sulla's appointees looked increasingly out of place, particularly if few of them had stood for office. Moreover, if that were the case, then the enlarged quaestorship was supplying nearly twenty genuinely new members to the Senate each year. By the end of the decade the Senate's size may have been creeping up towards six hundred. For all these reasons, a cull might well seem a course of action likely to be attractive to censors. A senatorial membership reluctant to expose themselves to scrutiny and potential loss of position can thus provide an explanation for the delay of a decade in the censorship. It is perhaps also possible to point to circumstances towards the end of the seventies which resolved this reluctance in favour of a censorial election. With each year that passed, the number of Sulla's appointees dwindled, and their influence declined. A new cadre of *nobiles* was emerging, increasingly confident in their management of affairs and willing to ignore some, at least, of Sulla's reforms. By 70, and in a context in which external threats to the *res publica* were vanishing with remarkable rapidity, the opportunity to close one period, and perhaps eliminate some individual reminders of its worst excesses, was not only desirable but also feasible.⁶³ At any rate, the censors elected in 70 conducted an exceptionally severe *lectio*, with 64 expulsions.⁶⁴ One consular (P. Lentulus Sura, cos. 71) is known to have been among the expelled; otherwise, no-one who had held *imperium* is recorded in this group, and it is largely nameless. It is difficult to avoid the conclusion that this severity was a comment on the membership and behaviour of the post-Sullan Senate, even though the precise nature of the criteria that the censors used to determine expulsions are unclear.⁶⁵

62 Astin 1985.

63 A censorial election in 70 would also prevent Pompeius from being one of the censors.

64 Liv. *Ep.* 98. The only comparable occasion was the *lectio* in 115 B.C., in which a similar proportion of around 10% of senators were expelled (in this case, 32: Liv. *Ep.* 62).

65 It is not clear whether the *lectio* took place before or after the passage of the *lex Aurelia* ending senatorial monopoly of jurors; but, since the *Verrines* show that the possibility was in the air earlier in the summer, the censors may well have expected the demand for senatorial jurors to drop even if their deliberations began before the law was passed. Ryan (1998: 86-87) implies that Sullan appointees who had not held office may have been particularly vulnerable; I'm not convinced that this can have been a formal criterion (not least because that category may well still have been larger than 64) but I would agree that Sulla's appointees are likely to have been disproportionately represented among those eliminated.

If some of the paradoxes of the Sullan Senate are to be explained by his attempting to use it to reward two distinct groups – the *nobiles*, and a wider group of Romans, some of them newly so, who supported him in a factional, Italy-wide conflict – then 70 marks the apparent triumph of the former. They had reasserted their near-monopoly on the consulship. They had re-established the Roman people as political actors by restoring the tribunate's legislative capacity; a move which made little sense in a world of Italian citizenship, but offered the prospect of return to a political environment in which the eminent could shine even more brightly, and those without a Roman power-based find themselves at a substantial disadvantage. They had, it seemed, secured Pompeius' adherence to the *res publica*. Diminution of jury rights may have seemed a small price to pay to men whose public service encompassed very much more. The censorship was a happy addition to this catalogue, through which the Senate could appear to police itself by eliminating the worst offenders against propriety.

To this extent, then, we might conclude by supporting Gruen's analysis subject to one modification, namely that the post-70 'Sullan constitution' marked the victory of one element within Sulla's version of how the *res publica*, and the Senate within it, should operate. But such a view cannot ultimately stand. The *nobiles* had demonstrated their dominance within the enlarged Senate and within the *cursus honorum*, but the re-establishment of the tribunate's legislative capacity introduced another and more potent check on their influence. It rapidly became apparent during the 60s that tribunes would successfully challenge the Senate and magistrates and attempt to scrutinise their behaviour.⁶⁶

Moreover, Gruen's conclusion is correct at a more fundamental level, which he barely acknowledges. The composition and size of the Senate did not change in 70, and it was in the Senate that the ultimate weakness of the Sullan *res publica* sat.⁶⁷ The Senate continued to be joined each year by twenty quaestors, whom logic would indicate came from a wider sector of society than had been the case for the eight or twelve elected before Sulla. Senatorial membership had become a possibility for a much larger group of men than hitherto, and that possibility is unlikely to have vanished even if some of the beneficiaries of Sulla's *ad hominem* grants found their careers concluded by the censors in 70. The Senate remained a large body, with many of its members never progressing beyond the quaestorship; their duties, subsequent to that office, remained jury service and attendance in senatorial debates, and influencing their voting patterns remained laborious and unpredictable. The Senate continued to be highly politicised, with the regular presence of large numbers of *imperium*-holding magistrates, and prone to administrative blockage. It is not in the scope of this paper to trace the consequence in detail over the final two decades of the *res publica*; but the relevance of these observations to the crisis of senatorial decision-making about Caesar's command between 51 and 49 is obvious. The fundamentals of the Sullan Senate remained in 70, and with them remained the greatest weakness of the Sullan *res publica*.

66 Millar 1998: 73-123. In addition, the return of equestrian jurors enhanced the equestrians' political influence, most visibly in the dispute surrounding the renegotiation of tax contracts in 61 (*Att.* 1.17.8-10).

67 Cf. the observations in Badian 1970.

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