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ARTICLE

Foucault, Sovereignty, and Governmentality in the Roman Republic¹

Dean Hammer, Franklin and Marshall College

ABSTRACT: The originality of Foucault's work lies in part in how he reverses the question of power, asking not how power is held and imposed, but how it is produced. In both his discussion of sovereignty and governmentality, though, Foucault skips over the *res publica*; a form of political organization that fits neither Foucault's characterization of sovereignty nor the care of the self. I extend Foucault's discussion to identify a *ratio* of government around the discipline of ownership by which the *res publica* was made intelligible, its relations understood, and its logic organized. I end by suggesting some implications for neo-Roman interpretations of liberty as non-domination.

Keywords: *Res publica*, sovereignty, governmentality, liberty, neo-Romanism

Introduction

This essay proceeds from my interest in exploring the complex power relations of Roman politics. I have sought elsewhere to try to separate Roman power relations from what Foucault calls the "mythology of the sovereign," which he describes as "the great trap" that has led scholars to view politics through the lens of power operating on subjects.² The originality of Foucault's work lies in

¹ My thanks to Michèle Lowrie, Michael Kacey, Kerry Whiteside, Richard Alston and Shreyaa Bhatt for their helpful comments.

² Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, edited by Colin Gordon (New York: Pantheon, 1980), 39: mythology; Michel Foucault, *Society Must be Defended: Lectures at the Collège de France, 1975-76*, edited by M. Bertani, A. Fontana, F. Ewald and D. Macey (New York: Picador, 2003), 34: trap. There have been a number of approaches that seek to identify the operation of sovereignty in Roman politics. Sovereignty as embedded in law (constitutional state): Theodor Mommsen, *Römisches Staatsrecht*, edited by K.J. Marquardt (Leipzig: S. Hirzel, 1887-1888), 3/1, 127-42, 300-68; 3/2, 1030; M. P. Nilsson, "The Introduction of Hoplite Tactics at Rome: Its Date and Its Consequences" in *The Journal of Roman Studies* 19 (1929): 1-11, here 7; Chaim Wirszubski, *Libertas as a Political Idea at Rome during the Late Republic and Early Principate* (Cambridge: Cambridge University Press, 1950), 17-18 (<https://doi.org/10.1017/CBO9780511518607>); Lily Ross Taylor, *The Voting Districts of the Roman Republic: The Thirty-five Urban and Rural Tribes* (Rome: American Academy in Rome,

part in how he reverses the question of power, asking not how power is held and imposed, but how it is produced. In his own writings and lectures, Foucault has sought to free the study of power from laws and institutions, viewing power as something that “passes through individuals” and is “not applied to them.”³

Although Foucault’s focus is on modern discourses of power, the ancient world figures in his work in two ways. First, in his efforts to displace the centrality of sovereignty for understanding power, Foucault identifies a break between modern disciplinary practices and a medieval discourse of sovereignty that he sees as extending back to the Hellenistic and Roman worlds. Foucault locates in modernity the operation of multiple sites of subjugation (as both the forming and disciplining of subjects) that he contrasts with an ancient historiography that forged the connection between men of power, the continuity of law, and the luster of force. Second, as Foucault addressed more specifically the connection between freedom and subjectivity, he turned to ancient ethics. Foucault associates the Hellenistic and Roman care of the self that connected the government of oneself to the government of others with the changing political cues that attended the decline of the city-state and the rise of Empire, whose political organization Foucault tends to associate with the Principate.

1960) 17; P. A. Brunt, "The Army and the Land in the Roman Revolution" in *The Journal of Roman Studies* 52 (1962): 69-86, here 76; P. A. Brunt, *The Fall of the Roman Republic and Related Essays* (Oxford: Oxford University Press, 1988), 345; Neal Wood, *Cicero's Social and Political Thought* (Berkeley: University of California Press, 1988), 169; Andrew Lintott, *The Constitution of the Roman Republic* (Oxford: Oxford University Press, 1999), 39-43; K. A. Raaflaub, *The Discovery of Freedom in Ancient Greece* (Chicago: University of Chicago Press, 2004), 266; Caroline Williamson, *The Laws of the Roman People: Public Law in the Expansion and Decline of the Roman Republic* (Ann Arbor: The University of Michigan Press, 2005), 95 (<https://doi.org/10.3998/mpub.15992>); Fergus Millar, *The Crowd in Rome in the Late Republic* (Ann Arbor, The University of Michigan Press, 1998), 3-4 (<https://doi.org/10.3998/mpub.15678>); Benjamin Straumann, "Constitutional Thought in the Late Roman Republic" in *History of Political Thought* 32 (2) (2011): 280-292, here 285-86; Sovereignty as domination: Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome*. 2 vols. (London: Macmillan, 1911), 1.112-13, 1.295-96, 1.411-13; Andrew Alföldi, "Hasta-Summa Imperii: The Spear as Embodiment of Sovereignty in Rome" in *American Journal of Archaeology* 63 (1) (1959): 1-27, here 3; Alan Watson, *International Law in Archaic Rome: War and Religion* (Baltimore: Johns Hopkins University Press, 1993), 10-37, 42; D. J. Bederman, *International Law in Antiquity* (Cambridge: Cambridge University Press, 2001), 42-43, 46-47, 76-79, 192-93, 274-75; Clifford Ando, "Aliens, Ambassadors, and the Integrity of the Empire" in *Law and History Review* 26 (3) (2008): 491-519, here 494, 499-500; Clifford Ando, *Law, Language, and Empire in the Roman Tradition* (Philadelphia, University of Pennsylvania Press, 2011), 65, 72-73, 79; Valentina Arena, *Libertas and the Practice of Politics in the Late Roman Republic* (Cambridge: Cambridge University Press, 2012), 142 fn 299; Melissa Lane, *The Birth of Politics: Eight Greek and Roman Political Ideas and Why They Matter* (Princeton: Princeton University Press, 2015), 289. Popular sovereignty: Andrew Lintott, *The Constitution of the Roman Republic*, 43, 200. Sovereignty as exception: Giorgio Agamben, *State of Exception*, translated by Kevin Attell (Chicago: University of Chicago Press, 2005), 41, 50-51.

³ Foucault, *Society*, 29; also Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-78* (Basingstoke, UK: Palgrave Macmillan, 2007), 118.

Between the city-state and the “Imperial epoch” stands the *res publica*, a political form that Foucault largely skips over, yet one the Romans themselves distinguished from Hellenistic monarchies and the Principate.⁴ The *res publica* fits neither Foucault’s characterization of sovereignty nor the care of the self. There is not the coincidence of sovereignty and power that Foucault associates with ancient politics. Nor is there the loss of traditional bearings — the “political structures of the city and the laws” — by which individuals oriented themselves politically.⁵ That is, if one view of the operation of power in the *res publica* suggests too unified a framework of state sovereignty, the other sees it as too diffuse, locating it in a sovereignty “that one exercises over the self.”⁶ The result is a misreading of the operation of power.

It is by way of Foucault, though, that I want to reconstruct the political framework that organizes the space of the *res publica*; not from its institutional forms, but from the logic by which relations of power were understood and organized. I turn first to Foucault’s discussion of Rome. My goal is to both acquaint the reader with Foucault’s different forays into the Roman world and provide a vocabulary of analysis. In the second section, I extend Foucault to identify a *ratio* of government around the disciplinary practices of ownership by which the *res publica* was made intelligible, its logic organized, its relations understood, and forms of domination normalized. I end by suggesting some implications for neo-Roman interpretations of republican liberty as non-domination.

Foucault and Rome

Although Foucault often turned to ancient Rome, particularly in his later work, it is less clear where the Republic fits into his discussion of power. At times, Foucault seems to include Rome in a continuous discourse of sovereignty that extends to the Middle Ages. The ancient and medieval writing of history, as Foucault writes, was “a ritual that reinforced sovereignty.”⁷ Although what Foucault means by sovereignty is never fully developed, in this context he characterizes sovereignty as binding “everything together into a unity.”⁸ As Foucault writes, “from the first Roman annalists until the late Middle Ages,” the function of history was “to speak the right of power and

⁴ Michel Foucault, *The History of Sexuality. Vol. 3. The Care of the Self*, 1st Vintage Books edition (New York, 1988), 85.

⁵ *Ibid.*, 89.

⁶ *Ibid.*, 85.

⁷ Foucault, *Society*, 69.

⁸ *Ibid.*, 69. Foucault also associates sovereignty with the right to punish, which derives from the right to make war on enemies; a power Foucault associates with the Roman *merum imperium* (Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1979), 48. And he associates sovereignty with the power to suspend law, which is superseded by disciplinary power (Foucault, *Discipline and Punish*, 53; also Foucault *Power/Knowledge*, 39).

to intensify the luster of power."⁹ History, as written by the men of power, reinforces sovereignty by showing both continuity and unity to power.¹⁰ It demonstrates "the continuity of the law" by establishing "a juridical link between those men and power."¹¹ And it functions to "intensify the luster of force" through *exempla*.¹² This Jupiterian history, as Foucault refers to it (drawing on Dumézil), accomplishes this by combining a "juridical aspect" in which "power uses obligations, oaths, commitments, and the law to bind" with a "magical function, role, and efficacy" in which "power dazzles, and power petrifies."¹³ This Roman discourse, meant to promote unity and glory, is then later brought into tension with what emerges as a more dominant discourse of what Foucault names (somewhat uncomfortably) race struggle; a discourse meant to illuminate something that was hidden.¹⁴ The tension is between Rome and Jerusalem, that is, between "the Roman history of sovereignty" and "the biblical history of servitude and exiles."¹⁵

However, there is no easily identified unity between men in power, sovereignty, and majesty. There is no doubt that the histories of Rome, especially the ones we have now, are focused on, and ratify the power of, the leading men. But even that is complicated. Historians such as Livy did not depict a history of unity and glory, but pointed to the conflict and divisions by which both power and law were contested, used and misused. Lost, also, are histories, such as Sallust's and Gaius Lucinius Macer's, that locate power in the *populus Romanus*.¹⁶ Moreover, the magical elements of history — the luster of force — is attributed frequently to the majesty of the people: the *maiestas populi Romani*.¹⁷ Even for early modern Romanists, the Romans were a ready source of disruption against a sovereign, centralizing power, as Hobbes attests (*Leviathan*, 2.21, 29). There is an irony here that underlies the analytic problem: While seeking to free the study of power from

⁹ Foucault, *Society*, 66.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*, 67; also 66: "The yoke of the law and the luster of glory appear to me to be the two things historical discourse strives to use to reinforce power."

¹³ *Ibid.*, 68. See Georges Dumézil, *Mitra-Varuna: An Essay on Two Indo-European Representations of Sovereignty*. 2nd edition (New York: Zone Books, 1988).

¹⁴ Foucault, *Society*, 72-74. See Andrew W. Neal, "Cutting Off the King's Head: Foucault's Society Must Be Defended and the Problem of Sovereignty" in *Alternatives: Global, Local, Political* 29 (4) (2004): 373-398 (<https://doi.org/10.1177/030437540402900401>).

¹⁵ Foucault, *Society*, 77.

¹⁶ On recovering this *populares* tradition, see Arena, *Libertas and the Practice of Politics*.

¹⁷ See Hammer, "Between Sovereignty and Non-Sovereignty: *Maiestas* and Foundational Authority in the Roman Republic," Paper to be presented at the Institute of Classical Studies (forthcoming). Different arguments are made by Richard A. Bauman, *The Crimen Maiestatis in the Roman Republic and Augustan Principate*. (Johannesburg: Witwatersrand University Press, 1967), J.-L. Ferrary, "Les origines de la loi de majesté à Rome." *Comptes rendus des séances de l'Académie des Inscriptions et Belles-Lettres* (1983): 556-572, Yan Thomas, "L'institution de la Majesté" in *Revue de synthèse* 112 (3-4) (1991): 331-386 and Arena, *Libertas and the Practice of Politics*.

the grip of sovereignty, Foucault ends up reading the Romans by way of a medieval history of sovereignty. Although conceptions of sovereignty drew on interpretations of Roman law, it is important to recognize that sovereignty is an early modern term and discourse that arises out of distinct historical circumstances and addresses a set of concerns tied to the emergence of the modern state.¹⁸ In short, reading Roman historiography as a discourse of sovereignty leads us to seek a unified power where there may be none.

Foucault at other times sees in Roman society, particularly under the Principate, something of a corollary to modern society. Foucault argues for the need to reorient the study of the modern operation of power from “the juridical edifice of sovereignty, State apparatuses, and the ideologies that accompany them” to “material operations, forms of subjugation, and the connections among and the uses made of the local systems of subjugation on the one hand, and apparatuses of knowledge on the other.”¹⁹ As Foucault writes, in suggesting the move from sovereignty as imposing law on men to government employing tactics:

Whereas the end of sovereignty is internal to itself and gets its instruments from itself in the form of law, the end of government is internal to the things it directs (*diriger*); it is to be sought in the perfection, maximization, or intensification of the processes it directs, and the instruments of government will become diverse tactics rather than laws.²⁰

The context for this statement is Foucault’s discussion of a new mechanism of power, “disciplinary power,” that is exercised on bodies and what they do rather than the land and what it produces.²¹ In his lectures the following year, Foucault would further elaborate what he describes as “the breakthrough” of a “governmental *ratio*” or “governmental reason” in which the state serves as “the principle of intelligibility” or “schema of intelligibility”: “a way of thinking the specific nature, connections, and relations of certain already given elements and institutions. What is a

¹⁸ See Quentin Skinner, “Political Philosophy” in *The Cambridge History of Renaissance Philosophy*, edited by C.B. Schmitt, Q. Skinner and E. Kessler, (Cambridge: Cambridge University Press, 1988), 389-452, here 392-93; Quentin Skinner, *Visions of Politics. Vol. 2: Renaissance Virtues* (Cambridge: Cambridge University Press, 2002), 14-15; Quentin Skinner, “The Sovereign State: A Genealogy” in *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept*, edited by H. Kalmo and Q. Skinner (Cambridge: Cambridge University Press, 2010), 26-46; Alexander P. d’Entrèves, *The Notion of the State: An Introduction to Political Theory* (Oxford: Clarendon Press, 1967); Martin Loughlin, “Ten Tenets of Sovereignty” in *Sovereignty in Transition: Essays in European Law*, edited by N. Walker (Oxford: Hart Publishing, 2003), 55-86 on the early modern discourse of sovereignty.

¹⁹ Foucault, *Society*, 34; also 46: “Rather than looking at the three prerequisites of law, unity, and subject — which makes sovereignty both the source of power and the basis of institutions — I think we have to adopt the three-fold point of view of the techniques, the heterogeneity of techniques, and the subjugation effects that make technologies of domination the real fabric of both power relations and the great apparatuses of power.”

²⁰ Foucault, *Security, Territory, Population*, 99.

²¹ Foucault, *Society*, 36.

king? What is a sovereign? What is a magistrate? What is a constituted body? What is a law? What is a territory?"²² Sovereignty emerges not as one edifice, "but the multiple subjugations that take place and function within the social body," and a network of discipline and punishment that culminates in the modern era as a carceral society.²³ Foucault situates this new version of sovereignty in this connection of "government of oneself and government of others," referring to this operation of power as governmentality.²⁴

Governmentality, at least in its initial formulation by Foucault, is focused on modern technologies of administering populations. That is, the sovereign power is replaced by a disciplinary power in which life is "the new object of power."²⁵ But he broadens the analysis when he turns to ancient ethics, looking specifically at the roots of forms of governmentality in ancient times: the Platonic model of recollection; the Hellenistic model of conversion to the self; and the Christian model of exegesis or uncovering the self.²⁶ In classical times:

the object of care was indeed the self, but in which the end of the care of the self was the city-state, in which the self reappears, but merely as a part. The city-state mediated the relationship of self to self so that the self could be the object as well as the end, but the self was only the end because it was mediated by the city-state.²⁷

That is, care of the self involved initially the question of "what basis and within what limits should the subject submit to the law."²⁸

With Imperial Rome, though, Foucault argues that one sees emerge a later relationship to the self as one of mastery and sovereignty.²⁹ Foucault characterizes the central political problem of the Roman world as the question of the type of political unit that will be organized when the exercise

²² Foucault, *Security, Territory, Population*, 285-87; also Michel Foucault, "The Subject and Power" in *Critical Inquiry* 8 (4) (1982): 777-795, here 779-80.

²³ Foucault, *Society*, 27; also 28: "rather than asking ourselves what the sovereign looks like from on high, we should be trying to discover how multiple bodies, forces, energies, matters, desires, thoughts, and so on are gradually, progressively, actually and materially constituted as subjects, or as the subject." See Foucault, *Discipline and Punish*, 298-308 on the carceral society.

²⁴ Michel Foucault, *The Hermeneutics of the Subject: Lectures at the Collège de France, 1981-1982*. 1st edition (New York: Picador, 2005), 374, 377-78.

²⁵ Gilles Deleuze, *Foucault*, translated by S. Hand (Minneapolis: University of Minnesota Press, 1988), 92; also Foucault, *Security, Territory, Population*, 108-9.

²⁶ Foucault, *The Hermeneutics of the Subject*, 264.

²⁷ *Ibid.*, 83.

²⁸ *Ibid.*, 318.

²⁹ *Ibid.*, 86.

of power must extend beyond the boundaries of city.³⁰ Foucault is careful to avoid the simple equation of the “decline of the city-state” that begins in the third century BCE with a retreat into the self, identifying instead a change “in the conditions of the exercise of power.”³¹ As Foucault writes, “Rather than imagining a reduction or cessation of political activities through the effect of a centralized imperialism, one should think in terms of the organization of a complex space.”³² The space is not highly bureaucratized; rather, it was “a space in which the centers of power were multiple; in which the activities, the tensions, the conflicts were numerous.”³³ With “a weakening of the political and social framework within which the lives of individuals used to unfold” comes an intensification of the care of the self.³⁴ One sees portrayed through Roman *exempla* not “visible forms of brilliance and power, but individual forms of self-mastery.”³⁵

Like in his discussion of sovereignty, so in his extension of governmentality Foucault draws his examples largely from the Principate: either as advice about how to conduct oneself as a member of the “service aristocracy” in carrying out rules in a large network of management and administration, or advice to the figure of the *princeps*, who was accountable to no one. In both cases, ruling others requires (and is coextensive with) ruling oneself.³⁶ But how does this self-mastery function in the framework of the *res publica*? Foucault gives us some sense of how this plays out in the Roman Republic in a brief mention of Cato the Elder, the late third and early second century BCE senator and historian, in which the body, the household, and love are all seen as domains “in which the practice of the self is actualized.”³⁷

I want to start from Foucault’s example, using Cato the Elder’s manual on agriculture as a beginning point for identifying less a care of the self and more a reason of government by which the Republic was made intelligible, certain kinds of knowledge validated, and relations of power understood. I am both arguing against the attempt by Foucault to embed the operation of power of the *res publica* in sovereignty and extending Foucault’s notion of governmentality to explore the cultural discourse by which disciplinary forms take shape. My argument proceeds by exploring discourses of ownership, beginning with Cato’s and Varro’s handbooks on agriculture, which emerge as practices of discipline both for the farm and the farmer. I look next at how these house-

³⁰ Michel Foucault, *The Government of Self and Others: Lectures at the Collège de France, 1982-1983*, translated by Graham Burchell (New York: Palgrave Macmillan, 2010), 290; Foucault, *The Hermeneutics of the Subject*, 375.

³¹ Foucault, *The Care of the Self*, 81, 83.

³² *Ibid.*, 82.

³³ *Ibid.*

³⁴ *Ibid.*, 41; see Dean Hammer, *Roman Political Thought and the Modern Theoretical Imagination* (Norman, 2008), 180-222 (<https://doi.org/10.1017/CBO9781139031073>).

³⁵ Foucault, *The Hermeneutics of the Subject*, 264.

³⁶ Foucault, *The Care of the Self*, 84.

³⁷ Foucault, *The Hermeneutics of the Subject*, 161; also 160, 264.

hold practices are extended to politics, not just as the characteristics of a good citizen, but also as a way of understanding the *res publica* as a form of ownership, as a partnership (*societas*). There is a close analogy to the household; in Roman law, there is a provision for managing the household when the *pater* is absent. But the absence of the *pater*, like the absence of the king, raises a question: How does the hierarchy work?

The question of hierarchy is not one usually associated with discussions of ownership. The political dimension of ownership has often been read by way of a dichotomy between owning and being owned, or between being free and being a slave. That is, ownership is frequently seen as the basis by which the Romans conceived of *libertas*. Neo-Roman interpretations (to which I will return in the final section) take the claim even further, suggesting that underlying this conception of *libertas* is a notion of non-domination. But much less attention has been given to unpacking how power is conceived within the image of ownership. I will argue by way of Foucault that in exploring the layered images of ownership, one actually gains insight into the operation of power; not as embedded in sovereignty (as Foucault suggests) but in a cultural discourse that defines equality, consent, reason, and trust in ways that normalize forms of domination.

Res publica and the ratio of government

Where “sovereignty capitalizes a territory, raising the major problem of the seat of government,” Foucault argues, “discipline structures a space and addresses the essential problem of a hierarchical and functional distribution of elements.”³⁸ These disciplinary forms “take shape within quite distinct practices, institutions, and groups” in which values are conditioned on “more or less regular techniques and procedures that have been developed, validated, transmitted, and taught, and that are also associated with a whole set of notions, concepts, and theories etcetera; with a field of knowledge (*savoir*).”³⁹ Unlike violence, which is direct action on another, the type of power Foucault is exploring refers to action on the action of others.⁴⁰ It is this ability to affect and direct the conduct of others, or “the possible field of actions of others,” that Foucault refers to as government.⁴¹ For Foucault, the analysis of governmental power is not confined to institutions but involves an attention to how power applies itself “to immediate everyday life which categorizes the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognize and which others have to recognize in him.”⁴² This attention directs Foucault to a variety of texts that are not just explicit theorizations of

³⁸ Foucault, *Security, Territory, Population*, 20.

³⁹ Foucault, *The Hermeneutics of the Subject*, 113, 179.

⁴⁰ Foucault, *The Subject and Power*, 789. See also Hannah Arendt, “On Violence” in Hannah Arendt, *Crises of the Republic* (New York: Harcourt Brace Jovanovich, 1972), 105-84 on the distinction between violence and power.

⁴¹ Foucault, *The Subject and Power*, 790.

⁴² *Ibid.*, 781.

power, but their practices: factory and prison floor plans, demographic analyses, health reports, and accounting, to name a few. I will look first at the discipline of owning that emerges from these handbooks, showing then how this discipline of owning is extended to conceptualizations of political relations.

The discipline of owning

We can understand Cato the Elder's handbook on farming as a regimen of everyday life that controls activity by classifying, categorizing, ranking, and organizing multiplicity. As Foucault writes, "the disciplines create complex spaces that are at once architectural, functional and hierarchical. They are spaces that provide fixed positions and permit circulation; they carve out individual segments and establish operation links; they mark places and indicate values; they guarantee the obedience of individuals, but also a better economy of time and gesture."⁴³ Discipline is not limited to particular, discrete practices, but forms the actions and attitude of the body.

When Cato the Elder writes in his manual on agriculture, "Remember that a farm is like a man," he is making a claim about a relationship between the *res rustica* and individual and social forms of conduct (Cato the Elder, *De agricultura*, 1.6; also pro.1).⁴⁴ A farm needs a master in order to manage the possessions (Cato the Elder, *De agricultura*, 2.1) and to assign different responsibilities (5.1-8; 10.1; 11.1; 14.1; 66.1; 67.1-2; 136.1: tenant; 142.1; 143.1-3; 144.1-5). Mastery relies on knowledge that recognizes the importance of distinctions: climate, soil, plantings, buildings, and job functions. And this knowledge is associated with discipline: training vines (32.1; 33.1), building orderly furrows (41.2), organizing and controlling slaves (2.7), and observing proper rituals (83.1; 131.1; 132.1-2; 134.1-4; 139.1; 140.1; 141.1-4). These disciplinary practices all have their corollaries in the management of time (2.1-8) and money (1.6; 2.7; 4.1), patience (3.1), attentiveness (4.1), productivity (2.1-8; 37.3; 39.1-2; 40.1), proper conduct (4.1; 143.1), piety (83.1), and neighborliness (4.1). The manual reads as a compendium of what every Roman should know and be: moderate (1.6), attentive (2.1-7), active (3.1), judicious (5.1-2), and skilled in crafts (135.1-3), encompassing everything from farming practice to religious observation to bodily cures. The suggestion is that the disciplinary practices of the good farmer form the good citizen. It is from the farmer, as Cato writes, "that the bravest men and the sturdiest soldiers come" (pro.4; also pro.2 and Varro *De re rustica*, 3.1.4-5: most pious and useful, only survivors of King Saturnus; in contrast, Cicero *De republica*, 2.4.7-8: temptations of trade).

⁴³ Foucault, *Discipline and Punish*, 148. Foucault would compare Seneca's language of the examination of the self to "that of a master of a household checking his accounts" (Foucault, *The Care of the Self*, 61).

⁴⁴ On the connection of agriculture to Roman identity, see Mary Jaeger, "Agriculture and Identity in Roman Myth" in *A Companion to Greek Democracy and the Roman Republic*, edited by Dean Hammer, (Oxford and Malden, MA: Wiley-Blackwell, 2015), 83-98.

This science (*scientia*) of cultivation is seen as organizing Roman spaces as well (Varro, *De re rustica*, 1.2.3-8). Varro, in his handbook, describes (by way of Agrasius) how in all his travels he has never “seen any land more fully cultivated than Italy,” not only because of the superior land and climate, but also because of laws (such as limits on landholding) that make the land productive rather than extravagant (1.2.3; 1.2.9-10). Esteem is awarded to diligence (1.2.9-10). And Varro connects this image of the farm not just to the citizen, but to their political location. He recalls Gaius Licinius, who, as tribune of the plebs, “was the first to lead the people, for the hearing of laws, from the *comitium* into the ‘farm’ (*in septem iugera*) of the forum” (Varro, *De re rustica*, 1.2.9; Cicero, *De republica*, 2.14.26). The language is layered: preceding this statement is a reference to Gaius Licinius’ ancestors who had originated the bill limiting Roman citizens from holding more land than 500 *iugura*, which was meant to control extravagance. Licinius is praised because of the continuity with his ancestors in managing the estate. But that management is extended into the political realm. Licinius is the first to lead citizens into the forum; the seven *iugura* recalling the modest amount of land assigned each citizen after the expulsion of the kings (see Pliny, *Naturalis Historia*, 18.3.18). These are claims about the science of space, about what counts as the profitable and proper arrangement of space for those who cultivate (*colere*) rather than philosophize (Varro, *De re rustica*, 1.5.2). Time is parceled as well. The calendar is created so that those in the country could attend to town affairs on the ninth days, the remaining days spent cultivating their farms (2.pro.1-2; 2.pro.3: now corrupted by leisure and entertainment; 2.pro.4-5: farms converted to grazing; also Cicero, *De republica*, 2.4.7-8: indolence and extravagance with trade rather than farms).

The knowledge of nature in the ancient world, as Foucault writes, served not as a means of detachment from one’s environment, but as a way of grasping its details and organization in order to see oneself as a part.⁴⁵ Certainly reasoning from nature looms large in Roman political thought as a framework for structuring political ideas, perhaps most explicitly developed during the Republic in Cicero’s *De legibus*. But in these handbooks on agriculture, one gets an insight into how forms of knowledge of nature normalize particular disciplinary practices and relations; practices that do not diminish different forces, but rather, as Foucault notes, “[seek] to bind them together in such a way as to multiply and use them.”⁴⁶ These practices more closely resemble what Scipio extols as the primary form of Roman training, namely that which occurs by experience and maxims learned at home (Cicero, *De republica*, 1.22.36).

Discipline, ownership and politics

Like the practices of farming, Cicero undertakes a study of “the *ratio* of government and the training of peoples” (*ratio civilis et disciplina populorum*) (Cicero, *De republica*, 3.3.4; also 1.2.2; 1.6.11).

⁴⁵ Foucault, *The Hermeneutics of the Subject*, 281-83.

⁴⁶ Foucault, *Discipline and Punish*, 170.

Just as Cato and Varro delineate different crops for different soils, so Cicero celebrates Romulus for wisely selecting where “to plant (*serere*) a *res publica*” (*De republica*, 2.3.5; also 1.26.41: seeds of state). The character of Scipio in Cicero’s *De republica* suggests not only how this discipline is read into politics, but also how seamlessly discipline in one sphere affects all spheres: When a democracy “destroy[s] all distinction between a private citizen and a magistrate,” it necessarily follows in such a State that liberty prevails everywhere, to such an extent that not only are homes one and all without a master, but the vice of anarchy extends even to the domestic animals, until finally the father fears his son, the son flouts his father, all sense of shame disappears, and all is so absolutely free that there is no distinction between citizen and alien; the schoolmaster fears and flatters his pupils, and pupils despise their masters; youth take on the gravity of age, and old men stoop to the games of youth, for fear they may be disliked by their juniors and seem to them too serious. Under such conditions even the slaves come to behave with unseemly freedom, wives have the same rights as their husbands, and in the abundance of liberty even the dogs, the horses, and the asses are so free in their running about that men must make way for them in the streets (*Cicero, De republica*, 1.43.67; also *De legibus*, 3.9.19: lowest equal to the highest).⁴⁷

The result, Scipio concludes, is that authority is so reviled that citizens “begin to neglect the laws as well, and so finally are utterly without a master of any kind” (*Cicero, De republica*, 1.43.67). The diatribe reads as a veritable compendium of what Cicero later describes as distinctions between “different kinds of domination and subjection” (*imperandi et serviendi*) (*De republica*, 3.25.37).

It is in the context of ownership that Cicero provides a genealogy of the early Roman community: as a large household with a father, extended then to the children who, when mature, comprised the senate (*De republica*, 2.12.23; 2.11.21: raised the people from infancy).⁴⁸ But a household is not the same as a *res publica*: the concentration of *imperium* or *potestas* in one man alters the terms of ownership. The king (as father) can command obedience over his property, eliding any difference between citizens and slaves (*De republica*, 3.25.37). For Cicero, political rule is not the same as household rule, but it is not a completely separate realm from the management of possessions either. The *res publica* is itself a thing, a possession of the people. In ancient law, “*res publicae* were all things owned by the state.”⁴⁹ Schofield, in his insightful discussion, argues that for Cicero to be free is to possess the *res publica*, which means that the *populus* “has rights over its management

⁴⁷ Reasoning from natural law, Cicero sees an analogous set of relationships that extend to the household: a god rules the universe, like a king rules his subjects, like a father rules his children, like the mind governs the body (*De republica*, 3.25.37: *sed corpori ut rex civibus suis aut parens liberis*); also 1.39.61.

⁴⁸ See Dean Hammer, *Roman Political Thought: From Cicero to Augustine*, (Cambridge: Cambridge University Press, 2014), 50-52. Cited hereafter as *Roman Political Thought*.

⁴⁹ Alan Watson, *The Law of Property in the Later Roman Republic* (Oxford: Clarendon Press, 1968), 10.

and use.”⁵⁰ As I have argued in *Roman Political Thought*, Cicero conceives of the *res publica* as a particular type of ownership: as a partnership (*societas*) (*De republica*, 1.25.39).⁵¹ Cicero is employing not just a common language of association, but one that has a legal denotation: it refers to a type of partnership in which, as de Zulueta writes, individuals “contribute property or work or both to the prosecution of a common aim” (see, for example, *Pro Q. Roscio* 8.24; *Pro Quinctio* 3.11).⁵² Like the state that, as Foucault writes, “is the regulatory idea of governmental reason,” so the *res publica* becomes a scheme by which relations of power, notions of agreement, objectives, and forms of authority are understood.⁵³

In a partnership, as treated later by the jurist Gaius, profits and losses must continue to be shared, either equally or in proportion to an agreed upon recognition of differences in service or other contributions (Gaius, *Institutiones*, 3.149-50). A partnership requires that the parties remain “of the same mind” (*in eodem sensu*) (Gaius, *Institutiones*, 3.151). Gaius refers at one point to a type of *societas* called *ercto non cito*, an “ownership undivided” (Gaius, *Institutiones*, 3.154a). The partnership likely referred to the continuation of the household as it was before the death of the *paterfamilias*, “except that there were now several persons who had equal right to perform independently the acts of administration previously performable only by the deceased or with his authority.”⁵⁴ The ancient consortium of *sui heredes* was likely the basis for the classical *societas omnium bonorum*, through which the assets of the *socii* and future acquisitions were held in common by contractual agreement.⁵⁵ It is changed from something seen as deriving from a pre-existing natural union (the family) to something artificial and constituted by law, though there is no different treatment in their legal effects.⁵⁶

I want to suggest how this language of ownership provides a *ratio* by which differential power relations could be understood, organized and validated not only between owning and being owned, but also among those who own. I will delineate below how conceiving of the *res publica* as a form of *societas* structures power by (1) differentiating, (2) establishing the parameters of legitimate action, and (3) defining the proper functioning of the parts.

⁵⁰ Malcolm Schofield, “Cicero's Definition of *Res Publica*” in *Cicero the Philosopher*, edited by J.G.F. Powell (Oxford: Clarendon Press, 1995), 63-83, here 76; also Malcolm Schofield, *Saving the City: Philosopher-kings and Other Classical Paradigms* (London: Routledge, 1999), 188-89.

⁵¹ See Hammer, *Roman Political Thought*, 46-69.

⁵² Francis de Zulueta, *The Institutes of Gaius*. 2 vols. (Oxford: Clarendon Press, 1946), 2.179. Examples of *societates* include the growth of tax companies (*societates publicanorum*) (see Andrew Lintott, *Imperium Romanum: Politics and Administration* (London: Routledge, 1993), 86-91). It has been suggested that Quintus Mucius first articulates the more abstract notion of *societas* (Aldo Schiavone, “Classi e politica in una società precapitalistica: il caso della Roa repubblicana” in *Quaderni di storia* 9 (1977): 33-69; Arena, *Libertas and the Practice of Politics*, 162-63).

⁵³ Foucault, *Security, Territory, Population*, 286.

⁵⁴ Francis de Zulueta, “The New Fragments of Gaius. Part II: *Societas ercto non cito*” in *The Journal of Roman Studies* 25: (1935), 19-32, here 25.

⁵⁵ de Zulueta, *The New Fragments of Gaius*, 25, 30.

⁵⁶ *Ibid.*, 20, 30.

1. *Differentiation*. Foucault writes, "Every relationship of power puts into operation differentiations which are at the same time its conditions and its results."⁵⁷ A partnership requires fairness (for example, *De republica*, 1.45.69). But fairness (*aequabilitas*), a term of Cicero's creation, is not the same as strict equality in which distinctions are eliminated (*De republica*, 1.27.43; 1.34.53; also *De legibus*, 3.9.19).⁵⁸ What is fair, from the perspective of *societas*, is negotiated among the partners according to the principle of shared contributions and losses. Partners, for example, can entrust others, as the people (for Cicero) entrust the aristocracy, to make decisions about certain affairs (*De republica*, 1.34.51). The mixed form of government advocated by Cicero is one way of institutionalizing the differential contributions of *societas*, one in which "every citizen is firmly established in his own station" (*De republica*, 1.45.69).

The idea of proportionate responsibilities had long been normalized and institutionalized by way of the census. Where the modern census for Foucault is part of a broader concern with the administration and care of populations, in Rome the census serves as a form of knowledge that organizes society by ranks.⁵⁹ Livy describes the introduction of the census, dating back to the sixth Roman king, Servius, which recognized "distinctions" (*discriminis*) among citizens that would allow burdens of war and peace to be born "in proportion to men's wealth" (Livy 1.42.4). These differential contributions are used, among other ways, to justify the dramatically different weighting of a vote. In the *comitia centuriata* (assembly of centuries), citizens were divided into 193 units (or centuries) according to the census class (based on wealth). Those with less wealth were grouped in larger numbers into particular centuries than those with more, giving disproportionate weight to wealthier classes.⁶⁰ As Cicero writes, "the greatest number of rules belonged, not to the common people, but to the rich" (*De republica*, 2.22.39; also 2.22.40: votes in hands of those for whom welfare of state is most important; also Cicero, *De legibus*, 3.3.7: censors).

⁵⁷ Foucault, *The Subject and Power*, 792.

⁵⁸ See Elaine Fantham, "Aequabilitas in Cicero's Political Theory and the Greek Tradition of Proportional Justice" in *Classical Quarterly* 23 (1973): 285-90, here 287 (<https://doi.org/10.1017/S0009838800036764>).

⁵⁹ On the modern administration of populations, see Foucault, *Society*, 242-47. On disciplinary structures, see Foucault, *Security, Territory, Population*, 20. Foucault references the organization of the Roman camp as an exercise of discipline through observation (see Foucault, *Security, Territory, Population*, 26 and Foucault, *Discipline and Punish*, 170-72).

⁶⁰ See Dionysius of Halicarnassus, *Antiquitates Romanae*, 4.19.2-3; 21.2; Cicero, *De republica*, 2.22.39-40; Livy, *Ab Urbe Condita*, 1.43.10. Distribution of voting: assembly consisted of 193 groups (centuries): wealthy distributed in 18 groups of knights (*equites*) (comprised of the senatorial class and a non-senatorial class who owned property and would come to form a distinct class and be referred to as the *equites*), 70 groups of the first class, and joined by a group of carpenters; poor distributed in 104 groups (*De republica*, 2.22.39-40). The two lowest classes were grouped into 30 *centuriae*, and the *proletarii* into one (Henrik Mouritsen, *Plebs and Politics in the Late Roman Republic* (Cambridge: Cambridge University Press, 2001), 94 (<https://doi.org/10.1017/CBO9780511482885>)).

The organization of space reinforced this differentiation, serving as what Foucault describes as a mechanism that enforces hierarchy through surveillance.⁶¹ The military camp becomes “the diagram of power that acts by general visibility”: a square or rectangle divided into other squares and rectangles.⁶² One sees this organization in political spaces. When voting, the people were grouped into their centuries or tribes, which corresponded with rank, in front of a presiding magistrate, and before the secret ballot their vote would be public.⁶³ In his argument against the secret ballot, Cicero made clear the role of this scrutiny: it deprives the elite of influence by concealing the people’s secretly held opinions (*De legibus*, 3.15.33-38).

2. *Reason and right action.* A partnership also serves as a framework for defining the parameters of legitimate action. The consent (*consensus*) that makes partnerships possible connects back to an earlier part of Cicero’s definition of a *res publica* (also Cicero, *De republica*, 1.25.40: partnership formed by mutual agreement). *Societas* for Cicero is premised on the *ius naturale* that arises from “natural reason among all men.”⁶⁴ In this context, natural reason basically means an ability to calculate interest and recognize fairness (see Cicero, *Epistulae ad Familiares*, 1.8.2; Sallust, *Bellum Catilinae*, 44.5). Without the former, there can be no mutuality of agreement, but only obedience (like a child or slave) to stated conditions. Without the latter, the agreement becomes nothing more than the fleeting arrangements of a den of thieves prone to deception and violence (see *De republica*, 2.26.48; also *De officiis*, 1.10.31; 2.11.40: duty to restore trust and fulfill a promise; *Philippics*, 2.3.5; 2.4.9). But reason limits the range of actions allowed in a partnership: one cannot be obligated to act contrary to morality (*boni mores*) (Gaius, *Institutiones*, 3.157); one cannot have one’s property taken against one’s will (3.195); and one cannot reach an agreement to take someone else’s property.

“Reason,” and I place the word in quotes because the discourse is itself about what counts as reason, had powerful implications for validating the distribution of property, as well as for delegitimizing attempts at agrarian reform. For Cicero the violation of property is like a violation of natural law:

For a man to take something from his neighbor and to profit by his neighbor’s loss is more contrary to Nature than is death or poverty or pain or anything else that can affect either our per-

⁶¹ Foucault, *Discipline and Punish*, 170.

⁶² *Ibid.*, 171; also Foucault, *Security, Territory, Population*, 2007: 15-16, 26 fn. 30.

⁶³ Henrik Mouritsen, “The Incongruence of Power: The Roman Constitution in Theory and Practice” in *A Companion to Greek Democracy and the Roman Republic*, edited by D. Hammer, (Oxford and Malden, MA: Wiley-Blackwell, 2015), 146-63, here 153-54.

⁶⁴ Gaius, *Institutiones*, 3.154; David Daube, “*Societas* as Consensual Contract” in *The Cambridge Law Journal* 6 (3) (1938): 381-403, here 385; also Cicero, *De legibus*, 1.13.35: *societas iuris*.

son or our property. For, in the first place, injustice is fatal to social life and fellowship (*societas*) between man and man (*De officiis*, 3.5.21).

Cicero draws out the conclusion: "For, if we are so disposed that each, to gain some personal profit, will defraud or injure his neighbor, then those bonds of human society which are most in accord with Nature's laws must of necessity be broken" (*Si enim sic erimus affecti, ut propter suum quisque emolumentum spoliet aut violet alterum, dirumpi necesse est, eam quae maxime est secundum naturam, humani generis societatem*) (*De officiis*, 3.5.21). Attempts to redistribute property, such as by Tiberius Gracchus, who introduced a law in 133 BCE to limit holdings of public land that have been taken illegally by the wealthy, become a violent abrogation of the partnership.⁶⁵

Cicero makes a comparison between efforts at land redistribution and laws entrusting the property of an insane person to male relatives in that line. It would be no more "right" for the insane individual to possess the property as it would for an insane multitude (or the demagogue who assumes their name) to possess the property of the people (*De republica*, 3.33.45). Speaking against P. Servilius Rullus' agrarian reform bill introduced at the beginning of Cicero's consulship, Cicero plays on the idea of property and inheritance, asking if the people would not rather have the territory that belongs to the Roman people remain part of their *patrimonio* rather than divided up into private lots (*Oratio de Lege Agraria contra Rullum*, 2.29.79-80). The specter that Cicero raises, and it is powerful enough to enable him to marshal popular support against the measure, is that the Roman inheritance will be lost (*Oratio de Lege Agraria contra Rullum*, 2.30.82; 2.31.84; also *De officiis*. 2.21.73; 2.22.78; 2.22.79 = theft; 2.23.83; 2.24.85; *De republica*, 1.44.68; recall Varro 1.1.2: wasted by gluttons).⁶⁶

3. *Order*. Finally, partnerships define the proper functioning of its parts. The norm of partnership is not the Greek *homonoia*, like-mindedness (Aristotle, *Nicomachean Ethics*, 9.6.3; Plato, *Republic*, 431d-432a; Stobaeus, *Anthology*, 2.7.11b P; 2.7.5l: shared belief about the goods of life), but *concordia* and *harmonia*. Harmony, as in music, occurs from the "proportionate blending of unlike tones" (*De republica*, 2.43.69), so in a *civitas*, concord is produced by "agreement among dissimilar elements" (*De republica*, 2.43.69). More ominous is the suggestion that "the interruption or violation" of this harmony is "intolerable to trained ears" (*De republica*, 2.43.78). Something must prevent that violation, and that is the *auctor* who ensures the validity of legal transactions.⁶⁷ *Auctoritas* is conventionally (and not incorrectly) defined as an influence that derives from respect for one's words and actions as a model of wisdom and virtue (*De republica*, 2.9.15; 2.12.23; 2.28.50; also *De*

⁶⁵ Drawing on the idea of ownership, the argument for land reform advanced by Tiberius was that the *populus Romanus* should be given what belongs to them (see Arena, *Libertas and the Practice of Politics*, 126-27).

⁶⁶ On Cicero's responses to land reform generally, see Arena, *Libertas and the Practice of Politics*, 220-43.

⁶⁷ Richard Heinze, "Auctoritas" in *Hermes* 60 (3) (1929): 348-366, here 350-55; Agamben, *State of Exception*, 76-77; Hammer, *Roman Political Thought*, 52.

officiis, 2.9.33). *Auctoritas* is derived from *augere*, which means to increase or grow, suggestive of how *auctoritas* is not tied to an office or specified powers but “grows on its own power.”⁶⁸ It is a power that is both enacted, generating influence, and granted by others through their esteem for the individual.⁶⁹ But it is not a power that has legal force or is binding on others.⁷⁰

Giving us insight into the relationship of *auctoritas* to *societas*, Heinze suggests that an *auctor* was originally used in legal terminology to refer to a person who, because of his position as seller of something, is responsible for ensuring the validity of the legal transaction, or someone who, because of particular knowledge, is responsible for advice about the transaction.⁷¹ As we have seen, for Cicero the most important aspect of a relationship, including political relationships, is “truth and fidelity to promises and agreements” (*De officiis*, 1.7.23; 3.70). *Auctoritas*, for Cicero, answers to this concern by ensuring the bonds of trust and mutual accountability by which negotiations can occur. The assurance is oriented both to the past, as contestations occur within a context of precedents, rules, and procedures, and to the future by ensuring that new promises are kept and protections assured.

This language of trust is significant. It is for Pettit a norm that reinforces non-domination.⁷² But trust is imprinted on the Roman imagination through a violent display that demonstrates disproportionate power relations.⁷³ Livy tells of the punishment of Mettius Fefetius for the violation of trust, which was a brutal tearing apart of his body so violent that the punishment (but not the memory) was henceforth forbidden (Livy 1.28.9-11). Such latent violence lies beneath *societas*. So, for example, state redistribution of property violates the basis of agreement (*De officiis*, 1.7.20; also 3.5.21, 23). It destroys harmony (*De officiis*, 3.5.22), equity (*De officiis*, 2.23.83; 2.24.85), and the trust (*fides*) of a partnership (*De officiis*, 2.22.78, 79; 3.5.23-24; *De officiis*, 2.23.81-82). In effect, the actions dissolve the partnership (*De republica*, 3.33.45). As Cicero writes, making clear the relationship between trust and property, “For there is nothing that upholds a government more powerfully than its credit; and it can have no credit, unless the payment of debts is enforced by law” (*De officiis*, 2.24.84).

⁶⁸ Michèle Lowrie, *Writing, Performance, and Authority in Augustan Rome*, (Oxford: Oxford University Press, 2009), 286.

⁶⁹ See Karl Galinsky, *Augustan Culture: An Interpretive Introduction* (Princeton: Princeton University Press, 1996), 12-13; Joy Connolly, *The State of Speech: Rhetoric and Political Thought in Ancient Rome* (Princeton: Princeton University Press, 2007), 126-27; Michèle Lowrie, *Writing, Performance, and Authority*, 279-308.

⁷⁰ There is no Greek equivalent for *auctoritas*: Richard Heinze, *Auctoritas*, 363-64. Lowrie provides a helpful contrast to Greek translations of *auctoritas*, noting how the Greek cannot capture how the authority associated with *auctoritas* is derived from both agency and community (Michèle Lowrie, *Writing, Performance, and Authority*, 291).

⁷¹ Richard Heinze, *Auctoritas*, 350-55.

⁷² Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), 266, 268.

⁷³ Foucault, *Discipline and Punish*, 50 on display.

The breakdown of *auctoritas* is associated by Cicero with the loss of power to stabilize, or for Heinze, the inability to ensure the validity of negotiations of power. Cicero ties *auctoritas* back to the *potestas* of the people; absent the central role of *auctoritas* in giving context and continuity to those agreements, the public realm and the power of the people are unsustainable. But that *auctoritas* would also define itself against the *potestas* of the people, particularly when that power was seen as a threat to the partnership (*De republica*, 3.33.45). The terms Cicero uses in talking about this violation of partnership is the language he employs against Catiline, equating the breakdown of trust with sedition and justifying the *senatus consultum* (*Orationes in Catilinam*, 1.10.25: *furiosus*; 1.5.11: *taeter*; 4.6.13: *immanis*). The *senatus consultum ultimum* was a statement by the senate advising (though the senate has no ability to compel or invest power in) a magistrate to do what was necessary to protect the *res publica*. Seemingly a last ditch measure envisioned when the community faces an emergency that is *ultima necessitas* (i.e., most extreme necessity), it was used on several occasions: in 121 BCE to remove Gaius Gracchus from the protection of law, thus allowing for his assassination by Lucius Opimius, a private citizen (*De oratore*, 2.30.132; also 2.31.134; 2.39.164-66; *Orationes in Catilinam*, 1.3; *De officiis*, 1.22.76; *Brutus* 212); in 100 BCE against the tribune Saturninus (*Orationes in Catilinam*, 1.4); in 88 BCE against the tribune Sulpicius; in 77 BCE against the proconsul Lepidus; and most harmfully (for Cicero's own career) to justify the execution of the Catilinarian conspirators without a public trial.⁷⁴ The provision is incomprehensible from a constitutional perspective: nowhere established by law, not enforceable by the senate that decreed it, its effect is to suspend law.⁷⁵ And its use was contested. But the reasons given in defense become more explicable from the perspective of *societas*: it is not a claim of legality but "for the maintenance of the fatherland" (*patriae conservandae*) (Cicero, *De oratore* 2.31.134, trans. modified).

I have sought to explore how the *res publica* was organized not as a constitutional system, but by forms of knowledge and disciplinary practices that underlaid rather than emanated from governmental institutions. I do not count myself among classical scholars who reject Foucault's work as historically untenable. There are limitations. His writings evince a tendency to view ancient authority by way of the figure of the sovereign: as magical, powerful, and able to suspend law and exact vengeance.⁷⁶ And owing perhaps to the scope of his work, Foucault tends to group ancient societies together, reading Greek and Roman works as an unbroken discourse, whether in talking about sovereignty, the care of the self, or *parrhêsia* (which Foucault translates as *libertas* in a Roman context, though containing a very different resonance). But the Republic is a puzzling case: The elites are the subjects, but not the sovereigns, of Republican historiography. It is by way

⁷⁴ On the use of the *senatus consultum ultimum*, see Arena, *Libertas and the Practice of Politics*, 200-20.

⁷⁵ On the difficulties of understanding the decree by way of constitutional principles, see Andrew Lintott, *The Constitution of the Roman Republic*, 89-93; Giorgio Agamben, *State of Exception*.

⁷⁶ Foucault, *Discipline and Punish*, 48-53; also Foucault, *Power/Knowledge*, 48: vengeance; Foucault, *Society*, 66-8: luster of glory and force.

of Foucault, though, that I have sought to suggest some of the logic by which the *res publica* was made comprehensible. I have located this *ratio* of Roman government in the idea of ownership, which is seen as providing the condition for the existence of the community. Where the *res* is not a common possession — whether held by a tyrant or a faction — there is no *res publica* (Cicero, *De republica*, 3.31.43). But how the *res publica* is known normalizes and rationalizes forms of domination. Where ownership distinguishes the *civis* from the slave, it is also within ownership that a system of differentiation is organized, objectives defined, disparities of power normalized, and the distribution of power institutionalized.

Neo-Romanism, liberty and power

I want to end by pointing to the implications of this *ratio* for neo-Roman interpretations of Roman politics; interpretations that view the Roman legacy by way of its early modern, republican revivals. Although starting from similar claims—that the *res publica* is conceptually different from the sovereign state and that citizenship is built around notions of ownership—the neo-Roman conception of power still operates in the shadow of the Leviathan. Hobbes signaled a new type of power that was concentrated and unified in the fictional entity of the state and exercised over a defined territory.⁷⁷ Accompanying the sovereign state for Hobbes was a redefinition of liberty as non-interference in which one was free to the extent that the state provides particular protections or guarantees. Before that, the neo-Romans argue, liberty was conceived as non-domination: not as a protection from the state, but as a legal status defined in relationship to slavery. What makes someone a slave for the Romans, Skinner writes, is that they are “made into the property of someone else.”⁷⁸ The difference between being free and a slave, between owning and being owned, and similarly of whether a community is free, is whether they are *sui iuris*, that is, under their own jurisdiction.⁷⁹ There is no higher authority that provides rights, but “a state of civic independence” in which one can live “a free way of life, unconstrained by any unjust dependence or servitude.”⁸⁰ Reading Rome through the lens of sovereignty has implications for the conception

⁷⁷ Quentin Skinner “The State” in *Political Innovation and Conceptual Change*, edited by T. Ball, J. Farr and R. Hanson, (Cambridge: Cambridge University Press, 1989), 90-131, here 123-25; Quentin Skinner, “A Genealogy of the Modern State” *Proceedings of the British Academy*, 162 (2009), 325-70, here 341, 354-55 (<https://doi.org/10.5871/bacad/9780197264584.003.0011>).

⁷⁸ Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998), 39.

⁷⁹ Gaius, *Institutiones*, 1.48; also Quentin Skinner, *Liberty Before Liberalism*, 40-41, 44-45; Quentin Skinner, “A Third Concept of Liberty” in *Proceedings of the British Academy* 117 (2002): 237-68, here 249. I have argued elsewhere that the juxtaposition of being free to being a slave is not only confined to a Roman tradition, but also articulated prominently by the Greeks (Dean Hammer, “Thinking Comparatively About Participatory Communities” in *A Companion to Greek Democracy and the Roman Republic*, edited by Dean Hammer (Oxford and Malden, MA: Wiley-Blackwell, 2015), 503-19. I would note, as well, that the Romans did not understand power only by way of the dichotomy of *imperium*, which Pettit understands as public power, and *dominium*.

⁸⁰ Quentin Skinner, *Visions of Politics*, 17.

of the operation of power in the *res publica*. Absent the Leviathan, the Roman Republican tradition appears as anti-power⁸¹ or non-domination.⁸² It is a community that is not conceived as having an existence apart from the sum of the people who populate it.

Pettit recognizes that laws have some coercion, though “laws create people’s freedom” by protecting them “against the resources or *dominium* of those who would otherwise have arbitrary power over them.”⁸³ Arbitrariness — which takes on a not entirely consistent sense of both capriciousness and of actions without reference to the “avowable interests” of the individual affected—is juxtaposed to lawfulness.⁸⁴ Skinner notes that “if a state or commonwealth is to count as free, the laws that govern it — the rules that regulate its bodily movements — must be enacted with the consent of all its citizens, the members of the body politic as a whole.”⁸⁵ These protections occur not only in the Roman constitutional arrangements,⁸⁶ but also by way of such intangible norms as “mutual reliance and trust,” which derive from and contribute to “freedom as non-domination”⁸⁷ as well as representing “a means of regulating those in power.”⁸⁸

It is hard to imagine what Rome is being described: it does not appear to be the Rome in which the votes of the wealthier simply counted as more, an unelected senate effectively set the political agenda and could suspend law, a political and religious system excluded entire groups from access to power, and an economic system condemned increasing numbers of society to landlessness and debt. In part, I raise these issues to suggest a certain mythologizing of this Roman past in neo-Roman interpretations, which has implications for how we reconstruct this Roman past as well as what aspects of this past get imported into a constitutional concept of Rome. Urbinati has already suggested that one sees in neo-Roman normative theory an “echo” of the Roman resistance to equality.⁸⁹ I am pointing to a slightly different, though related, aspect of neo-Roman approaches; namely, to their language of non-coercion, non-arbitrariness, non-domination, and

⁸¹ Philip Pettit, “Freedom as Antipower” in *Ethics* 106 (3) (1996): 576-604.

⁸² Philip Pettit, *Republicanism*, 20, 27-28, 36, 283-84, 298.

⁸³ *Ibid.*, 36.

⁸⁴ Philip Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency* (New York: Oxford University Press, 2001) 138-39; also Pettit, *Republicanism*, 55. On the ambiguity of Pettit’s notion of arbitrariness, see Patchen Markell, “The Insufficiency of Non-Domination” in *Political Theory* 36 (1) (2008): 9-36, here 13-16.

⁸⁵ Quentin Skinner, *Liberty Before Liberalism*, 27. Pettit argues for contestability rather than consent as a basis for non-arbitrariness (Pettit, *Republicanism*, 184-85).

⁸⁶ Philip Pettit, *Republicanism*, 284; Quentin Skinner, *A Third Concept of Liberty*, 262.

⁸⁷ Philip Pettit, *Republicanism*, 266, 268.

⁸⁸ *Ibid.*, 268.

⁸⁹ Nadia Urbinati, “Competing for Liberty: The Republican Critique of Democracy” in *American Political Science Review* 106, (2012): 607-621, here 614.

consent.⁹⁰ Where Foucault is helpful is not just in alerting us to different sites of domination, but also in exploring how these forms of domination are normalized; how something that is arbitrary, for example, is seen as non-arbitrary. While one aspect of domination occurs in the opposition between owning and being owned, other forms of domination are normalized within the context of ownership.

The issue is not that Pettit and others ignore structural inequalities. The problem is that they define power only along one dimension, namely as domination (either *imperium*, public domination, or *dominium*, private domination)⁹¹ understood largely in agent-centered and institutional terms as power that is held and applied to another.⁹² That is, it is exactly the conception of power that Foucault is critiquing as incomplete. What the interpretation is not able to account for — and this is significant given the importance of the *mos maiorum* in Roman political life — is how social power operates. An illuminating example is Pettit's discussion of norms, including norms of trust, as supplementing freedom as non-domination.⁹³ But norms are aspects of power that do not have obvious agents and are not recognizable by way of a dichotomy of owner/owned. Norms privilege particular conduct, validate particular forms of knowledge, and sanction particular institutions that, from any perspective outside those norms, are arbitrary. We have seen, for example, how trust was integral to the Roman political system, enforced by memories of violence, premised on particular relations of power, and how it served as the justification for actual violence under the guise of the abrogation of trust.

The notion of trust for both the Romans and neo-Romans is not simply an informal norm; it is a metaphor that defines a particular relationship between the people and rulers. Pettit includes Locke in this Roman tradition because he employs trust as a legal metaphor in which rulers act on behalf of the people.⁹⁴ As Pettit writes, "The idea that government is a sort of legal trust—the idea that government is a more or less well-defined brief to which the rulers have to remain faithful—goes with the further idea that the people are entitled to challenge the government about how far and how well it is discharging this trust."⁹⁵ Pettit sees the sovereignty of the people as lying in responding rather than choosing, and in contestability rather than electoral authorization.⁹⁶

⁹⁰ Quentin Skinner, *Liberty Before Liberalism*, 27 employs the idea of consent. Philip Pettit argues for contestability rather than consent as a basis for non-arbitrariness (Pettit, *Republicanism*, 184-85).

⁹¹ Philip Pettit, *Republicanism*, 13, 130; Philip Pettit, *A Theory of Freedom*, 152.

⁹² For example, Philip Pettit, *Republicanism*, 284; Philip Pettit, *Freedom as Antipower*, 578: "the dominating party will always be an agent."

⁹³ Philip Pettit, *Republicanism*, 241.

⁹⁴ *Ibid.*, 40, 202.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

At the core of the idea of contestability is a Roman legacy of anti-majoritarianism that gets imported into neo-Roman normative theory. The neo-Roman concern with arbitrary imposition is as much about the actions of the many as of the few. As Pettit argues, non-domination requires that one avoid a system in which laws are “subject to excessively easy, majoritarian change.”⁹⁷ It is an idea of contestability, as Urbinati writes, that is focused on “stopping, checking, and impeding rather than legislating, reforming and ruling.”⁹⁸ What is off limits in a trust, like in a *societas*, are attacks on private property. Pettit describes one appeal of liberty as non-domination, making it “easier to support the introduction or reinforcement of private property.”⁹⁹ Although protections of private property “would require the non-dominating interference of the state,” it would “more than compensate by increasing the extent of such undominated choices in other respects.”¹⁰⁰ In contrast, the ideal of non-interference “does not make the argument for institutions of private property so straightforward,” since it may allow for interference by the state if that makes it possible “in a great measure” for people to avoid interference.¹⁰¹ Sounding like Scipio in *De republica* and Cicero against land reform, Pettit writes: “Let the laws be subject to ready majoritarian amendment, then, and the laws will lend themselves to more or less arbitrary control; they will cease to represent a secure guarantee against domination by government.”¹⁰²

But we have good historical evidence from the Republic of how these sorts of anti-majoritarian procedures entrench inequalities and prevent communities from addressing systemic concerns (in the case of Rome, agrarian reform). Pettit tries to get around this problem, suggesting that identifying arbitrariness and domination is a “political matter,” but one that is “not essentially value-laden.”¹⁰³ Trying both to advocate contestability and carefully confine it, Pettit talks about the need for jurisprudence to identify “good law” and to create procedures that somehow recognize good challenges from bad ones.¹⁰⁴ So who is it that decides what good law is or what counts as a good challenge? Is it the *optimates*? Or the *populares*? Is it the tribunes, the assembly, or the senate? And if the procedures are themselves the problem, by what procedure does one challenge them? For if there is one thing that the Roman Republican past teaches us, it is that “good” does not ad-

⁹⁷ Ibid., 180.

⁹⁸ Nadia Urbinati, *Competing for Liberty*, 615.

⁹⁹ Philip Pettit, *Republicanism*, 135.

¹⁰⁰ Ibid., 135.

¹⁰¹ Ibid.

¹⁰² Ibid., 181. Similarly, see Skinner’s disassociation of freedom from “collective control over the common life” (Quentin Skinner, *A Third Concept of Liberty*, 242; also Quentin Skinner, “Rethinking Political Liberty” in *History Workshop Journal* 61 (2006): 156-70; Quentin Skinner, *Liberty before Liberalism*, 741, fn. 38).

¹⁰³ Philip Pettit, *Republicanism*, 56.

¹⁰⁴ Ibid., 181. On contestability, *ibid.*, 63. Pettit at times moves toward a claim of arbitrariness that acts against an individual’s interests and desires, but then takes another step in suggesting that those interests and desires must be “common” and “avowable” (Philip Pettit, *Republicanism*, 181; Philip Pettit, *A Theory of Freedom*, 156-58). We end up with a disembodied universality and rationality of beliefs.

mit of obvious or impartial criteria, since these notions are themselves outcomes of social power.¹⁰⁵

The Roman liberty that Pettit celebrates is the outcome of the normalizing discourse of domination. It is the *ratio* that is abstracted from history: the fierce, extra-constitutional actions that not only confront the hidden forms of domination that lie within the system, but also expand involvement in the system (which is a notion of liberty that is different from liberty as non-domination).¹⁰⁶ The emergence of the *civis* — in fact, the emergence of the subjectivity by which one even talks about liberty — is itself a history of domination and contestation. As Foucault writes in rejecting any notion of a universal, autonomous subject, “I am very skeptical of this view of the subject and very hostile to it. I believe, on the contrary, that the subject is constituted through practices of subjection, or, in a more autonomous way, through practices of liberation, of liberty, as in Antiquity.”¹⁰⁷ That is, *libertas* is not simply a state of legal being in which the free subject operates in a space of non-domination, but rather a practice both of resistance and the care of the self. The individual does not develop in a realm of anti-power; the individual “is an effect of power.”¹⁰⁸

Livy portrays the mass strikes of the plebeians in securing protections (Livy 2.23-24, 32-33; 3.52) as well as assertions of supremacy (Livy 2.7.7). In the surviving fragments of Sallust’s *History*, Macer, tribune to the plebs, links the manly deeds of the ancestors, which are akin to military virtues, to the struggle to gain the tribunate for the commons, to open the magistracy to plebeians, and to gain the secret ballot (*Historiae*, 3.34.15, McGushin; also 3.34.1). Sallust’s language continually recalls images of an internal war against the *populus*: of gaining the state by arms (*Bellum Cat.* 11.4); of citizens as victors turning on other citizens (*Cat.* 11.4); of the nobility as enemies turning on the commons (*Jug.* 31.3); of enslavement by one’s own people (*Jug.* 31.11; 31.20); of the surren-

¹⁰⁵ Along these lines, Markell notes in his discussion of Pettit, “Social power systematically oriented toward the development of certain agents’ discursive capacities is not arbitrary in the first, minimal sense, because it is guided by something other than whim; and it evades scrutiny under the second, thicker sense of arbitrariness precisely because its exercise is represented as the very thing that converts an agent’s own whims into legitimate interests” (Patchen Markell, *The Insufficiency of Non-Domination*, 23).

¹⁰⁶ See also Patchen Markell, *The Insufficiency of Non-Domination*, 26 who argues that Pettit’s concern with control and domination should be supplemented with a concern that goes back to the Republic with involvement and usurpation (as “world-narrowing”).

¹⁰⁷ Michel Foucault, “An Aesthetics of Existence” in *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984*, edited by L.D. Kritzman, (New York: Routledge, 1988), 48-53, here 50; also Foucault, *The Subject and Power*, 790.

¹⁰⁸ Michel Foucault, “Two Lectures” in *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, edited by C. Gordon, 78-108 (Brighton: Harvester Press), 98.

der of sovereignty (*Jug.* 31.9); and of the commons as the vanquished (*Jug.* 42.4-5; *Hist.* 3.34.27).¹⁰⁹ Sallust characterizes the Gracchi as beginning “to assert the freedom of the commons and expose the crimes of the oligarchs” (*Jug.* 42.1). He announces the reason for writing *The War with Jugurtha* as “the first time resistance was offered to the insolence of the nobles” (*Jug.* 5.1). And he identifies the people’s jealous embrace of their liberty as checking the corruption and complicity of the nobility (*Jug.* 3.2-3).

My interest here is not to challenge whether there is such a thing as liberty as non-domination. I am pointing to the complexity of interpreting the Roman tradition as the beginning point for a notion of *libertas* as non-domination. As important as *libertas* was in Roman self-reflection, and I think the meaning of *libertas*, itself, has a broader set of meanings than recognized in neo-Roman interpretations, the Roman case is as much a study of how forms of domination are normalized to appear as non-domination.¹¹⁰ Although in his work Foucault glosses the operation of power in the Republic, a Foucauldian study of the past alerts us to how the meaning of such words as “non-arbitrary” and “non-domination” are historically constituted and constitutive of power. And it alerts us to how neo-Roman interpretations import this past — a past that itself suppresses its agonistic history by naturalizing power — to normalize and “discipline” particular political attitudes and conduct: privileging equity over equality, order over participation, and authorization over initiation.¹¹¹ Lost is the life of the Republic as a study of moments of liberation; not due to reasoned, deliberative discourse that counts as contestation, but through the unsettling types of agonism and mass unrest that get read out of this Roman past just as they get read out of our present.

Dean Hammer
Franklin and Marshall College
P.O. BOX 3003
Lancaster
PA 17604-3003
dean.hammer@fandm.edu

¹⁰⁹ See Daniel J. Kapust, *Republicanism, Rhetoric, and Roman Political Thought: Sallust, Livy, and Tacitus* (Cambridge and New York: Cambridge University Press, 2011) on the role of an enemy in Sallust’s rhetoric.

¹¹⁰ On the range of meanings of liberty, see Dean Hammer, *Roman Political Thought* and Dean Hammer, “Thinking Comparatively,” in *Companion*, edited by Dean Hammer.

¹¹¹ Philip Pettit, “Democracy, Electoral and Contestatory” in *Nomos* 42 (2000), 105-144, here 134.