Introduction

My main purpose in the following work is to study the conceptualisations of the idea of *libertas* and the nature of their connection with the practice of politics in the late Roman Republic.[1]

In what follows I am exclusively concerned with the notion of political liberty, understood as the relation between the liberty of the citizen and the power of the commonwealth, and its conflicting applications in the political debates that took place in the last period of the Republic, that is between 70 BC, the year when the tribunes of the plebs, one of the acclaimed strongholds of Roman liberty, regained their full powers, and 52 BC, the year when Pompey was elected *consul sine collega* and officially authorised to use military force *domi* to restore order in the city.[2] I shall therefore inevitably focus on a very limited category of people: Roman adult male citizens, the sole group which Roman society recognised as politically active agents in the civic community. It follows that when I talk about persons/individuals or members of the civic body I implicitly refer to this very limited category of people, which, regrettably but nonetheless historically, did not include women, slaves or foreigners resident in Rome.

In this period, politicians had recourse several times to claims of *libertas* as a way of characterising as well as of justifying their courses of political action.[3] However, as a careful review of the political issues debated in the period under consideration shows, not all measures proposed were argued in the name of liberty. It is a crucial point, which although not unnoticed

[1] Despite a preference for liberty as a direct translation of *libertas*, on the whole I shall use the terms liberty and freedom interchangeably. On the differences between the two terms see Pitkin 1988.

[2] On the events of 70 BC, the first century's *annus mirabilis*, see Wiseman 1994; on those of 52 BC, whose great significance is overshadowed by the outbreak of the civil war, Asc. 34C, Dio Cass. 40.50.1, Caes. *B. Gall.* 7.1.1, Cic. *Mil.* 67, 70 and Nippel 1995: 78–84. On a revised periodisation of the late Republic see Flower 2010: esp. 135–53.

[3] For an outline of the methodology applied here see Skinner 1974a (= rev. 2002: II 344–67) and Skinner 2002: I 145–57.

in previous scholarship has not been sufficiently underlined, that only certain proposals were consistently opposed, and that opposition to them was articulated by constantly referring to the ideal of liberty.

The nature of the extant sources constitutes a considerable limit to this sort of investigation. Not only are we constrained by the amount of information regarding the political debate on specific policies, which may lead us to exclude from consideration measures that may well have been discussed in the name of liberty,[4] but the nature of the sources also forces us to come to terms with the probability of historical inaccuracy of the reported debates. The first category of sources, and to an extent the most reliable for my purposes, is made up of Cicero's published speeches. His major role in many of the political events of the period under consideration guarantees us the account of a certainly partial eyewitness of, as well as protagonist in, the debates. Bearing in mind that my central aim is to reconstruct the use of the political ideas and principles adopted in debate to justify a politician's position on particular political measures, the partiality of Cicero does not impinge on such a historical reconstruction, nor does the potential discrepancy between the delivered and published version of the speech constitute a true obstacle to this kind of research. Although, as the case of the *pro Milone* attests, there is no doubt that such a discrepancy could in fact exist, and indeed that some orations had never been delivered (such as, for example, the five books of the *actio secunda* against Verres, the *in Pisonem* or the *Second Philippic*), it is important to underline that in all these cases the orator composed the speeches to fit the actual or implied circumstances of delivery.[5] Although in these cases they may be considered a product of fiction, the speeches were still not divorced from the historical context in which they were generated. Published at most a few years after their delivery, there can be little doubt that these speeches present arguments and ideas that a contemporary readership of members of the elite, often themselves amongst the protagonists of the events, must have found plausible as having been advocated in those circumstances.[6] As Quintilian claims that the published version of an oration was a

[4] See, for example, Labienus' proposal regarding the election of priests in 63 BC, and Scribonius' scheme concerning road restructuring in 50 BC. For full discussion of those cases see Chapter 4.

[5] On the publication of the *pro Milone* see, most recently, Melchior 2008; on the *actio secunda* of the *Verrines*, Frazel 2004.

[6] See, for example, Cic. *Att.* 2.1.3 for Cicero's publication of his consular speeches in 60 BC, just three years after their delivery. On the issue of the speeches' publication see Humbert 1925, Stroh 1975, Classen 1985, Narducci 1997 and Powell and Paterson 2004. For a discussion on the process of writing up the delivered speech see Alexander 2003: 15–25.

'commemoration of a delivered speech (*monumentum actionis habitae*)',[7] so the exiguous evidence regarding Cicero's process of editing the written versions of his speeches seems to lead to the conclusion that he takes the utmost pains to represent the arguments adopted in his delivery in an accurate way.[8] Nor can he have been alone in this. As Cicero's *Brutus* and the well-attested use of the orations, for example, of the Gracchi or Crassus show, published speeches of other orators were used by younger speakers as a means to learn how to deliver a speech 'under specific circumstances, before a specific audience, and on a specific issue'.[9] As such, they must have been expected to be a plausible reflection of at least the arguments, ideas and type of rhetoric that had been used or could reasonably be expected to be used in such circumstances.

The second category of sources available for the reconstruction of the political discourse over specific policies in the period under consideration consists mainly of speeches reported in Sallust, Plutarch and Dio Cassius. Each of the three writes a different kind of historical account, and the value of each as a source should be assessed according to the conventions of their ancient historiographical genre, in compliance with which they would have been expected to insert speeches that were both rhetorically ornate and well suited to the narrative context, rather than verbatim transcripts of what had actually been said. However, this does not necessarily imply that the direct speeches they inserted are entirely the products of their imagination.

Although Sallust's speeches, for example those of Lepidus and Macer in the *Historiae* and of Caesar and Cato in the *de Catilinae coniuratione*, are to a certain extent the result of Sallust's own invention in matters of details, they must also have been the result of a direct knowledge, on the one hand, of what was said in those debates, and, on the other, of those arguments which the historian thought plausible as having been advocated in support of a particular political position.[10] Sallust was one of the tribunes of the plebs in 52 BC, the year of Clodius' murder, and must have witnessed the burning of the senate-house.[11] As Syme famously put it, 'when a senator writes history, he knows how to render the speech of a politician'.[12] Composed by a contemporary of the intellectual world of the late Republic,

[7] Quint. *Inst.* 12.10.51. Cf. Plin. *Ep.* 1.20.8.
[8] See Cic. *Att.* 1.13.5, 13.44.3 and 15.1a.2 with full discussion in Morstein-Marx 2004: 24–30.
[9] See Stroh 1975: 52–3, Classen 1985: 5–8 and Chapter 3: 126–7, 131.
[10] On the historicity of Sallust's speeches see Büchner 1982: 204–43 and esp. 241: 'behind all speeches and letters stand historical speeches and letters'. On the role of *topoi* as conveyor of authorial voice see Nicolai 2002: esp. 50–1.
[11] Asc. 37C and 49C. [12] Syme 1964: 198. See also see La Penna 1968: 325–32.

Sallust's speeches attest, if not the exact words that were uttered on those occasions, the political ideas and arguments that must have been adopted about twenty years earlier to support a specific course of action. Whilst Plutarch does not seem to indulge in entirely free licence in composing direct speeches, but appears rather to be thorough in his use of late Republican sources (which included Sulla's memoirs, the History of Asinius Pollio, and even the lost work of Cicero himself περί ὑπατείας),[13] Dio, on the other hand, seems to employ considerable freedom in composing the direct speeches inserted in his historical account. In writing them he seems to adopt that 'tendency towards generality and lack of apposite details which characterises his History as a whole'.[14] However, it should be borne in mind not only that had he consulted a wide range of authorities in composing his history and, as a result, had included much of historical value in his account,[15] but also, and more importantly for the purpose of the present study, that the arguments that he attributed to Catulus, for example, in his speech against the *lex Gabinia* (which granted special powers to Pompey to fight against the pirates) seem to resemble very closely those that Cicero attests had been adopted in discussing a very similar issue in the following year, for the conferral of special powers upon Pompey against Mithridates.[16] Here, to a certain extent, it is possible to identify a general criterion that can be applied in order to assess the value of later imperial sources in reconstructing the principles advocated in late Republican debates. Leaving aside the issue of the existence of another later source which may corroborate a point (such as, for example, the fragment preserved in Xiphilinus about Catulus, since its derivation from Dio in this case cannot be easily disproved), the unifying features of the arguments and the general homogeneity of the principles displayed may be an indication of dependence on late Republican sources. However, even if they are the result of hindsight, these later imperial sources may function as an attestation of the arguments and principles that these later authors thought appropriate and plausible to have been used in late Republican debates. Although their interests, as Dio's predilection for the relation between the βασιλεύς and the τύραννος shows,[17] were not always in tune with the conceptual world of the late

[13] On Plutarch's use of late Republican sources see Pelling 1986 = 2002: 207–36. On the Catilinarian conspiracy, Plutarch seems to have read Cicero himself, including his now lost Greek monograph: see Pelling 1985: 313–17 = 2002: 46–9.

[14] Millar 1964: 83. [15] Millar 1964, Manuwald 1979: 168–79 and Lintott 1997b: 2497–523.

[16] For a full discussion of the arguments see Chapter 4.

[17] On Dio's speeches see Millar 1964: 78–9 and 1961: esp. 14–15. On Dio and the theme of political ideas see Lintott 1997b: 2517 and 2520. For the passages on sovereign and tyrant see Millar 1964: 79–81.

Republic, these later authors refer to ideals and principles in the representation of late Republican political conflicts which they must have perceived, on the basis of sources closer to the events, as plausible and consistent with their perception of that remote time.

What these sources allow us to reconstruct is a recurrent political pattern making consistent use of the idea of *libertas* in relation to the following issues: in opposing the granting of extraordinary powers to an individual or a group (*potestates extraodinariae*), in supporting the use of the '*senatus consultum ultimum*' and in opposing land distribution. Politicians who took these political stances claimed to be acting in the name of liberty, whilst their adversaries, as is fully attested in the sources on the '*senatus consultum ultimum*', argued that it was their political behaviour that was the sole guarantee of Roman liberty.

The controversies over these issues were, in essence, a struggle for political legitimation: those who opposed these measures referred to the ideal of *libertas* when they felt the need to justify their political behaviour in response to accusations of wishing to establish their dominium over the commonwealth.[18] In their search for legitimation, these politicians referred to liberty as a way of characterising their political action as well as justifying it. During these political debates, politicians' general awareness of two distinct discourses on *libertas* allowed them to frame their arguments in such a way as to demonstrate that their opponents' actions could be classified as truly detrimental to *libertas*: based on shared assumptions, these discourses (or intellectual traditions) were sufficiently distinct to cast the issues at stake within the terms of rival conceptions of politics.[19]

My principal concern in what follows is to understand and fully explore the nature and dynamics of the relation between the ideal of *libertas* and associated rhetorical claims in political debates.

As the bibliography attests, the notion of Roman liberty during the Republic has already been extensively discussed, and the existing secondary literature contains some major contributions on this specific theme that have been very successful in shedding light on numerous aspects of importance, such as the nature of the ideal of political liberty and its historical development, as well as the amount of freedom that individual citizens could *de facto* enjoy.[20] Building on the achievements of these previous studies, the contribution I hope to make in what follows is threefold.

[18] On the importance of the issue of legitimacy in the ideological struggle of the late Republic see Morstein-Marx 2009. Along similar lines see Hölkeskamp 2010: 55.
[19] Pettit 1997. [20] Wirszubski 1950, Bleicken 1972, Brunt 1988 and, most recently, Cogitore 2011.

First, some of the existing literature embodies a cardinal assumption with which I disagree. According to this trend of studies,[21] since appeals to *libertas* were exclusively formulated in *ad hoc* contexts and for self-interested motives, they did not embody an abstract political *Idee* of liberty. It follows, it is argued, that it is not possible to postulate any direct link between Greek (and Roman) political thought and the reform programmes of Roman politicians, except in those circumstances when Roman politics cannot be explained by itself. By contrast, I have tried to show how political thought itself informed the discourse on *libertas*, which, in the late Republic, came to be articulated in at least two intellectual traditions.[22] Drawing on Greek philosophy, these two traditions on *libertas*, which I have categorised as 'optimate' and '*popularis*', although they shared the same conceptualisation of political liberty as a status of non-subjection to the arbitrary will of another person or group of persons, diverged on the institutional and political arrangements to be implemented in order to achieve and preserve the liberty of the commonwealth, and on the related issue of how much liberty each section of society is entitled to. Whilst the main authors of the 'optimate' tradition, despite their occasionally substantial differences, displayed a significant homogeneity as to the political reasons why the mixed and balanced constitution was the best form of government to achieve and preserve the liberty of the commonwealth, the '*popularis*' tradition saw the civic community as the ultimate owner of all goods and empowered its institutional form, the popular assembly, to arrange their fair distribution. In what follows, alongside reconstructing the 'optimate' tradition, I excavate its rival tradition, the '*popularis*', from its submergence under the overwhelming weight of the competing ideology (which ultimately prevailed in the intellectual world of the Principate), through the analysis of fragments of speeches and the reported discourse of the supporters of democracy in Cicero's *de republica*. These attestations, however fragmentary, manifestly demonstrate a shared way of reasoning about politics which is clearly distinct from the 'optimate' fashion of thinking. Basing its Republican framework on a significant role for the popular assembly, this intellectual tradition advocated a form of corrective justice which required the implementation of some kind of scheme designed to secure a more egalitarian distribution of property. Ultimately, therefore, the two intellectual traditions differ in their attitude to the institutional

[21] Bleicken 1972: 52–6 on the *ad hoc* usages, and on the relation between Greek philosophy and Roman politics 17, n.3; his view has been developed in an original fashion by Roller 2001: 213–33. See also Chapter 3: 79ff.

[22] On the existence of other traditions see Arena 2011a.

arrangements, especially with regard to the role of the popular assembly and the notion of justice, around which Roman political discourse of the late Republic was organised.

By 'intellectual traditions' I have in mind two distinct styles of political reasoning, which were not fixed conceptions of liberty, but rather clusters of ideas held together by a 'family resemblance' amongst their members.[23] By referring to them as two distinct ideological 'families', I mean neither the ideologies of the nineteenth century nor Freeden's morphological complexes around a given core of concepts,[24] but rather systems of thought, more or less coherent in themselves, that displayed distinct orientations on questions relating to fundamental evaluative terms such as liberty, justice and sovereignty.[25] These two intellectual traditions should not be confused with reified philosophical systems. They formed two distinct views which ultimately articulated two different conceptions of politics, but, although nourished by Greek philosophy, they should not be identified with any specific philosophical doctrine. Without requiring a personal and permanent commitment, these families of ideas provided Roman politicians with a language and conceptual framework to analyse political issues, frame their choices and justify their actions: in short, to articulate and explain their political behaviour. In this sense, I argue, it is possible to talk about the existence of ideologies in the intellectual world of the late Republic.[26] By understanding them, in the words of Eagleton, as 'the medium in which men and women fight out their social and political battles at the level of signs, meanings and representations',[27] the principles and rules of these ideologies do not derive from the values and beliefs of the political agents, but rather from the linguistic norms in which they are embedded. Following this line of argument, 'conservatives', according to Gerring's clear example, 'therefore, might be defined as those who evaluate the political world with a particular set of linguistic symbols, rather than those who believe in God, family, and country'.[28] Understanding Roman Republican

[23] I am treating the word *libertas* in the same way that Wittgenstein (2001: 31) treats the word 'games'. For a lucid and helpful analysis of distinct intellectual families about liberty see Miller 2006: 1–20.

[24] Freeden 1996. For a very interesting engagement with the notion of ideology in the study of Roman rhetoric and political thought see Connolly 2007: 38–47. See also Morstein-Marx 2004.

[25] Nelson 2004: 18, a work methodologically exemplary in its reconstruction of a Greek tradition in Republican thought.

[26] For the most recent reassertion of their centrality in the political struggle of the late Republic see Wiseman 2009.

[27] Eagleton 1991.

[28] Gerring 1997: 967 which contains the most lucid analysis of the issue of definition I have found. See also Ellul 1973 with valuable remarks applicable to the ancient world.

ideologies in these terms allows us to appreciate why Roman politicians could easily adopt two diametrically opposed stances on the same issues.

These intellectual traditions provided late Republican politicians with a weaponry of terms, ideas and values that, attached to political behaviour either favourable to the *populus* or in support of senatorial *auctoritas* and combined with a certain political strategy or method (such as, for example, recourse to or avoidance of the popular assembly), might gain them the description of *populares* or *optimates*.[29] Of these opposing alignments, composed of socially homogeneous politicians, the latter designated politicians who stood up in defence of the *status quo* and thereby resisted new reforming measures, whilst the former described those who advanced demands for change. However, they did not constitute firmly established political groupings, much less entities more or less akin to modern political parties. Devoid of any organisational structure, single individuals might assume a certain stance in a given situation, a stance which gained them the label of *popularis*, only to act the year after (often when no longer holding the tribunate of the plebs) in such a way as to be appropriately described as optimate. Whatever were their motives (and they are in most cases inscrutable to us), Roman politicians had at their disposal distinct conceptual systems providing them with the political language in which to frame their struggle in search of legitimacy for their course of action, without, however, requiring any permanent commitment to a given school of thought.[30]

The second contribution that I hope to make concerns the relationship between the appeals to *libertas* that politicians invoked in rhetorical debates as a motive for their political action, and the nature of the proposals they supported in its name.[31] Contrary to the very common claim that in political debates each side supported opposing policies by referring to its own notion of *libertas*,[32] I have tried to show that politicians on both sides of a political debate referred to a commonly shared notion of liberty, understood as a status of non-subjection to the arbitrary will of either a foreign power or a domestic group or individual. The recourse to this agreed idea of *libertas* allowed them to show that their adversaries were people of

[29] On *populares* and *optimates* see Strasburger 1939, Hellegouarc'h 1963, Martin 1965, Meier 1965, Serrao 1970, Seager 1972a, Perelli 1982, Vanderbroeck 1987, Burckhardt 1988, Mackie 1992, Ferrary 1997, Tatum 1999, Wiseman 1994, 2009, Robb 2010 and Duplá 2011.

[30] For an emphasis on the ideological features of the distinction between *optimates* and *populares* see Perelli 1982, Mackie 1992, Ferrary 1997, Wiseman 2002 and 2009, Yakobson 2004 and Duplá 2011.

[31] For the reading of such a relationship as applied to the historical case of Bolingbroke versus Walpole see Skinner 1974a (= rev. 2002: 1 344–67).

[32] See, for example, Morstein-Marx 2004: 221 and the remarks in Wallace 2009: 175. A few exceptions to this general trend are Mackie 1992, Ferrary 1997 and Cogitore 2011: 106, who, however, does not fully explain the dynamics of the relation between such claims and the adopted practice of politics.

blinkered political sensibilities, since they did not realise that in virtue of the very same value that they themselves cherished the most (the idea of liberty as a state characterised by the absence of a condition of domination) the policies that they advocated could plausibly be described as detrimental to liberty. This is the reason why these politicians did not resort to the openly constitutional argument of wishing to restore, advance or simply preserve the mixed and balanced constitution at the centre of the 'optimate' intellectual tradition on *libertas*. If they succeeded in showing that the policies that they resisted could reasonably be presented as constituting a true threat to a shared notion of liberty, they might hope to be successful in presenting themselves as the real defenders of this very same value.

In other words, what I hope to illustrate is that the politicians' ability was not only to recognise the need to justify their political actions by some accepted political principles, but also to recognise that the principle of liberty was already normative within their society and capable of legitimating (at the same time as describing) certain political courses of action. In turn, these politicians perceived that if they concentrated on these particular policies, that is *potestates extraordinariae*, the '*senatus consultum ultimum*' and land distribution, they would have the best chance of making their adversaries' behaviour appear detrimental to *libertas* by virtue of the shared notion of this value, the beliefs also held by their enemies. Their most effective move was to perceive that, according to the common understanding of liberty and of the means by which it could readily be lost, their adversaries could be presented as pursuing policies which could be made appear as jeopardising such a liberty. Their corresponding strategy consisted of relentlessly pursuing precisely those policies, the importance of which thereby came to be magnified, and provided them with the opportunity to present themselves as the true defenders of Roman liberty. If, as I argue, their ability consisted of matching their political project to their available linguistic resources in such a way as to be able to show, with the greatest degree of plausibility, that their opponents were pursuing policies liable to endanger the liberty of the commonwealth, it follows that the ideal of *libertas* should be considered as one of the causal conditions of political actions, regardless of the political agents' true beliefs.

It is one of my aims to show that contrary to the idea that *libertas* was a vague word to which politicians paid lip-service in their search for power,[33] adopted to provide *ex post facto* justifications for their behaviour,

[33] This view is symbolised by the icastic words of Syme 1939: 39 'liberty and the laws are high-sounding words. They will often be rendered, on a cool estimate, as privilege and vested interests' and at 155

the recourse to the principle of liberty as justification for their action guided the politicians' behaviour in ways that were compatible with those claims of liberty.

An influential reading of Roman political culture, interpreting the ideal of liberty as a mere epiphenomenon which should be bypassed if one wishes to investigate real rationale of political behaviour, the Realpolitik, has been opposed by those who have argued that Roman politicians did indeed believe that their chosen political conduct could preserve the liberty of the commonwealth.[34] Reviewing twentieth-century scholarship, responsible in his opinion for the artificial creation of an 'ideological vacuum' in Roman political culture, Wiseman effectively summarises: 'so Gelzer gave you the norm, aristocrats exploiting connections and patronage to get their consulship, and Syme gave you the crisis, as power was usurped by "chill and mature terrorists". Either way, you were not to suppose that there were causes that men would die for.'[35] The line of argument, he observes, that a '*popularis*' political attitude could further one's career and satisfy political ambitions, goes against the most patent observation that those who chose it and acted as radical tribunes, such as Tiberius and Gaius Gracchus, Saturninus, Livius Drusus, Sulpicius and Clodius, were all murdered before they could reach the pinnacle of the *cursus honorum*, the consulship.[36]

By contrast, I have tried to show that regardless of whether or not it is possible to show that *libertas* genuinely acted as a motive for engaging in a certain course of political action, it is necessary to refer to the principle of liberty in order fully to understand that action. If one view, historically formulated by Syme, considers that liberty seldom played a role as a genuine motive for action, and hence can be bypassed in historical research, and the contrary view, recently reinforced by Wiseman, claims that liberty indeed often served as a genuine motive for action, and hence should not be sidelined in our studies of Roman political history, my contention is that the principle of *libertas* played a central role each time that Roman politicians believed they needed to provide an explicit justification for their political behaviour.

'*libertas* is a vague and negative notion – freedom from the rule of a tyrant or a faction. It follows that *libertas*, like *regnum* and *dominatio*, is a convenient term of political fraud.' Most recently, see, for example, Wallace 2009: 175.

[34] Wirszubski 1950: 65 (in regard to Tiberius Gracchus, Cato and Cicero) Brunt 1971b, de Ste Croix 1981: 332–72 and Millar 1998.

[35] Wiseman 2009: 31. Syme 1939: 191 and Gelzer 1912 and 1962.

[36] Wiseman 2009: 30.