WHY *RES PUBLICA* IS NOT A STATE: THE STOIC GRAMMAR AND DISCURSIVE PRACTICES IN CICERO'S CONCEPTION

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Abstract: While most scholars took Cicero's Stoicism to be reflected in the content of his theories, this article tries to examine the 'how' rather than the 'what' of his statements. The article starts with the privileging of the verb in what the Stoics termed *lekta*, then considers how the term *res publica* fared in full *lekta*, pronounced by Cicero and his republican contemporaries (first and second sections). Then a Stoic theory of definition is analysed to elucidate an incorporeal quality of the *res publica* and stresses the particularity of Cicero's theoretical achievement (third and fourth sections). Section V compares the uses to which the term *res publica* was put in the speech acts of republican and imperial days, while Section VI evaluates the implications of the findings for our contemporary theory of the state.

The aim of this article is pretty straightforward: while most people so far have been taking Cicero's Stoicism to be reflected in the content of his theories, this article is trying to examine the 'how' rather than the 'what' of his statements. I would like to argue that the Stoic discursive practices he employed formed the background for his very specific articulation of the theory of *res publica*, with the pragmatic logic of this discursive articulation playing itself out even in the latter-day formulations on this topic — from the days of the Roman empire to today. This logic might help us question anew some key aspects of the modern theory of the state.

I will be mostly concerned with unravelling the pragmatic logic of speech as it is reflected in the Stoic conception of the incorporeal sayable — *lekton* — since Cicero's theory of *res publica* was articulated against the background of this vision of *lekta*, and since *res publica* itself, as many would argue, is largely incorporeal as well.[3] This article starts with the Stoic privileging of the verb in *lekta* (Section I), then considers how the term *res publica* fared in full

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[3] The inspiration for such treatment of *res publica* comes from Gilles Deleuze, who integrated the Stoics into the foundation of his *Logique du sens* and who thus stressed the surface-like character of the *lekta* as non-corporeal events of sense-making. Could *res publica* be interpreted then as an ever-recurring event that plays itself out on the surface of the certain corporeal entities, a result of the Deleuzian *pli*, i.e. a folding of bodies that produces sense? See Gilles Deleuze, *The Logic of Sense* (New York, 1990), and the

lekta, pronounced by Cicero and his republican contemporaries (Section II). I will also attempt to show how the specific Stoic theory of definition helps us to elucidate an incorporeal quality of the *res publica* and to stress the particularity of Cicero's theoretical achievement (Sections III and IV). Section V compares the uses to which the term *res publica* was put in republican and imperial days, while Section VI evaluates the implications of the findings for our contemporary theory of the state.

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I

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The Stoics had famously based their metaphysics on the concept of action and their grammar, correspondingly, on the verb. Thus, the central notion of their linguistic theory, an incorporeal enunciation — *lekton* — is supposed to be incomplete when it is only expressed with an inflected verb but is not qualified by an added noun or pronoun. However, it is already a *lekton* even in such a condition, it exists even without being brought into its full bloom, so to say. Verbal formulas such as '. . . is raining', '. . . is running', '. . . flows', are all *lekta*, even if incomplete *lekta*: the main element is action, while subjects and objects allegedly involved in it might be singled out from the intertwining or the hurly-burly of practice later. Naming or articulating subjects and objects of action is thus secondary to action.

In terms of the Stoic grammar, the full *lekton* is supposed to have a case (*ptosis*) and a predicate (*kategorema*), with the predicate being more important, because it is the presence of the predicate that tells us that something is said, that a *lekton* is there. The term *ptosis* means 'falling' in Greek, its Latin equivalent being *casus* and coming from *cadere* (to fall), hence the English term 'case' for a familiar grammatical category that applies to nouns. We now of course usually say that it is not the 'case' that is added to a predicate (in order to have a full *lekton*), but a noun or a pronoun put in a respective grammatical case.[4]

Why did the Stoics call what we now take to be inflected forms of nouns 'cases' rather than 'nouns in cases'? Michael Frede makes an effort to show that 'case' was a fundamental metaphysical notion — which he takes to be 'a constitutive quality of an object' — rather than just a grammatical category.[5] Gilles Deleuze goes even further, suggesting in *Logique du sens* that the Stoic

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analysis on which it was based — Émile Bréhier, *La théorie des incorporels dans l'ancien stoicisme* (Paris, 9th edn., 1997).

[4] A grammatical category of 'case' does not play a central role in some modern European languages. For instance, the English language has only two noun cases — nominative and genitive — but ancient Greek had five, modern Russian has six, and Finnish has fifteen. Thus, there are quite a number of inflected noun forms one can add to the predicate, depending on the language.

[5] Michael Frede, 'The Stoic Notion of a *lekton*', in *Language*, ed. Stephen Everson (Cambridge, 1984), p. 125.

notion of the folding surface, or of the bending body, might be a better foundational metaphor for an insightful philosophy than the worn-out inner–outer distinction of the Platonists and Aristotelians. Clashing forces bend or unbend each other, making the weaker one follow along the vector of movement of the stronger one. One can even hypothesize that this vision was so fundamental to the Stoic universe that it became immortalized in the standard titles for grammatical categories that had been developed in their wake: declination (bending), conjugation (putting under a single yoke), case (falling).

Cases in grammar are, of course, divided into a nominative or straight one (*orthos* in Greek) and oblique ones, of which there might be several. We have curious stories about the Peripatetics demanding from the Stoics an answer to the question of why they called the nominative case a case at all (i.e. an instance of 'falling'), when from the title of this straight (nominative or 'orthogonal', according to the Greek root of the term) case it was clear that nothing fell away from the vertical line. In oblique cases such falling away was obvious, but the case called *orthos* was standing straight, as if a carbon pencil fell from the sky vertically and got stuck in the earth. The Stoic authors gave no less curious answers: OK, it fell away, but not in the sense that it was bending away from the straight vertical line but from the generic concept, being just a specific instance.[6]

But one can render another, Deleuzian answer to these curious questions. All cases were taken to be bendings in a sense that they were also inflections of bodies (and not only of nouns), folded, moulded and bent by forces engaged in action. Indeed, *ptoseis* were corporeal for most authors, with Clement of Alexandria (an early Christian author) arguing alone for the contrary (*Stromata* VIII, 9.26.3).[7] So, one could suggest the following Stoic vision of the universe: forces, engaged or inherent in action, produce or create subjects or objects as secondary instances to action itself. Consequently, a noun in a nominative (or straight) case, when added to a predicate, becomes a subject of the statement. A noun in oblique case, when added to a predicate, becomes a designation of the object, or of the setting and conditions of the statement: it indicates where action happens, to whom and on what it is directed, etc. Thus, the primordial action captured in a predicate is explicated by adding a subject, an object, object-like conditions, etc.

Another proof that what we now call a subject or an object of action were more problematic or derivative entities than action itself comes from Sextus Empiricus and his description of different criteria for truth among the Academics and the Stoics. In *Contra Mathematics* he wrote about the Stoic notion of (full) *lekton* and the ways in which it could be true or false. He first states: 'Three things, they [the Stoics] say, go together: what is signified, what is

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[6] Ammonius and scholia on Dionysius Thrax, cited in *Hellenistic Philosophers*, ed. A.A. Long and D.N. Sedley (Cambridge, 1987), Vol. 1, pp. 197–8.

[7] *Ibid.*, p. 198.

signifying, and what has it (*to tynchanon*).'[8] Then he clarifies that the first element in this formulation is usually held to be an incorporeal *lekton* itself, the second — the signifying one — is supposed to be uttered words as physical sounds (a corporeal element), and the third one is something just as corporeal as the second, i.e. what modern Europeans would call today 'an object referred to'. Curiously enough, this referent, captured by a noun added to the predicate, is what 'has it', as Michael Frede translates the term *tynchanon*.[9]

From this one might infer that this *tynchanon* owns either the cases or the predicates, i.e. two constituent parts of any full *lekton*. That cases could be possessed, at least by people if not by bodies, we know from a quote from Stobaeus.[10] But it seems that the *tynchanon* could not only possess different cases (as, for example, forms that a body, which is reflected by a noun, could take), but it also possessed a disposition of that body, expressed in a predicate. Thus, the status of some corporeal entity as *to tynchanon* meant that, for example, Dion of the phrase *Dion peripatei* ('Dion is walking') possessed both the case (or, as we would say now, it was the word 'Dion' put in some grammatical case — i.e. into nominative, in the example given) and a predicate (*peripatei*, '. . . is walking'). As Frede generalizes, citing Plutarch, Philoponus and Pseudo-Alexander: '. . . the Stoics standardly call the object, which has the predicate true of it, if the proposition is true, *to tynchanon*, i.e. "what has it" '.[11]

Baffled, a modern-day reader may ask: in what sense does this *tynchanon* own action? The answer might be the following. Even though the noun appears for the Stoics a secondary, derivative and not fully necessary instance in the unravelling of action captured by a predicate, it might become a name of a subject of action (if one adds to a verb a noun in a nominative grammatical case). Whatever this noun designates thus comes to be seen as the author of a given action. Nietzsche, in *The Genealogy of Morals*, famously sneered at this manoeuvre of enthroning a subject when he described how both simple folk

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[8] Sextus Empiricus, *Contra Mathematics* VIII:11–12, as translated in Frede, 'The Stoic Notion of a *lekton*', p. 118.

[9] Frede, 'The Stoic Notion of a *lekton*', p. 123. Frederique Ildefonse, *La naissance de la grammaire dans l'antiquité grecque* (Paris, 1997), p. 169, stresses the strangeness of this translation. Indeed, the verb *tynchanein* — 'to encounter, to hit upon, to happen to be doing something' — comes to mean possession only in past tenses: 'to have hit upon; to obtain, come into possession of'. The basic cultural connotation of the verb is that of an accidental, chance encounter — as in *tykhe*, 'Fate, Chance' — not ownership.

[10] *Eclogae*, 1.137.3ff.: 'Of these [sc. The Ideas] the Stoic philosophers say that they do not exist, and that we participate in the concepts, but have (*tynchanein*) the cases, which they call appellations', Cited in Frede, 'The Stoic Notion of a *lekton*', p. 123.

[11] Frede, 'The Stoic Notion of a *lekton*', p. 123. A.A. Long, 'Stoic Linguistics, Plato's Cratylus and Augustine's *De dialectica*', in *Language and Learning*, ed. D. Frede and B. Inwood (Cambridge, 2005), p. 53, thinks that a definition of corporeal *res* in Augustine's treatise — as opposed to *verbum*, *dicibile* or *dictio* — is a copy of the *tynchanon* of the Stoics.

and scientists — led astray by the now predominantly subject–predicate structure of our language — add a fictional agent to the non-agent-like act of lightning or raining.[12] In a similar way popular grammar now pushes us to ascribe a subject and object to each action, adding nouns to verbs, so that an agency captured by such an agent becomes, one might say, an 'owner' of action. Alternatively, qualifying the verb with nouns might single out not a subject but an object (if one adds to a verb a noun in one of the oblique grammatical cases) — i.e. on what a given action is directed. But here also, the object captured by a noun, a *tynchanon*, owns or governs the details or conditions of the representation of action.

This explains the curious quality of Stoic truth criteria for such a statement, which Sextus describes. From a modern standpoint, it is really strange that the statement 'Dion is walking' is not judged true or false in relation to action — according to whether Dion is or is not actually walking. It is judged true or false first and foremost according to whether Dion exists or does not (or may never have existed). Frede comments: 'the Stoics consider the statement *Dion peripatei* true, when both action (walking) and the agent (Dion) are present'.[13] But Sextus stresses that it is primarily the presence or absence of Dion which makes the statement true or false, and that's what distinguishes Stoic truth judgments from other philosophical schools. We can infer from his lines that action is always already given for the Stoics, that it is a starting point of analysis (and hence it is not part of doubts — is it there or not?), while the presence of the subject of action, of an agent, is in doubt. Hence truth conditions of a statement are satisfied when the actor is added to the action, when we have Dion in addition to the act of walking. They are not satisfied when there is no Dion and there is just some walking occurring. Also, when we have the statement as true, Dion exists in such a way that we see this walking now as 'his', as his very walking. The *tynchanon* 'has' the *lekton*, while the noun in the nominative is seen as a subject of the predicate. The actor has been added to the action.

The Stoic notion of the *tynchanon* was developed as an alternative to the Aristotelian notion of the *hypokeimenon* — a term translated usually now as

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[12] Friedrich Nietzsche, *On the Genealogy of Morals and Ecce Homo*, ed. and trans. Walter Kaufman (New York, 1989), p. 43: 'For just as the popular mind separates the lightning from its flash and takes the latter for an action, for the operation of a subject called lightning, so popular morality also separates strength from expressions of strength, as if there were a neutral substratum behind the strong man which was *free* to express strength or not to do so. But there is no such substratum; there is no "being" behind doing, effecting, becoming; "the doer" is merely a fiction added to the deed: it posits the same event first as cause and then a second time as its effect. Scientists do no better when they say "force moves," "force causes," and the like — all its coolness, its freedom from emotion notwithstanding, our entire science still lies under the misleading influence of language and has not disposed of that little changeling, the "subject".'

[13] Frede, 'The Stoic Notion of a *lekton*', p. 120.

'subject' or 'substance' that is a bearer of secondary, accidental qualities. By contrast to this Aristotelian notion of subject or substance, which adds accidental qualities to itself or bears them, the *tynchanon* is not what fundamentally precedes action. It is, on the contrary, what is added (to action). It does not act and is not a source of other qualities. Rather, it is marked out or clearly designated at the end of the day in order to have a full *lekton*, to decisively complete action, that is, in order to 'own' it — i.e. to mark it as 'his', 'her' or 'its'. In other words, one needs the *tynchanon* so that one can recognize action as belonging to a certain owner, but this is done *post factum*: the agent appears as a prop for action, rather than its initiator. The same applies to objects: they are also singled out from the block of undifferentiated entity called the flow of action and are captured by nouns (in oblique cases), added to a predicate. Thus they become props for action as well.

To clarify this exposition, a number of certain contemporary examples can be given. For instance, one may say that children start speaking in verbs and only later learn names, nouns and pronouns. 'Bow wow wow' is the name of an act. The 'dog [bow wow wows]' comes later, as well as 'at a passer by'. Institutional action can be characterized in the same way. A terrorist act happens in Mumbai. Initially we just notice this event, we just know that a violent action is what is going on. A *post factum* analysis will tell us by whom it was started ('twenty disgruntled youths', 'Al-Qaida trainees', 'Islamic fundamentalists', etc.), where and in what object-filled circumstances it happened and who were the primary objects of action ('citizens of Western developed nations', 'the financial capital of India', 'relative manageability of inter-confessional conflict and stability in the country', etc.). Diverse figurations of subjects and objects that were allegedly enmeshed in this action are not the same. They are frequently not even synonymous in the sense that they require different avenues of retaliatory or corrective action. But their common feature is that these subject and object positions are secondary to action, from which they are singled out.

II

Cicero is conventionally taken to be a master of rhetoric and a model orator. The usual perception is that his sentences very often have imaginative, if not beautiful predicates — hence a modern day reader allegedly finds many successful metaphors first suggested or exquisitely practised by Cicero — and attached to them are no less ornate subjects. However, if we adopt the Stoic vision with its emphasis on the verb, and not on nouns and pronouns, we can examine how the expression 'res publica' in Cicero's texts is added to the predicate — as a subject or an object.

Historians have long known that the term *lo stato* in Machiavelli rarely, if ever, figures in his sentences in the active stance, mentioned as a subject of actions or possessions. Rather, it is an object to be grabbed, controlled and

maintained or, conversely, lost and transferred. Jack Hexter was the first to point out that out of more than a hundred usages of the term *lo stato* in *Il principe*, in only eight *lo stato* may be interpreted as a subject of action, and unambiguously so in only three.[14] Quentin Skinner demonstrated that this happens in part because the initial development of the modern term for the state was dependent on two Latin expressions, *status regni* and *status rei publicae*.[15] Neither could be conceived as a subject of action, hence the initial difficulties of ascribing action to such instances as 'the state'. Only protracted efforts of such absolutists as Walter Raleigh and Thomas Hobbes helped effect this epochal change. But perhaps the difficulty of putting *lo stato* into a position of a subject of action stemmed also from the fact that this early modern *stato* (or *state* in English, *Staat* in German and *l'Etat* in French) was modelled on the notion of *res publica* in the classical texts, which also was often prone to be the object of action, rather than its subject.

Rudolf Stark and Hans Drexler — two German scholars who first wrote their disciplined histories of the term *res publica* which up until our days satisfy even the rigorous standards of Reinhart Koselleck and his colleagues[16] — both stressed the fact that *res publica* features as a subject rather less frequently in comparison to sentences when it is taken to be the object or condition of action.[17] Thus, Drexler points to such revealing instances of usage, when *res publica* is said to be *in manu est* (in the hands)[18] or *in potestate* (under control of).[19] Frequent also are the references to, when an agent can *tenere rem publicam* (hold *res publica*),[20] or capture it (*capere*),[21] or do things with it that hardly require translation into English — *occupare*, *recipere* and *recuperare* (multiple instances cited by Drexler). One can even *possidere*

[14] J.H. Hexter, 'The Predatory Vision: Niccolo Machiavelli. *Il principe* and *lo stato*', *The Vision of Politics on the Eve of the Reformation* (New York, 1973).

[15] Quentin Skinner, 'The State', in *Political Innovation and Conceptual Change*, ed. Terence Ball *et al*. (Cambridge, 1989).

[16] *Geschichtliche Grundbegriffe: Historisches Lexikon zur politischen-sozialen Sprache in Deutschland* (Stuttgart, 1972), cites these authors as providers of basic knowledge on the Latin term in the article on the German term *Republik*.

[17] Rudolf Stark, *Res Publica* (Goettingen, 1937). Reprinted with supplements in *Romische Wertbegriffe*, ed. Hans Opperman (Darmstadt, 1967). Hans Drexler, 'Res Publica', *Maia*, Vol. IX (October–December 1957) and Vol. X (January–March 1958).

[18] Livy, *Ab Urbe Condita*, II.57.3, XXVI.8.11, XXXIV.21.2, etc. (http://www.thelatinlibrary.com/liv.html). All Latin texts are available at www.thelatinlibrary.com.

[19] Cicero, *De Re publica*, III.44 (http://www.thelatinlibrary.com/cicero/repub.shtml); Cicero, *De Divinatione*, II.6 (http://www.thelatinlibrary.com/cicero/divinatione.shtml); Livy, *Ab Urbe Condita*, XLV.23.9, etc.

[20] Cicero, *De Domo Sua*, 92 (http://www.thelatinlibrary.com/cicero/domo.shtml); Cicero, *Pro Sestio*, 44 (http://www.thelatinlibrary.com/cicero/sestio.shtml).

[21] Cicero, *De Domo Sua*, 129; Sallust, *Bellum Catilinae*, V.6 (http://www. thelatinlibrary. com/sall.1.html).

totam rem publicam, come to own it all,[22] and, concomitantly, *repetere rem publicam*, demand it back as a possession,[23] or in fact render it back (*reddere*).[24]

This most widespread usage depicting *res publica* as an object to be acquired, maintained, transferred or lost, had a long tradition. Both Stark and Drexler cite the following excerpt from the Roman poet Naevius (*Praetexta*)[25] as a most characteristic early example: *Cedo qui rem vestram publicam tantam amisistis tam cito*? ('How did you lose so quickly your so great *res publica*?'). One could guess that Cicero's quotes listed above simply continued this conventional way of talking about republican institutions, affairs and property. Of course, one would expect that before losing them, one should have created them. Thus Cicero also speaks of *rem publicam instituere* and *constituere*,[26] *commutare rem publicam* (change it)[27] or *convertere* (overthrow it)[28] so that seditions are called *conversiones rei publicae*.[29]

The feminine noun *res* is most frequently put here in the accusative case, signifying the object of influence or action. However, other grammatical cases were also in use. Apart from the accusative, among the oblique cases we most frequently find *res publica* also in the ablative, signifying the loss of something: an innumerable amount of bread was stolen from *res publica* in three years (*aversum a re publica esse*).[30] People could also be disconnected from a republic — this was captured by expressions such as *removere*, *relegare*, *excludere a re publica.* And there is a stable expression *in re publica* (the term put in the ablative as well), which signifies a condition or a sphere, thus clarifying aspects of action mentioned in the predicate. For example: 'That is how we will most easily achieve what we want both in private matters and in public affairs' (*privatis in rebus et in re publica consequemur*),[31] and: Milo defended the rights of tribunes and auspices *in re publica*, while in private affairs he defended the gods of his home hearth.[32] A similar expression, but with the term in the plural is: divination happens *in rebus publicis*

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[22] Cicero, *Pro Milone*, 76 (http://www.thelatinlibrary.com/cicero/milo.shtml).

[23] Cicero, *Pro Sestio*, 81.

[24] Tacitus, *Annales*, IV,9.1 (http://www.thelatinlibrary.com/tacitus/tac.ann4.shtml).

[25] Cited in Cicero, *De Senectute*, 20 (http://www.thelatinlibrary.com/cicero/senectute. shtml#20).

[26] Cicero, *Pro Marcello*, 27 (http://www.thelatinlibrary.com/cicero/marc.shtml).

[27] Cicero, *In Catilinam*, 3.25 (http://www.thelatinlibrary.com/cicero/cat3.shtml).

[28] Cicero, *Pro Flacco*, 94 (http://www.thelatinlibrary.com/cicero/flacco.shtml).

[29] Cicero, *Pro Sestio*, 99. Drexler, 'Res Publica', *Maia* IX, pp. 248, 266.

[30] Cicero, *In Verrem*, II.3.163 (http://www.thelatinlibrary.com/cicero/verres.2.3.shtml).

[31] Cicero, *De Officiis*, II.24 (http://www.thelatinlibrary.com/cicero/off.shtml), English translation: Cicero, *On Duties*, ed. M.T. Griffin and E.M. Atkins (Cambridge, 1991), p. 71.

[32] Cicero, *Pro Sestio*, 95.

(ablative, as well).[33] Such references to the place or sphere of activity eventually gave rise to a stable expression, *verso in re publica*, 'to turn or to be in the very midst of public affairs', with the following characteristic examples: 'when you are constantly in the midst of *res publica* and engage in so many important undertakings' (*in tanta re publica versere et maximis negotiis praesis*),[34] or 'all of us who are constantly present in the midst of *res publica* and these dangers to life and labours' (*in re publica . . . versamur*).[35]

The same grammatical case seems to produce two stable idioms that frequently refer to the activities of the Senate — *de re publica dicere*, *referre*, *consulere*, *consultare*, that is, to speak, deliberate or comment on the concerns of the *res publica* — and *e (ex) re publica facere*, act in the interests of the republic).[36] But, of course, other grammatical cases are possible as well. To give just one example with the dative: Cicero hopes to prolong many centuries for *res publica*, i.e. *multa saecula propagasse rei publicae*, by stamping out Catiline's sedition.[37]

Res publica ends up in the nominative case, when it signifies the subject of action, added to the predicate, with the predicate — as we recall from the Stoics — being the principal factor in telling us what is actually going on. Let us now consider these cases of *res publica* in the nominative, when — as a modern reader is bound to believe — it allegedly acts. For example, assiduous Drexler enumerated many examples when Cicero posits *res publica* as a speaking, thinking and feeling agent. It speaks in *In Catilinam*, I.27, its voice sounds in *In Catilinam*, I.29, it pleads in *Pro Flacco*, 3, judges in *Philippicae*, 10.12, is filled with dolour and laments in *In Pisonem*, 17,[38] and *Pro Sestio*, 18, it is happy in *De Re publica*, III.46, *In Catilinam*, 2, 7.10, grieves in *De Domo Sua*, 4, cannot tolerate in *De Domo Sua*, 137. With its own hands it helps a fallen citizen stand up in *De Domo Sua*, 119, and embraces a human in *In Catilinam*, 4.3. and *Philippicae*, 13.9. It kills in *Pro Sulla*, 32,[39] punishes in *In Catilinam*, 1.4, it takes revenge in *Pro Milone*, 88, wins in *Pro Plancio*, 88,[40] it is in armour in *Pro Milone*, 67, is not ready for war in Sallust, *Bellum*

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[33] Cicero, *De Natura Deorum*, II.162 (http://www.thelatinlibrary.com/cicero/nd.shtml).

[34] Cicero, *Pro Balbo*, 14 (http://www.thelatinlibrary.com/cicero/balbo.shtml), my translation.

[35] Cicero, *Pro Archia*, 30 (http://www.thelatinlibrary.com/cicero/arch.shtml), my translation.

[36] E.g. Cicero, *Philippicae*, 3.6, 3.13 and 5.19 (http://www.thelatinlibrary.com/cicero/phil.shtml).

[37] Cicero, *In Catilinam*, 2.11.

[38] Cicero, *In Pisonem* (http://www.thelatinlibrary.com/cicero/piso.shtml).

[39] Cicero, *Pro Sulla* (http://www.thelatinlibrary.com/cicero/sulla.shtml).

[40] Cicero, *Pro Plancio* (http://www.thelatinlibrary.com/cicero/plancio.shtml).

Catilinae, XVII.1, but it defends itself from its enemies in *De Legibus*, III.20,[41] and kicks out the city plebs in *In Catilinam*, 2.7.

As we can see, these instances are not so few. Still, this personification of *res publica* happens mostly in phrases that for a modern reader seem to be a result of an astute use of the power of metaphor by Cicero and his contemporaries. The Romans of that epoch had not yet developed the notion of a republic as a juridical person, the *Genossenschaftsrecht* of the medieval Holy Roman Empire being in the distant future.[42] Drexler thus sums up:

> . . . *res publica* is in this or another way only a *res*. Even in their most bold phrases authors do not forget that this is a metaphor. Stark is completely right when he says . . .: '*Res publica* after all was never taken as an acting person, as a bearer of state-legal functions'. And when an individual owes something to *res publica*, and it owes to him something in return, this happens because it has already, as a *res*, become a compulsory idea.[43]

Adding a subject called *res publica* to a predicate that designated action might have been a popular sport at the time of Cicero, and if it was, it was clearly a fun sport. It seems that at that time people did not take phrases that put *res publica* into a position of a subject of action as seriously as, say, those that put individuals or families as subjects of action, and legally responsible for their actions. Rather, people were only learning how to ascribe to *res publica* the place of a subject in sentences, and mostly with the help of metaphorical manoeuvres. There was possibly one exception though — these were the phrases that dealt with possessions of *res publica*, or with any other entities that the Romans claimed the republic really owned or had, like its generals and legions, its provinces and lands. From a philosophical standpoint, in such phrases the Stoic 'referent' — the *tynchanon* analysed in the first section of this text — seemed to work most properly: it referred to corporeal elements of life, not metaphorical wordings. And in these cases the *tynchanon* called *res publica* actually even owned something tangible, as the Stoic notion of the *tynchanon* was supposed to be doing, as the very verb *tynchanein* implies in the past tenses. When a subject was added to a predicate in Stoic grammar, as we recall, the *tynchanon* of this subject became an owner of these actions or proceeds.

Here are the relevant examples. *Res publica* is said to have disposed of (*administraretur*) fourteen legions and one hundred military boats in Livy's *Ab Urbe Condita*.[44] Thus, when lavishly supported, it should not experience a want in the number of oarsmen or in pay to soldiers (*nec remige . . . nec*

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[41] Cicero, *De Legibus* (http://www.thelatinlibrary.com/cicero/leg.shtml).

[42] So well analysed for us by Otto von Gierke, *Das Deutsche Genossenschaftsrecht* (Berlin, 4 vols., 1868–1913).

[43] Hans Drexler, 'Res Publica', *Maia*, Vol. X, pp. 3–4.

[44] Livy, *Ab Urbe Condita*, XXX.41.9.

stipendio res publica eguit).[45] Cicero in one of the Philippics mentions that *res publica* holds (*tenet*) Macedonia and Illyria and takes care (*tuetur*) of Greece, but the main thing perhaps is that ours are also the legions (*nostrae sunt legiones*).[46] In another excerpt Cicero implies that *res publica* has already lost such key holdings as its generals and armies (*res publica non tot duces et exercitus amisisset*)[47] and hence is in decisive danger. Therefore leaders of the people are what a faltering *res publica* lacks first and foremost (*publicis ducibus res publica careret*).[48] On the contrary, while powerful it surely has these leaders and generals, as it had Cassius (*habet imperatorem C. Cassium . . . res publica*)[49] against Caesar's lieutenant Dolabella. To show that *res publica* possessions included not only generals and armies, as the last quote might imply, let us cite Cicero from *De Lege Agraria*,[50] where Rullus is described as intending to squeeze out *res publica* from its possessions in Campagna fields (*ex ea possessione rem publicam demoveret*), or Cicero as a consul opposing the loss by the Roman people of its possessions (*populum Romanum de suis possessionibus . . . demovere*).[51]

To repeat once again, but in other words: when a *tynchanon* called *res publica* was being looked for next to the *lekton* that mentioned it, this seemed in most cases to be excessive or surely futile, because an expression *res publica* took its agent position in the sentence largely as a result of uses of metaphoric means by an author. In fact, for the case of such metaphor-based phrases nobody would be even looking for an empirical agent called *res publica* in reality. But in the case of the republic's leaders and generals, armies (and other things that it actually owned like lands or territories), looking for the *tynchanon* could seem to be more felicitous: here the *res publica* owned or possessed something very tangible, and this seemed to run parallel to the fact that the *tynchanon* — according to the meaning of the underlying verb, from which this term developed — was supposed to 'have' the predicate.

Of course, to whom belonged a given action, mentioned in the predicate, might have been expressed in another way, by an almost equivalent expression. I mean that instead of putting *res publica* as a subject of action, an author could add to a predicate a similar subject, but designated by a proper name — *res Romana*, *res Nolana*, etc. For example, the classic lines by Ennius stated that *moribus antiquis res stat Romana virisque* (*res Romana* rests on ancient mores and men).[52] Livy seemed to rephrase it also, by saying once that Rome

[45] *Ibid*., 36.12

[46] Cicero, *Philippicae*, 10.12.

[47] *Ibid*., 2.37.

[48] Cicero, *Pro Sestio*, 26.

[49] Cicero, *Philippicae*, 11.35.

[50] Cicero, *De Lege Agraria*, II.81 (http://www.thelatinlibrary.com/cicero/legagr.shtml).

[51] *Ibid*., III.15.

[52] Livy, *Ab Urbe Condita*, I.12.1.

grew by audacity and action (*res Romana crevit*).[53] But this Roman *res* could
be lost in a moment, as if falling into a precipice — as happened at the battle of
Cannes (*praeciptiasset Romana res*).[54] It was not perhaps accidental that in
such and similar quotes the references were clearly military. For instance, we
also find this imagery in *Tusculanae Disputationes* when Cicero cites Ennius:
'tell me, tell me, how in battle *res Argivium* maintains itself (*se sustinet*)';[55] or
in *Ab Urbe Condita*, when Livy describes how *res Nolana* got into trouble
when Hannibal and the Phoenicians had occupied lands adjacent to this town
itself.[56]

   The primary effect of such a linguistic operation, which designated the sub-
ject of action as 'res + proper name', was that the said action then was clearly
ascribed to a certain people with the name (not to an abstract *res publica*),
while psychological or anthropomorphic metaphors were hardly ever applied
to such a stern subject of action. Was it because matters were so serious —
very frequently, the very life and death of a polis or a people — that there was
no place for metaphoric juggling? One can hardly answer this question with-
out discussing the whole difference between how phenomena called meta-
phors appeared and functioned in the times of Ennius and Cicero and how
they do so now.[57] But one can surely notice that by introducing a structure
'res + proper name' to assume the place of a subject of a given predicate, the
claims that the *tynchanon* owns the actions designated by predicates are made
even easier. This happens because a proper name very frequently states an
agent, which has a far clearer reference in reality than some abstract *res
publica*: this agent has a topographic location, first, and, as a standard Cicero's

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[53] *Ibid.*, XXII.14.14.

[54] *Ibid.*, XXVII.40.3.

[55] Cicero, *Tusculanae Disputationes*, II.39 (http://www.thelatinlibrary.com/cicero/
tusc.shtml), my translation.

[56] Livy, *Ab Urbe Condita*, XXIII.14.10. The last three examples may sound like
instances of a poetic collocation, of course (e.g. Livy is known to use poetic diction). It is
perhaps not accidental that just from looking at the dictionary, there seem to be no
Ciceronian examples and he cites Ennius rather than pronouncing a similar phrase him-
self.

[57] Drexler seems to believe the mechanisms were pretty much the same (transporting
a feature of one situation to describe another), as well as the direction of transfer (taking
features from a life of the individual to describe state actions, rather than vice versa) —
but both assumptions can be questioned. Furthermore, some would even doubt that mak-
ing *res publica* into an agent can be described as a metaphor, strictly speaking. Ascribing
animate qualities to an inanimate object would be properly called at the time a
prosopopeia (or personification); if *res publica* were to speak that would be
sermocinatio. Both tropes are usually considered in rhetorical theory as elements of vivid
description, in Latin — *sub oculos subiectio*. (I am grateful to Boris Maslov for pointing
out these distinctions to me.)

definition of *res publica* would assert,[58] it has to have a property (*res populi*) if it is to be a true *res publica*. A proper republic has its own proper (topographic?) name and is a property of its people.

III

The second Stoic element, important for understanding Cicero's background skills in dealing with words, is the Stoic theory of definition. Cicero relied on it, but transformed it. Thus, if one is to position properly his famous definition of *res publica*, one has to understand what definition as a practice entailed for Cicero.[59]

Definition mainly concerns Cicero as part of his treatises on rhetoric, i.e. as a tool that allows gaining victory in discursive warfare. In a forensic speech, for example, a successful definition allows one to persuade the audience, win over the listeners, and thus win the trial. Charles Brittain provided an extensive analysis on how Cicero changed the Stoic theory of definition by introducing a new notion of *sensus communis*.[60] The Stoics held that by natural reason all people had certain common preconceptions, *prolepseis*, inscribed in their minds. However, these were not philosophically enlightened and thus very frequently could obscure some details of the nature of things. A common person thus had to come to a Stoic sage to engage in a philosophic conversation that would happen somewhere in the favourite sedate Stoic setting of porticoes or colonnades. As a result, his mind would be elevated by philosophical illumination, and he would leave in possession of *ennoemata*, rational conceptions, rather than *prolepseis* that he had held before coming. Stoic definitions were part of this enlightenment.

Cicero (even in his early treatise *De Oratore*) adds to this process of Stoic enlightenment a new instance, *communis mens*, when he argues that in debates one has to investigate 'what is, as it were, impressed on the common mind', e.g. a perennial question of 'whether justice is in the interest of the stronger'.[61] This common mind is a feature of a different background setting than the one that the Stoics presupposed: rather than entailing a one-to-one

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[58] Cicero, *De Re publica*, I.39.

[59] From the standpoint of a Stoic theory of *to tynchanon*, predicates of a definition reveal to us the very great difficulties of this conception. For example, when *res publica* appears as a subject of a predicate in *lekta* of the kind '*res publica* is . . .', what is the *tynchanon* of this phrase, where all action boils down to an attempt simply 'to be'? What should be the features of such a subject in general, in order for it to be ascribed to the predicate 'is'? I must ignore these most interesting difficulties, focusing here not on Stoic linguistics *per se*, but on how it illuminates the theory of *res publica*.

[60] Charles Brittain, 'Common Sense: Concepts, Definition and Meaning In and Out of the Stoa', in *Language and Learning*, ed. D. Frede and B. Inwood (Cambridge, 2005).

[61] Cicero, *De Oratore*, 3.115 (http://www.thelatinlibrary.com/cicero/oratore.shtml). Translated in Brittain, 'Common Sense', p. 205.

calm conversation between a sage and a curious visitor, the common mind
presupposes a situation when many people discuss things in public, e.g. dur-
ing trials or in a forum. Thus, the rhetorical theory of definition of Cicero
appeals to *sensus communis* of this crowd, which should be enlightened and
elevated by lawyers or orators exchanging discursive blows in front of it: 'The
meaning of the disputed word is ultimately determined by the preconception
the audience have of the thing it names. The competing definitions the law-
yers give are thus attempts to approximate the content of this preconception;
the closer one gets to it, the more likely one is to win.'[62] The term *sensus
communis* itself appears in forensic speeches of Cicero,[63] which presume that
everyone listening to him has some understanding of the matters discussed.
The assumption here is that almost anyone can discuss moral issues (e.g.
justice, as in the example above), while there are of course subjects that
require expert knowledge or technical skill, and these are not part of the
sensus communis.

Now, let us consider the intricacies of this process of rhetorical definition.
Brittain claims: 'Cicero's closest approach to a formal theory of definition,
and his most clearly Stoicizing treatment of the subject, is set out in *Topica*,
his last rhetorical work.'[64] According to Brittain, Cicero primarily relied on
Antipater's theory of strict definition, since he required naming only a
proprium of the defined phenomenon. In other places Cicero also invoked a
theory of Chrysippus, which required stating in the definition both the genus
and the differentia.[65] But the practical rule on most felicitous definitions is
given by Cicero in *Topica* as follows:

> All that remains is to give the method by which one makes a definition. The
> ancients gave the following rule: when you have got hold of the properties
> common to the thing you want to define and to other things, carry on until a
> unique property (*proprium*) is produced, i.e. one which cannot be trans-
> ferred onto anything else.[66]

Res publica res populi that famously appears in *De Re publica*[67] might thus
be one such definition through the *proprium*, because *res* is never ever defined
by Cicero as a genus to be subdivided into species (e.g. *res* thus broken into
res privata and *res* in common possession, with the latter itself breaking down

[62] Brittain, 'Common Sense', p. 206.

[63] Cicero, *Pro Cluentio*, 17 (http://www.thelatinlibrary.com/cicero/cluentio.shtml);
Cicero, *De Domo Sua*, 97; Cicero, *Pro Plancio*, 31 and 34.

[64] Brittain, 'Common Sense', p. 201.

[65] See Cicero, *Topica*, 31 (http://www.thelatinlibrary.com/cicero/topica.shtml), which
states this and also says: 'I call a "concept" (*notio*) what the Greeks call an *ennoia* or
prolepsis. It is an engrafted understanding of each thing, known by the mind, which
requires explication.' Translation from Brittain, 'Common Sense', p. 203.

[66] Cicero, *Topica*, 28–9. Translated in Brittain, 'Common Sense', p. 201.

[67] Cicero, *De Re publica*, I.39.

into *res divina*, *res communis* and *res publica*), nor is *publica* ever presented as a species to be added to the genus *res*. But we must consider another particularity as well. This famous definition of *res publica* does not appear at the very beginning of the dialogue. Rather, it is preceded by a long exposition. During this exposition the protagonists protractedly discuss what would be the subject of their future debate, and this preliminary episode finally ends with Scipio agreeing to talk on *res publica*, after he has been asked by others to do so.

Before he starts, though, Scipio articulates the procedure of his future discussion:[68]

> I shall enter into the discussion under favour of that rule which, I think, should be adopted by all persons in disputations of this kind, if they wish to avoid being misunderstood; namely, that when men have agreed respecting the proper name of the matter under discussion, it should be stated what that name exactly means, and what it legitimately includes. And when that point is settled, then it is fit to enter on the discussion; for it will never be possible to arrive at an understanding of what the character of the subject of the discussion is, unless one first understands exactly what it is. Since, then, our investigations relate to a commonwealth, we must first examine what this name properly signifies.

Only after Laelius agrees to this procedure — he 'intimated the approbation of this course', as Charles Duke Yonge solemnly translates[69] — can Scipio give the readers his illustrious definition: *res publica res populi*.

So, if one sums up the Stoic theory of definition, as described by Cicero in *Topica*, 28–9, and as practised by him in his most famous treatise on *res publica*, one finds two main features of this procedure. First, a successful definition defines, that is, puts limits or lines (*fines*) around a terrain where a conversation will happen, it effects an operation, which the Greeks sometimes designated as *dihorizein*, as if drawing a horizon (*horos* being a term for boundary).[70] Thus, it limits the topics for consideration and discussion that the present audience agrees to take as legitimate and thus agrees to suppress deviations from the de-limited space of a conversation. Second, once the terrain is delimited and established, a successful definition should point out to the audience the proper qualities (*propria*) of a defined thing.

But there is also a third feature of a Ciceronean definition, which distinguishes it from the Stoic position — it does not stop at this initial formulation,

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[68] *Ibid.*, I.38.

[69] Cicero, *Tusculan Disputations, On the Nature of the Gods, On Commonwealth*, trans. C.D. Yonge (New York, 1877), p. 378.

[70] Aristotle, *De anima* 413a9–10: 'This should be enough to define (*dihorizein*) and delineate an account (*hypographein*) of the soul in outline.' Stoics mostly used the second term in their theory of preliminary definition (Brittain, 'Common Sense', pp. 186, 188.)

as many theoretical definitions do now. Definition in rhetoric is not a one-time statement for some immediate purpose; it is part of a prolonged process that is to result in winning over the minds of the audience, thus leading to serious consequences. Therefore the advice of Cicero seems to be the following: having articulated the proper qualities of a name (*propria*), one should reinforce the persuasion of the audience that these qualities are the correct ones, either by prompting the audience to perceive the discussed features (if they can be shown and touched), or — in a more difficult case, when one deals with abstract or non-tangible entities — by progressively perfecting the definition, adding more and more *finesse*, so to speak, to the first attempt at defining.

Topica 26–27 states it in the following famous excerpt on two kinds of things defined: there are things that exist and those that are intelligible (*unum earum rerum quae sunt, alterum earum quae intelleguntur*). The first ones, 'things which I call existing are those which can be seen or touched; as a farm, a house, a wall, a gutter, a slave, an ox, furniture, provisions, and so on; of which kind of things some require at times to be defined by us'.[71] But the more interesting class of things to be defined are those that *non sunt*, and thus *quae tangi demonstrarive non possunt*, 'which are incapable of being touched or proved', but which can be discerned nevertheless by the rational soul and understood, *cerni tamen animo atque intellegi possunt*. For example, you would have to rely on this rational soul 'if you were to define usucaption, guardianship, nationality, or relationship — all things which have no body (*quarum rerum nullum subest corpus*), but which nevertheless have a certain conformation plainly marked out and impressed upon the mind',[72] the last phrase in Latin being *conformatio insignita et impressa intellegentia*. This conformation is called *notio*, 'taking cognizance of a thing', its 'concept'. Things like this, says Cicero, are often explained while arguing about them and supplying definitions — *Ea saepe in argumentando definitione explicanda est.*

Clearly, *res publica* is a thing of the second kind. It cannot be touched or demonstrated by pointing at it. But it can be impressed on the soul, first by giving a definition that enlightens the preconceptions (on moral and political matters), already held by listening citizens, and then perfected by supplying additional arguments. That is what the dialogue *De re publica* does: it sets the stage for the progressive impression on the souls of the listeners of Cicero's definition of *res publica*. First, we agree on the procedure of this articulation, delimiting the subject area of discussion. Second, the definition is given by singling out the *proprium* of the phenomenon in question. Third, five books of discussions of details of this initial definition are needed to allow it to solidify itself and make a stable lasting impression on the rational minds of listeners.

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[71] Cicero, 'Treatise on Topics', in *The Orations of Marcus Tullius Cicero*, Vol. 4, trans. C.D. Yonge (London, 1852), p. 464.

[72] *Ibid.*

The end result: the thing, which does not have a body but which can be intelligibly understood, has come into full existence if the audience is persuaded. (The irony of history, of course, is that what proved to be the most relevant audience for Cicero at the time was, however, not reading his dialogues but rather preparing proscription lists that eventually allowed his assassination!)

IV

The problem with the *lekta* that involve the *tynchanon* called *res publica* is thus that there is no corporeal referent out there. *Res publica* owns actions ascribed to it, but it is among those things, for which *nullum subest corpus*. Thus, in the strict sense, it is no *tynchanon* at all — when Cicero amended the Stoic doctrine of definition and introduced the notion of common mind or common sense, he posited a new realm, which has concepts impressed on the mind, to which everybody refers, when they are discussing *res publica*, for example, but which does not have a corporeal existence.

This non-corporeal *tynchanon* produces very specific difficulties for Cicero and his Stoic-minded contemporaries. In republican discourse ascribing (in order to have a full *lekton*) a subject or an object called *res publica* to a predicate, which captured some sort of a public act, was not so difficult. The problem, however, was not difficulty; rather, it was efficiency. Particularly in cases where *res publica* was added as a subject to a predicate, as we recall, this smacked of what now would be called metaphorizing, and thus did not entail serious commitments on the part of a listening or reading audience.[73] The same scepticism could be expressed in, apparently, and thus held true for, the cases when *res publica* was added to a predicate as an object or condition of action, e.g. in senate language that described instances of *e (ex) re publica facere*[74] — something being done in the interests of *res publica*, 'for it'. During the civil wars Caesar, perhaps because of such widespread attempts to point at a subject of action called *res publica* or to claim that one was acting in its interests (which almost all did, justifying one's partisan behaviour), is thus said to proclaim in the end that *nihil esse rem publicam, apellationem modo sine corpore ac specie*, that *res publica* was nothing, a mere appellation with-

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[73] With two exceptions, stated in Section II of this article: speech acts that put *res publica* into a subject position were deemed serious if (a) they spoke of generals, armies, lands and other possessions of a *res publica*, or (b) they spoke of an agent called 'res + proper name', like *res Romana*. (Of course, a complementary interpretation is equally possible: as an effective rhetorical device, adding a subject called *res publica* to predicates in tropes like *prosopopeia* or *sermocinatio* induced temporary persuasion, but not serious lasting commitment.)

[74] Drexler, 'Res Publica', *Maia*, Vol. X, pp. 16–17.

out body or form.[75] If this expression had no tangible referent, it could be and was used to justify the behaviour of opposing political parties, and thus should be better excluded from usage as malfunctioning — such was Caesar's logic.[76]

Cicero's answer to these difficulties was an ingenious definition that rendered *res publica* as *res populi*. This allowed him to point to another *tynchanon* — the *populus* that owned the *res* of the people, and thus owned the actions of this *res* (of the *populus*, i.e. *publica*), as a *tynchanon* was supposed to have been doing all the time. *Res publica* could not be a *tynchanon* in the classic Stoic sense of the term, while the *populus* could claim such status with more success. The difference between them was that the latter represented what many could have taken as a corporeal existence — since the *populus* itself was defined as many bodies, though of course united by a consensual tie of law and care for the common good.[77] Thus *populus* was rather more felicitous as a *tynchanon* that made *lekta* seem completed, full and effective in that they involved reference to a tangible reality. Of course, in the standard formula in the beginning of decrees the *populus* was helped by a no less tangible Senate: the Senate and the Roman people (*senatus populusque Romanus*) decided this and that.

Apart from better claims of the *populus* to corporeality, there was a better claim to ownership as well. A *tynchanon* was supposed to own the acts stated in the predicate: and the *populus* certainly owned these acts, which heretofore were not felicitously ascribed to *res publica*. It was hardly a coincidence that the term *proprium* — designating the unique quality captured in a definition, for which Cicero was, for example, looking in his definition of *res publica* — also meant property, ownership.[78] What belonged to the essential features of a phenomenon made this phenomenon itself, or made it proper to itself, so to speak. Similarly, property made a citizen what he was as *pater familias* and made *populus* what it was as a public agent. Thus, the feature mentioned in the *proprium* of the definition, was also pointing to issues of ownership — at who controlled the defined phenomenon and maintained its essential features.

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[75] Suetonius, Divus Iulius, 77 (http://www.thelatinlibrary.com/suetonius/suet.caesar.html).

[76] Llewelyn Morgan, ' "Levi Quidem de re . . .": Julius Caesar as Tyrant and Pedant', *Journal of Roman Studies*, 87 (1997), pp. 23–40.

[77] Cicero, *De Re publica*, I.39.

[78] *Proprium* figures more obviously in this sense when it is opposed to *alienus*, rather than to *communis*. For example, Cicero states in a letter, referring to property as *usus* and *fructus*: *id est cujusque proprium, quo quisque fruitur atque utitur*, a man's property may be defined as that which he enjoys and of which he has the profit (letter F.7.30.2 — http://www.thelatinlibrary.com/cicero/fam7.shtml#30). Dictionaries give this as an example of direct meaning, while a trope usage of the same term we find in e.g. Cicero speaking in *De Officiis*, II.17, of a proper function of virtue, *proprium hoc statuo esse virtutis*.

In effect, this gave two ways of speaking about the *proprium* of *res publica*. First, the expression *res populi* was the *proprium* (in the sense of essential features) of any *res publica*. Second, the *proprium* of *res publica* (understood as its property or possessions) was its *res*. These possessions should belong, as the definition of *res publica* claimed, to the *populus*. Malcolm Schofield claimed persuasively that this very property emphasis was a decisive innovation that Cicero made in political theory.[79] This innovation was not so difficult, though: one simply had to stress that the essential features of a definition (*proprium*) concern matters of ownership (*proprium*). The new political criterion was clear, however: if the *populus* could not dispose of its *res*, i.e. possessions or property, there was no *res publica*. Putting property at the very heart of the definition of the essential feature of a republic now required naming the owner. Cicero was the first to do so.

V

Even if *populus Romanus* was about to cede its liberty and property as Cicero was writing his last treatises, the usage that mentioned *res populi* became very convenient for the emperors who came to rule Rome. Instead of rejecting the term *res publica* as *nihil*, as Caesar did, they readily agreed to keep it, if it served their goals and solidified their rule. For example: 'Both in meetings of the people and in the senate he [Hadrian] used to say that he would so administer the commonwealth that men would know that it was not his own but the people's (*ita se rem publicam gesturum ut scirent populi rem esse, non propriam*).'[80] Emperors knew that even if the *res* that the *populus* claimed heretofore now effectively belonged to them, it befitted them to deny this, and to claim that they did not treat this *res* as *proprius*, their own. Rather, allegedly it was still *proprius* of the people, belonging to it.

Only when legitimating rule with the help of republican imagery and rhetoric became an obsolete task, could emperors — as was the rule by the time of Justinian — openly talk about *res publica nostra*, the republic that belonged to 'us', referring in plural to the person of a single autocrat. Thus Justinian proclaims, abolishing the status of certain freemen:

> Those known as *dediticii* shall not hereafter, under any circumstances, be permitted to interfere with the administration of Our government (*nostram rem publicam molestare*), for the reason that We find this term has fallen into disuse, and that the freedom obtained by the aforesaid class exists only in name (*vanum nomen circumducitur*); for We, who endeavour to cultivate

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[79] Malcolm Schofield, 'Cicero's Definition of *Res Publica*', in *Cicero the Philosopher*, ed. J.G.F. Powell (Oxford, 1995).

[80] Latin — *Historia Augusta*, 8.3 (http://www.thelatinlibrary.com/sha/hadr.shtml); English — *Scriptores Historiae Augustae*, Vol. 1, trans. David Magie, Loeb Classical Library # 139 (Cambridge, MA, 1921), p. 25.

the truth, only desire those things to appear in Our laws which can actually
become operative.[81]

From the context it is clear who are that 'We' who gives laws.

But another interesting feature of this formulation is imperial attention to
enforcing clear reference chains. The end of this sentence in Latin sounds as
volumus in nostris esse legibus, quae re ipsa obtinent: we would like in our
laws to have only those phenomena, which hold (or pertain to) things them-
selves, *re ipsa*. Stop appealing to fictions or other phenomena that cannot be
touched or seen! Clear reference to tangible things made ruling easy in that it
precluded attempts by any non-desirable people from claiming that they were
acting in the interest of some mythical *res publica*.

Is it then accidental that codifiers of Justinian's law also articulated a very
specific category of goods, *res publicae*, which had a clear empirical refer-
ent — e.g. navigable rivers or regulated roads — next to *res omnia communes*
or *res divinae*? This clear reference made statements with the term *res publica*
easy, when it was used to designate an object or conditions of the act. These
shared and regulated goods could be pointed at as empirically verifiable and
tangible cases of *res publicae*.[82]

However, by the end of the empire one could hardly employ felicitously the
term *res publica* for subject positions in sentences. This had been difficult in
the republican epoch, and it became even more difficult in the imperial
period. Of course, formulations of lawyers in the Digests or *constitutiones* of
emperors are a specific type of literature, and it is impossible to compare legal
definitions from republican days that used the term *res publica* with the defi-
nitions from the imperial days, because there are almost no relevant republi-
can documents extant. But still one fact speaks for itself: in the Digests we
find almost no clear case of usage when *res publica* would occupy a place of a
subject of action, even in statements which might seem metaphorical or emo-
tional in style. The closest we perhaps get is Ulpian talking about seditions
and factional struggles, with the verb put in a passive voice:

> In civil dissensions, although the state is often wounded by them (*per eas
> res publica laedatur*), the contest is not fought for the destruction of the
> state (*non tamen in exitium rei publicae contenditur*); and those who go off

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[81] *Codex Iustiniani*, 7.5.1 (Latin — http://www.thelatinlibrary.com/justinian/codex7.
shtml), English — 'The Code of Justinian', in *The Civil Law*, ed. and trans. S.P. Scott,
Vol. 14 (Cincinnati, 1932), p. 122.

[82] In the *Digests* the term *res publica* also frequently referred to (1) the property of the
municipium or (2) part of the imperial fisc, still linked historically to republican *aerarium*
out of which it developed and from which it was distinguished. But the most frequent
usage of the term is met in the idiomatic expression 'to be away on public business', *rei
publicae causa absum*. On analysis of these terms in Justinian see Oleg Kharkhordin,
'*Res Publica* and *Res Publicae*: History and Politics of the Terms', in *The Materiality of
Res Publica: How to do Things with Publics*, ed. D. Colas and O. Kharkhordin (New-
castle, 2009).

to join one or other side are not counted as true enemies among whom the rights of captivity and *postliminium* apply.[83]

Thus, *res publica* almost never acts in Justinian's law. True, it might be justly entitled to certain proceeds, as is clear from the Codex: '*Res publica* usually enjoys (*uti solet*) the privilege of minors, and therefore it can (*potest*) demand the relief of restitution.'[84] Sometimes the rights it enjoys it is able to put into effect. Thus, it can take a special mortgage, *pignus specialiter res publica acceperit*,[85] but this is a rare example of its active role as a separate agent.[86] But in general, instead of *res publica* someone else is acting, and since there is no notion of corporate representation yet, the phrases even do not imply that these individuals are acting on behalf of *res publica*. Rather, they administer its affairs, e.g.: *Gaius seius qui rem publicam gerebat faeneravit pecuniam publicam sub usuris solitis*, 'Gaius Seius, the administrator of a *res publica*, lent public money at the usual interest'.[87] Also, often it is more convenient or felicitous to say not that it is the *res publica* acting, but rather that acts are done in it, as in a field of action, e.g.: 'We must treat as done in the public sphere (*gestum autem in re publica*) handling public money (*pecuniam publicam tractare*) or decreeing its expenditure.'[88] This brings us back to an almost idiomatic formula of republican days.

VI

Contemporary readers find themselves in a curious situation when reading about *res publica*. One intuitively believes that some kind of a state was there, even if the Romans never spoke of the governmental apparatus as a separate actor, distinct both from the ruler and the ruled. Rather, they spoke, for example, of the publicans who collected taxes as the best foundation of the republic, while taxes themselves were taken to be sinews in the body of *res publica*.[89] Estates and individuals acted, but not the *res publica*. In other

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[83] Justinian, *Digestae*, 49.15.21.1 (Latin — http://www.thelatinlibrary.com/justinian/digest49.shtml); English — *The Digest of Justinian*, ed. D. Colas and O. Kharkhordin (2 vols., Philadelphia, PA, 1998).

[84] *Codex Iustiniani*, 2.53.4, emperors Diocletian, Maximian.

[85] Justinian, *Digestae*, 20.4.8.

[86] The context of the sentence — that *res publica* also accepts a property liability for this, the mortgage — point to the similar usage in republican days, when its possessions were singled out as a referent of *res publica*. See Section II above.

[87] Justinian, *Digestae*, 22.1.11pr.

[88] *Ibid.*, 50.1.2.1.

[89] Cicero, De *Imperio Pompei*, V:17 (http://www.thelatinlibrary.com/cicero/imp.shtml): 'In truth, if we have always considered the revenues as the sinews of the republic (*vectigalia nervos esse rei publicae*), certainly we shall be right if we call that order of men which collects them, the prop and support of all the other orders (*firmamentum ceterorum ordinum*).' In *Pro Plancio*, 23, Cicero calls the order of the publicans *flos*

words, as we have tried to demonstrate, *res publica* was hardly, if ever, a subject of all those acts that are now habitually ascribed to modern states.

So, our wish to see the 'state' behind *res publica* clearly points to matters of our own beliefs rather than to matters of real concern for the Romans. Indeed, we would ardently like to have a sovereign agent working there, when there are only separate individuals, families or estates that we find in historical documents. As we saw, the Romans of the republican days, when they put *res publica* into an active subject position in a sentence, could imply generals, armies and its possessions in its place. The Romans of the imperial period could try doing the same, but with even less success, because for them the term came to be part of idiomatic expressions, like *rei publicae causa* or *in re publica esse*, first; or could be used in the plural, *res publicae*, to designate a clear category of collective property (distinguished, for example, from the property open to all or from the property of gods), second.

But then, if the state performed no act during the Roman days, what was really involved in pragmatic situations, when *populus Romanus* controlled or owned its *res*, and thus *res publica* clearly existed, according to the famous definition of Cicero? Here, as often, structuralism saves us: it is hard to point out exactly the instances when the people had its *res*, but it is clear when it did not. Thus, Cicero discusses the example of Rome under the Decemvirs.[90] They had been called to draw up a code of laws, but prolonged their rule and then usurped their positions. After they had adopted unjust laws and it became impossible to appeal against the actions of these illustrious ten lawgivers, the people had to rise up and restore its law-making and law-applying capacity. This event is interpreted in *De Re publica* as follows: the *populus* had to restore its control over its *res*: 'There was no "property of the people" (*populi nulla res erat*); indeed the people rose in revolt (*populus egit*) to recover its property (*ut rem suam recuperaret*).'[91]

Cicero's theory on why there was no *res populi* in the case of the Decemvirs should be seen as pretty straightforward. There is a theoretical criterion and a pragmatic one. Theoretically, the *populus* exists when there is 'not a collection of human beings brought together in any sort of way, but an assemblage of people in large numbers associated in an agreement with respect to justice (*iuris consensu*) and a partnership for the common good'.[92] Having provided

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enim equitum Romanorum, ornamentum civitatis, firmamentum rei publicae, that is, 'the flower of the Roman knights, the ornament of the state, the great bulwark of the republic'. English translations by C.D. Yonge, *The Orations of Marcus Tullius Cicero* (London, 1852), Vol. 2, p. 83, and Vol. 3, p. 111.

[90] Cicero, *De Re publica*, II.61–3.

[91] Cicero, *De Re publica*, III.44. Translation — C.W. Keyes, *De Re Publica. De Legibus*, Loeb Classical Library #213 (Cambridge, MA, 1928), p. 221.

[92] Cicero, *De Re publica*, I.39. Keyes trans. p. 65.

this definition, Cicero describes the origins of *res publica*,[93] and notes that buildings or spaces in common property do not make a city a *res publica* and do not make its inhabitants a public or people, i.e. *populus*, unless it is to be governed by a certain council, *consilio quodam regenda est*. The term *consilium* means not only a body that decides but also the process of deliberation, and the key idea is that deliberative consultation should rule in order for the *res publica* to exist. This deliberative consultation binds even a single ruler in his judgments and actions and it binds the multitude into a *populus*. Developing this thought, Cicero says that it does not matter whether it is the one, the few, or all, who govern — each form has its pros and cons, and Cicero himself prefers one among them — but what matters is that 'the bond (*vinculum*) that originally joined the citizens together in the partnership of *res publica* (*inter se rei publicae societate devinxit*)', holds.[94]

This bond is ensured by written law that guides deliberation, whether done by one, many or all. The notion of law as a binding tie and the corollary notion of a binding obligation — the term 'ob-ligation' comes from the same root as the term 'ligament' — are closely linked to this metaphor of *vinculum*, tie or bond. Young Hannah Arendt wrote her first dissertation on the notion of *vinculum* in Augustine, who took it to be Christian love that ties *civitas dei* together rather than love of the public world, so characteristic of the republican past, of the just *civitas*. Indeed, in Cicero's thought ligaments that bind the *res publica* together are explicitly theorized as a tie of law, *vinculum iuris*: when it is gone, there is no *res publica* anymore. His logic is pretty straightforward here: if there is no *vinculum iuris*, there is no agreement in matters of law, *iuris consensus*, which is a defining feature of *populus*, and thus we have just a multitude. When there is no *populus*, there is no owner of its *res*, and thus no *res publica*.[95]

Such are the theoretical criteria of the presence of a *res populi*. In practical terms, most of the time a statement that a *populus* is a real owner of its *res* means that there is access of all interested citizens to the processes of deliberation (*consilium*) on the drawing and application of laws that affect citizens. This is the *vinculum iuris* that establishes *iuris consensus* that establishes a *res populi*, and this *vinculum* is not necessarily metaphorical. For example, it can designate physical blocks of access to an infrastructure of legal and political deliberation. If these blocks are effective — and, say, it is only the bodies of the Decemvirs that have access to the bronze tables with written laws, installed at the sites of deliberation where these laws are applied — then the

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[93] Cicero, *De Re publica*, I.41.

[94] Cicero, *De Re publica*, I.42. Keyes trans. p. 67.

[95] See this argument on the centrality of *vinculum iuris* as a criterion in Cicero, *De Re publica*, III.43, in relation to Syracuse under the tyrant Dionysios.

multitude rises up in revolt, so that access of all citizens' bodies (in principle) to these legal tables is restored.[96]

An event that precipitated the downfall of the Decemvirs was apparently a soldier slaying his daughter in the Forum so as not to give her over to the unjust decision — in an episode reminiscent of how in 510 BC King Tarquinius was deposed after his son had violated Lucretia, and she had committed suicide. The soldier similarly went to the army, the army went into Rome, deposed the Decemvirs and restored access of all to the deliberation *fora*.[97] In this episode one should not be surprised by the centrality of matrimonial politics in republican life — this continued into Italian early modern republics[98] — but with a rather non-complicated infrastructure of access to *consilium* sites. Of course, only a certain percentage of full citizens used their right for equal access to the positions in the executive of the judiciary. But for those who did use this right, the infrastructure was not so convoluted and complicated.

By contrast, in contemporary politics, mediated by polling and voting machines, files and expert opinions preparing the deliberation, with educational and professional qualifications needed to ensure entry into the deliberation process, just getting enough force to restore access to the Forum would be clearly not enough![99] The Stoics and the Romans lived among the colonnades and the porticoes, the *fora* and the temples, drawing lots and voting with the help of very basic gadgets. All of these hardly functioned like contemporary political black boxes, or even like a standard modern office, filled with many a predictable bureaucrat, whom Max Weber once called 'an automaton of paragraphs'.[100] The difference from the modern world, one would guess, lies in the complexity of contemporary machine-like black boxes and mediations.

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[96] Cicero, *De Re publica*, II.61. Keyes trans. p. 175: 'A third year of the decemvirate followed, the same decemvirs continuing in office, and being unwilling to have others elected in their stead. While the government was in this situation . . . the whole commonwealth was in the hands of the leading citizens, their being ten eminent men in command, with no plebeian tribunes to oppose them, no other magistrates whatever in office, and not any right of appeal to the people against execution or scourging. Consequently . . . there was a great insurrection, followed by a complete change in the government. For the decemvirs had added two tables of unjust laws, among which was one that . . . was later repealed by the Canuleian Law, a decree of the plebeian assembly.'

[97] Cicero, *De Re publica*, II.45 and 62.

[98] See, e.g. Anthony Molho, *Marriage Alliance in Late Medieval Florence* (Cambridge, MA, 1994).

[99] See e.g. a description of files, dossiers and deliberation in Conseil d'Etat in Bruno Latour, *Fabrique du droit* (Paris, 2004). On the three primary techniques that ensured the black box operation of the Soviet government — the card files, the dispatching techniques and ubiquitous telephone interventions — see Yves Cohen, 'Administration, politique et techniques: Réflexions sur la matérialité des pratiques administratives dans la Russie stalinienne, 1922–1940', *Cahiers du monde russe*, 44 (2003), pp. 2–3.

[100] Max Weber, *Economy and Society* (Berkeley and Los Angeles, 1978), Vol. 2, p. 1395.

The Stoics were too close to nature to offer to us exact descriptions of the intricacies of action in contemporary technological networks. But we witness the first inroads into the same issue, when they had to deal with the linkages between *res* and *populus*.

Let us sum them up. First, restating the content of what was said on the matter: according to Cicero, *res publica* is not about a state acting to achieve some goal, rather it is about a *populus* being a real master of its *res*. Central to this is a genuine *consilium* that ensures that a *populus* owns its *res*, but there is also a certain infrastructure of politics that is antecedent to this republican deliberation. For example, such *consilium*, if thwarted, is restored by providing equal access to and use of this infrastructure of making, applying and enforcing the law. Second, let us restate how this theory was articulated. Following the standard Stoic vision of language as first and foremost concerned with *lekta*, Cicero and many of his contemporaries used an expression *res publica* as a subject or object added to complete the full *lekton*, thus treating the act, not the subject or object of action, as the most important part of reality. (But the incorporeal quality of *res publica* made it a difficult candidate for subject positions, and in such positions it was more felicitously replaced by similar expressions that could claim more tangibility.) Furthermore, by employing the Stoic practices of defining through the *proprium*, Cicero was able to formulate his theory of *res publica* as concerned mostly with the property of the *populus*. This pointed to the centrality of tangible things as well.

Studies of the modern state thus could profit from two types of questions. First, which sorts of phrases typically ascribe agency for state actions nowadays? Why does such ascription seem normal now, when it would seem extravagant if not abnormal to the Romans from Cicero to Justinian and all the way to the time of Machiavelli? Second, how could interest in the tangible infrastructure of politics (for example, of deliberation — not only in the sense of arranging its correct procedure,[101] but its very physical setting as well) bring back our attention to the republican side of political life? That is, to the days when life was more about *populus* taking care of its *res* rather than about the state instrumentally affecting or transforming the world? Philip Pettit called for, but never developed in detail, the 'gas-and-water works version of republicanism'.[102] It is high time we look at such infrastructural prerequisites for republican enunciations: a study of the infrastructure of freedom is needed as much as the study of the speech acts that are formulated against its background or which run along the channels of this infrastructure.

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[101] Bernard Manin, 'On Legitimacy and Political Deliberation', *Political Theory*, 15 (1987), p. 3.

[102] Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford, 1997), p. 280.