Ambitus in the Roman Republic (1)

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Introduction

Omnis definitio in iure civili periculosa est (2). But this danger is not limited to the field of civil law, as an attempt at defining *ambitus* may show. One could say that *ambitus* is at once easy and difficult to define. A very broad definition would be: 'a criminal offense, consisting in canvassing for the Roman elections by illegal means'. This definition is correct and applies to the entire republican period. But it does not help us very much when we are trying to understand the meaning of *ambitus*. Which means were illegal? What was the penalty? Who could be punished? These things varied throughout the Republic. May we call *ambitus* a kind of corruption? I doubt it.

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1) A draft version of this article was presented as a paper at the SIHDA conference in Oxford, September 1993, under the title '*Ambitus* in the first century B.C.'. I would like to thank the people who made critical remarks and suggestions.

2) D. 50,17,202 (Javolenus).

In this article, I will give a survey of legislation on *ambitus* and related matters, with some comments. An explanation will be given for the large amount of legislation in the first century B.C. Finally, I will address some questions which have been asked but not answered in other publications.

How to win elections in Rome

Roman magistrates were elected in three different voting assemblies. The *comitia centuriata* elected the consuls and praetors, the *comitia tributa* elected the curulian aediles, the quaestors and the *tribuni militum*, and the *concilium plebis* elected the tribunes and the aediles of the plebs. The voting procedure in the *comitia tributa* and the *concilium plebis* were practically the same. To be elected, a candidate had to win 18 of the 35 *tribus*. In the *comitia centuriata*, the winner was the candidate who was the first to get 97 *centuriae* behind his name. So in either case it was not a simple majority vote. A candidate had to make sure he was favoured by voters in a sufficient number of *centuriae* or *tribus* (3).

In the early times of the Roman Republic it was probably possible to get most of the necessary support by cultivating political friendships with people who had a large number of clients. A candidate without friends in the right places had to

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3) L.R. TAYLOR, *The Voting Districts of the Roman Republic*, Papers and Monographs of the American Academy in Rome XX, Rome 1960; L.R. TAYLOR, *Roman Voting Assemblies. From the Hannibalic War to the Dictatorship of Caesar*, Ann Arbor 1966.

work very hard to find the necessary support. In the *Commentariolum petitionis*, ascribed to Quintus Cicero, we have a manual for the candidate which offers a wealth of information about the methods a candidate should employ to get elected (4). The methods recommended by Quintus Cicero are of course very honourable tried and trusted ones. However, alternative means of gathering support from the voters appear to have been invented, as we can see from the legislation designed to counter undesirable canvassing methods.

The legislation against *ambitus*

The title of this section does not entirely cover the legislation I will consider; there are a few laws which do not immediately concern *ambitus* as such, but since they are important for the election procedure, they deserve to be mentioned. Apart from laws, there are also interesting *senatusconsulta* on *ambitus* and other matters related to the elections, and proposals for laws which were never passed. I shall discuss these as well.

The legislation against *ambitus* proper may be divided into three 'groups', partly because there are long intervals in which no legislation took place, and partly because of fundamental changes

4) D. NARDO, *Il 'Commentariolum petitionis'. La propaganda elettorale nella 'ars' di Quinto Cicerone*, Padua 1970; J.-M. DAVID, S. DEMOUGIN, C. NICOLET a.o., *Le 'Commentariolum petitionis' de Quintus Cicéron. État de la question et étude*, *ANRW* I,3, Berlin/New York 1973, 239-277; J.A. VAN ROSSUM, H.C. TEITLER, *Quintus Cicero. Verkiezingshandleiding*, Baarn 1994.

introducing a new background for the legislation. There is the 432-314 B.C. period, there are two isolated laws in 181 and 159, and then the bulk of the legislation is found in the first century B.C.

432: *lex de ambitu*

In the early Republic, we do not see any trace yet of the practices which will later mark the criminal form of *ambitus*. It is a period in which the Romans were probably only just discovering the possibility of canvassing and its effects. Livy records a *lex de ambitu* in the year 432, proposed by the *tribuni*, which prohibited the whitening of togas by those who were candidates in the elections (5). The very fact that the term candidate derives from *candidatus*, someone who wears a whitened toga, shows that this law cannot have had any lasting effect (6). Livy himself does not consider this a real law against *ambitus*; he calls the entire thing *parva res et vix serio agenda.*

It is, however, not easy to interpret this law. A common interpretation is that it was proposed by the tribunes of the plebs to prohibit the patricians using their whitened toga's in canvassing for the elections. This interpretation has two weaknesses: firstly, it is difficult to see why such a prohibition would mainly affect the patricians, since the toga is not an

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5) Livy 4,25,13-14; Isid. *Or.* 19,24,6; cf. *RE* s.v. *candidatus*.

6) MOMMSEN, *Römisches Strafrecht*, Berlin 1899 (reprint Darmstadt 1961), 866.

exclusively patrician piece of clothing. Secondly, could the tribunes of the plebs make laws for the entire population of Rome as early as in 432?

I would prefer another interpretation. Both in 433 and 432, no consuls were elected, but *tribuni militum consulari potestate*. Unlike the consulship at the time, this magistracy was open to plebeians. Nevertheless, only patricians were chosen both times. Generally speaking, one would expect the patricians to control the voters through their *clientelae*, certainly at this time in history, so the result is not unexpected. They would have had little reason for active canvassing, and a measure prohibiting this would rather be directed against plebeian candidates. So I would interpret the *tribuni* who propose the law to be the *tribuni militum*. They could probably, unlike the tribunes of the plebs, propose laws binding the entire population. This would mean that the law was directed against the plebeian upstarts who were, through their active canvassing, becoming a possible threat to the patricians.

I think this interpretation makes more sense than the traditional one, although it forces me to interpret *tribuni* as *tribuni militum* in a text which paints an entirely plebeian background. Still, the point is only a minor one. The main thing is that Livy's story makes it clear that 432 marks only the first innocent beginning of the Roman discussion about what is and is not allowed in the context of the elections.

358: *lex Poetelia*

Next comes a law in 358 B.C. proposed by the tribune of the plebs C. Poetelius on the authority of the senate, prohibiting canvassing outside the city of Rome, which was being practised especially by *homines novi*:

> *eaque rogatione novorum maxime hominum ambitionem, qui nundinas et conciliabula obire soliti erant, compressam credebant* (7).

The background of this law is not so much a general looking down upon *homines novi* by patricians or even the fact that the consulship had been open to plebeians since 366 (8). This does not explain the *nundinae* and the *conciliabula*. The correct interpretation, in my view, is that the *plebs* was, at the time, very much interested in the founding of new *tribus*, whereas this posed a threat to the existing patrician system of political relationships. The new *tribus* Pomptina and Publilia were founded in 358 and they were the first to be situated at some distance from Rome. Of course, this opened the possibility for the plebeians to establish some political following of their own to counterbalance the patricians' established *clientelae*.

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7) Livy 7,15,12.

8) J. CHAIGNE, *L'ambitus et les moeurs électorales des Romains*, Paris 1911, 121.

The patricians counterattacked by having the canvassing outside the city curbed by this law (9).

Although Poetelius was himself a plebeian, he was undoubtedly siding with the senate. In the 360-341 period, fifteen plebeian consulships were filled by only five different persons, among them Poetelius who was consul in 360, 346 and 326. He was obviously one of a select band of plebeians who were trusted by the patricians.

314: *edictum dictatoris Maenii*

This virtual monopoly of a few plebeians came to an end around 341; new plebeians managed to get themselves elected to the consulship. One of them, C. Maenius (consul in 338) was elected dictator in 314, in order to investigate a conspiracy in Capua. His work there was soon completed when one of the conspirators committed suicide, and Maenius redirected his investigations to Rome, where he published an edict asking to tell him the names of *in universum quicumque coissent coniurassentve adversus rem publicam.* He also made it known that *coitiones honorum adipiscendorum causa factas adversus rem publicam esse.* Great confusion followed; Maenius found himself and his *magister equitum* M. Folius accused of *coire*; both resigned in order to be tried by the *quaestio* they had established

9) A.J. TOYNBEE, *Hannibal's Legacy*, Oxford 1965, I, 488 note 9; U. HACKL, *Das Ende der römischen Tribusgründungen 241 v.Chr.*, *Chiron* 2 (1972) 145 ff.

and were gloriously acquitted. The *quaestio* subsequently fell victim to the *coitiones et factiones adversus quas comparata erat* (10).

Although not a *lex de ambitu* in the strict sense, this dictator's edict was obviously intended to do something about *coitiones* concerning the elections. Towards the end of the republic, a *coitio* was a partnership between two candidates trying to obtain a mutual benefit from their followings of voters. Maybe a similar *coitio* is involved here; it may also be a *coitio* with a non-candidate who had a large *clientela*. The entire significance of this edict, however, remains rather vague.

In this early period in history, there is no trace yet of the bribery which was to become such an important element of *ambitus* in later times. The laws trying to outlaw certain aspects of the candidate's *petitio* form a part of the general struggle between patricians and plebeians over the latter's eligibility for the magistracies. Both in 432 and 358 the context is one of controversy over a magistracy just open to the plebs, but to which as yet only patricians had been elected (the military tribunate in 432) or which was being reserved for trusted plebeians (the consulship in 358). I would consider Maenius' edict of 314 to be little more than an incident which has the same general background; it is certainly not a law against *ambitus* in the proper sense.

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10) Livy 9,26,22.

These three laws are the earliest known to us. Of course, we have no contemporary written sources for this period. Whether the later annalistic tradition is a reliable source for this period is open to doubt (11). I am inclined not to bother too much with this question. At least the Romans themselves probably considered these laws to be real cases of legislation against *ambitus*, so for their picture of *ambitus* through the ages the laws were a reality. I must say that the picture painted by this tradition appears to be credible enough. The laws can be interpreted in such a way that they fit into the background of a struggle of the plebeians for political emancipation.

One interesting point to keep in mind is that the acts forbidden by these laws were absolutely normal and accepted practice in later centuries.

It need not be a surprise that nothing is heard about *ambitus* until 181 B.C. Around 300 the political integration of the plebeians was taking shape. Some dozens of plebeian *gentes* had managed to reach the consulship, and the *lex Hortensia* of 287 confirmed the validity of *plebiscita* for the entire Roman population. This sufficiently met the plebeians' political demands; the old division between patricians and plebeians started to disappear, creating a new ruling élite, the *nobilitas*, which was to try and monopolize the consulship at the expense of *homines novi*.

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11) See e.g. the prudent remarks by HÖLKESKAMP in *ZSS (RA)* 104 (1987) 791-796 (cf. note 18 below).

181: *lex Cornelia Baebia*; 159: *lex Cornelia Fulvia*

Two laws against *ambitus* date from the first half of the second century B.C. Neither of the two is particularly well-documented. Livy tells us that the first of them, the *lex Cornelia Baebia*, was proposed in 181 by the consuls P. Cornelius Cethegus and M. Baebius Tamphilus *ex auctoritate senatus*. The other, the *lex Cornelia Fulvia*, was proposed in 159 by the consuls Cn. Cornelius Dolabella and M. Fulvius Nobilior. We can infer something about their contents and the penalty imposed by them from the works of Polybius. Writing about this period, he tells us that in Rome the penalty for making gifts to people in order to be elected to a magistracy is punishable by death, whereas it is common practice in Carthago. Pliny the Elder writes about a possible victim of one of these laws:

> *Q. Coponium invenimus ambitus damnatum, quia vini amphoram dedisset dono ei, cui suffragi latio erat* (12).

In order to see the complete background of these laws, we must look back to the end of the third century B.C., when a series of new Games was introduced which offered aspiring magistrates an opportunity to influence the voters: *Ludi Plebeii* in 220, *Apollinares* in 212, *Megalenses* in 204, *Ceriales* before 202, *Florenses* in 173. Not only the number of Games increased, but

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12) Polybius 6,56,4; Pliny, *Nat. Hist.* 35,46. Polybius also informs us that it was common for those fearing capital punishment to go into exile: J. LINDERSKI, *Buying the vote: Electoral Corruption in the Late Republic*, in: *The Ancient World* 11 (1985) 91-92.

their length as well: originally one day, later up to fourteen days and if necessary, one could always pretend some religious omission in order to start again. Especially the *aediles* got the opportunity to use the Games for the furthering of their careers.

In addition to the Games, influence on the voters was exercised by giving *congiaria*, gifts of wine and oil originally, later of money, and introduced at the *Ludi Romani* in 213 by Scipio Africanus, who was an aedile at the time, and no doubt copied them from the Hellenistic kings. Another new development were public meals (*epulae*), given on the occasion of the Games, but also at funerals or triumphs.

All this of course provoked a reaction. The senate tried to impose a limit on the budget for Games with a *senatusconsultum* in 182 (13) and in the same year a *lex Orchia de cenis* did something similar for the meals. Cato maior during his censorship also tried his best to counter these new developments. The *lex Cornelia Baebia* of 181 fits in with this reaction (14). Cato maior may have supported it, since we know he made a speech *de ambitu*, although we only have a fragment of its text left and cannot draw any sort of conclusion from that. We would expect him to have been opposed to these novelties. The consuls, though, both belonged to the camp of Cato's enemies, the Scipiones. This may indicate that the situation was generally perceived as a problem, even by political opponents.

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13) H.H. SCULLARD, *Roman Politics 220-150 B.C.*, Oxford 1973, 25.

14) Cf. A. LINTOTT, *Electoral bribery in the Roman Republic*, *Journal of Roman Studies* 80 (1990) 5.

We may doubt the effect of the *lex Cornelia Baebia*. There are several indications that expensive Games and *congiaria* continued to play a role in developing one's political career. The *senatus-consultum* of 182 was confirmed in 179, and we are informed that the elections in 166 were conducted *ambitiosissime* (15). In 159 a new *lex de ambitu* was passed, very likely to improve upon the one made in 181. We do not know any details about it. But again, the Scipiones are very prominent in Roman politics: two consuls in 160 and 159 were from the family, and also a censor in 159 (who had been consul for a short period in 162, but had to abdicate as having been *vitio creatus*). This censor, Publius Cornelius Scipio Nasica Corculum, was a man very much like Cato in his preference for old-time Roman virtues, although he opposed Cato's idea of destroying Carthago, since he thought Rome needed a strong enemy to keep her sharp and aware. He may well have been an important figure behind the introduction of the law.

139-107: *Leges tabellariae*

After these laws there is another interval during which apparently no legislation against *ambitus* was passed. There were however, a number of laws which were directly relevant to the procedure of the elections: they introduced the principle of written voting in the *comitia*. All were proposed by tribunes of the plebs. There were four of them. In 139 the *lex Gabinia* introduced

15) Jul. Obsequens, *Prodigia* 12.

written votes in the elections of all Roman magistrates. The *lex Cassia* of 137 introduced written votes in all trials held before the *comitia*, with the exception of *perduellio* cases. Six years later, the *lex Papiria* introduced written votes in legislative *comitia*. And finally in 107, the *lex Coelia*, a complement to the *lex Cassia* of 137, extended the principle of written votes to *perduellio* trials.

119: *lex Maria de suffragiis ferendis*

The effect of the *leges tabellariae* must have been to make it harder for the *nobiles* to check whether their clients really voted the way they were expected to. The *nobiles* tried to counter this by standing on the *pontes* which led to the ballot urns (16), but this practice was countered by the *lex Maria de suffragiis ferendis* of 119. This law made the *pontes* narrower, apparently to make sure there was no standing room for unwanted outsiders (17). No more is heard about trouble concerning the written vote after that, and it seems to have become the accepted procedure towards the turn of the century.

122 (?): *Quaestio perpetua de ambitu*

Another development in this period is the appearance of the *quaestio perpetua de ambitu*. It was probably established in 122 as a result of the *lex Sempronia iudiciaria*; in any case before 116

16) Cicero, *De leg.* 3,38.

17) Cicero, *De leg.* 3,39.

B.C., when Marius was tried for *ambitus* by a *quaestio* (18). One may doubt whether this *quaestio* met a real demand. Concerning the *quaestio perpetua de repetundis*, we know that it was established because of the large number of trials (19). But we have evidence for only one trial *de ambitu* (its date is unknown) between 314 and 116 (20), and I think it more likely that the establishing of a *quaestio perpetua de ambitu* was part of a more general development in penal law, the example of the *quaestio de repetundis* being followed for a number of other crimes.

Towards the end of the Republic

It is no surprise that we find most of the laws on *ambitus* in a period when the Republic was rapidly declining. There was a fierce struggle for political power, in which no holds were barred and all possible means to influence voters were used by rival candidates for the magistracies. Of course, attempts were made to counter or at least influence this development.

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18) An earlier introduction of the *quaestio* is apparently defended by L. FASCIONE, *Crimen e quaestio ambitus nell'età repubblicana. Contributo allo studio del diritto criminale repubblicano*, Milano 1984; unconvincingly according to the review by HÖLKESKAMP, *ZSS (RA)* 104 (1987) 791-796. I have not been able to study FASCIONE's book, only the review.

19) E.S. GRUEN, *Roman Politics and the Criminal Courts, 149-78 B.C.*, Cambridge (Mass.) 1968, 11-15.

20) See note 12 above.

81: *lex Cornelia*

This first law of the final series is not particularly well-documented; it laid down a penalty for *ambitus* consisting in exclusion from running for office for ten years (21). It is usually ascribed to Sulla on the basis of the mildness of the penalty. Since the source only mentions a *lex Cornelia*, it is possible to take this as a reference to the *lex Cornelia Baebia* of 181, but since the penalty under that law was death according to Polybius (22), this is unlikely. It is also unlikely that Sulla would have excluded the *quaestio de ambitu* from his reforms of the *quaestiones perpetuae* (23). Moreover, our source speaks of the *lex Calpurnia* of 67 as being *aliquanto post* this *lex Cornelia* (24).

Before 68

Plutarch mentions a prohibition on *nomenclatores*, people who assisted candidates by reminding them of the names of important people they met in the streets. This prohibition must date from before Cato's candidacy for the military tribunate in 68 (25).

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21) *Schol. Bob.* 78 (STANGL).

22) See note 12 above.

23) *RE* s.v. *quaestio*, Sp. 744-745.

24) MOMMSEN, *Strafrecht*, 867 note 2.

25) Plut. *Cato min.* 8,2; cf. T.R.S. BROUGHTON, *The Magistrates of the Roman Republic*, New York 1952, II, 147.

67: *rogatio Cornelia* and *lex Calpurnia de ambitu*

In 67 the tribune of the plebs C. Cornelius proposed a severe law with heavy penalties against *ambitus*. The senate instructed the consuls to make a less severe law, because heavier penalties would make no sense and would only serve to deter everyone from coming forward as an accuser. The law made by the consuls is usually referred to under the name of one of the consuls, L. Calpurnius Piso. Its provisions were as follows: people convicted of *ambitus* lost their magistracy and their seat in the senate; they lost the right to run for office again and were fined as well. Apart from the candidates, this law probably also punished the *divisores*, the *tribus*' paymasters, because the latter group angrily besieged Piso when he wanted to put his proposal to the vote, and forced him to fly from the Forum until he could return with an armed escort. Moreover, the *lex Tullia* of 63 laid down a *poena gravior in plebem*, which tells us that such a *poena* must have existed in legislation before 63 (26).

65 and 64: *senatusconsulta*

The provisions of the *lex Calpurnia* were toned down by a *senatusconsultum* in 65, but in the following year the consul L. Caesar persuaded the senate to go back to a firmer interpretation. The tribune of the plebs Q. Mucius Orestinus interceded, an

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26) C. NICOLET, *Le Sénat et les amendements aux lois à la fin de la république*, in: *Revue Historique de Droit français et étranger* 36 (1958) 268.

incident which gave rise to Cicero's *oratio in toga candida.* Obviously there was no agreement about how strict measures against *ambitus* should be.

64: *lex Fabia de numero sectatorum*

Though not a law *de ambitu* proper, it clearly belongs to the laws concerning the elections. It limits the number of *sectatores*, people who follow a candidate through the streets. We do not know whether it punished the candidate or the *sectatores* (or both); the penalty is also unknown. Cicero tells us that the *plebs* was opposed to the law, because it took away a possibility of showing one's affection to a politician (27). I suspect the *plebs* was more concerned about losing a possible source of income.

We know nothing about the Fabius who proposed the law. RINKES thinks it is somehow related to the troubles concerning the interpretation of the *lex Calpurnia* (28).

63: *lex Tullia de ambitu*

Cicero made the next law against *ambitus* during his consulship. He often refers to its provisions in his speeches in *ambitus*-trials, so we are well-informed about it.

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27) Cicero, *pro Murena* 71.

28) S.H. RINKES, *Disputatio de crimine ambitus et de sodaliciis tempore liberae reipublicae*, Leiden 1854, 107-109.

1. *Nobiles* convicted of *ambitus* were banished for 10 years. RINKES believes that the law also repeated a provision of the *lex Calpurnia* of 67 in withholding the seat in the senate from the culprit even after those 10 years (29). 2. There was to be a *poena gravior in plebem* (probably directed against the *divisores*). 3. Those making use of *morbi excusatio* for avoiding trial were to be punished. This appears to have been a popular trick: candidates elected but accused of *ambitus* used it to put off the trial until their term of office started, when they would *eo ipso* enjoy immunity from prosecution. 4. Candidates were not allowed to organize games in the year in which they ran for office, nor in the year before that, unless they were obliged to do so *ex testamento praestituta die* (30).

In addition to this Cicero consulted the senate about the interpretation of the *lex Calpurnia*. The result was that the senate proclaimed the following activities to be against the provisions of that law: 1. paying of *sectatores* and *salutatores*; 2. handing out tickets for games *tributim*; 3. giving public meals.

Cicero made his law more or less against his will; he thought the provisions of the *lex Calpurnia* to be sufficient, but a *senatusconsultum* inspired by Ser. Sulpicius Rufus invited him to propose a stricter law on *ambitus*.

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29) See note 28.

30) Cicero, *in Vat.* 37; *pro Sest.* 133.

61: *senatusconsulta* and *rogatio Aufidia*

Two *senatusconsulta* of this year tried to make further steps against *ambitus* possible: the first granted permission to search the houses of magistrates and the second declared providing room to *divisores* to be *adversus rem publicam.*

The *rogatio Aufidia* is an interesting case: a proposal by the tribune of the plebs Aufidius Lurco to make only actual payment to *tribus* illegal, not the promise of payment. The offender was to be punished by having to pay 3000 sesterces to each *tribus* yearly for the rest of his life (31). Cicero ironically remarked that Clodius had been observing the proposal before it had been made: *dixi hanc legem P. Clodium iam ante servasse: pronuntiare nam solitum esse et non dare* (32). But the proposal never became a law.

55: *lex Licinia de sodaliciis*

This is not a law against *ambitus* in the narrow sense, but the *sodalicia* were important in the context of the elections. *Sodalicia* are organizations of voters, subdivided into *centuriae*. Their existence made it far easier to practise *ambitus*. By this time, their votes were practically for sale; they would vote for the highest bidder. In addition to this they were used in bringing violence and intimidation onto the political scene. Towards the middle of

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31) For a different interpretation of the penalty: LINTOTT, *JRS* 80 (1990) 8, note 51.

32) Cicero, *ad Att.* 1,16,13.

the first century B.C., this practice was getting out of hand, culminating in the troubles between Clodius and Milo and Clodius' violent death.

The senate tried to do something about it, expressing its concern in a *senatusconsultum* of February 56: *ut sodalitates decuriatique discederent lexque de iis ferretur, ut, qui non discessissent, ea poena quae est de vi tenerentur* (33). The link with the penalty on violence is striking. But this did not result in a law being made. Another *senatusconsultum*, this time *de ambitu* (no details are known), followed in February 55, and probably towards the end of March 55 the *lex Licinia* was passed on the authority of the *triumvir* and consul Crassus. He ignored a request by the senate to lay down a provision that the elected candidates were to remain *privati* for 60 days after their election in order to make their prosecution under the *lex Licinia* possible (34).

The penalty under the *lex Licinia* was banishment, probably for life, and possibly a fine (35). A curious provision concerned the procedure: trials were to be held before the *iudices editicii*. The procedure was as follows: the accuser would choose four *tribus*, one of which could be refused by the defendant, where-

33) Cicero, *ad Q. fratrem* 2,3,5.

34) P. GRIMAL, *Lex Licinia de sodaliciis*, in: A. MICHEL, R. VERDIÈRE (edd.), *Ciceroniana. Hommages à K. Kumaniecki*, Roma Aeterna IX, Leiden 1975, 112.

35) MOMMSEN, *Strafrecht*, 873; Cicero, *pro Planc.* 79; RINKES, *Disputatio*, 158.

upon the jurors would be chosen from the three remaining *tribus*. The intention was that the accuser would choose those *tribus* alleged to have been corrupted by the defendant. This is not such a wild idea as it may seem, because the jurors would not come from the same social background as the members of the *sodalicia* (36). The aim was possibly to have jurors who had inside information because of their knowledge of the *tribus*, so that the trial would depend less on the proof provided by the accuser.

52: *lex Pompeia de ambitu*

Proposed by Pompeius, who was *consul sine collega* in that year. His law concentrated mainly on the procedure: 1. The penalty for *ambitus* was increased to banishment for life instead of 10 years (37); 2. There was to be a maximum duration of five days for a trial; the accuser got two, the defence three hours' speaking time (38); 3. Anyone convicted of *ambitus* could escape his penalty by having one worse or two lesser offenders convicted; an accuser not convicted of *ambitus* himself was entitled to a reward (39); 4. The law was to be applied retroactively back to 70 B.C. (40); 5. Character witnesses were

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36) P. GRIMAL, *Cicéron, Discours. Tome XVI, 2ème partie. Pour Cn. Plancius, pour M . Aemilius Scaurus*, Texte établi et traduit par Pierre Grimal, Paris 1976, 23-24.

37) Asconius 34 (STANGL).

38) Dio Cassius 40,52.

39) App. *Bell. Civ.* 2,24; Dio Cass. 40,52; Asconius 45 (STANGL).

40) App. *Bell. Civ.* 2,23.

prohibited (41); 6. Witnesses were to be questioned only during the first three days of the trial (42).

It is no coincidence that Asconius mentions this law together with the *lex Pompeia de vi*. Electoral corruption and violence had increased over the years and had finally led to Milo's killing Clodius, with riots on the Forum and fire in the *Curia* as a result. Pompeius apparently thought that the problem in applying the laws on *ambitus* was in the length of trials, the undue influence of character witnesses, and in the difficulty of finding an accuser. He was probably right; his law is said to have driven *ambitus* away from the *Campus Martius* (43). It is the last republican law against *ambitus*; however, it must be remembered that the free elections of the Republic did not have many years left.

Ambitus in the first century B.C.

The first century B.C. offers us an impressive series of measures and attempted measures against undesirable ways of influencing the result of the elections. Three tendencies are discernible in the legislation in this period (44):

1. gradual sharpening of the penalties for candidates convicted of *ambitus*;

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41) Dio Cass. 40,52; cf. L.R. TAYLOR, *Party Politics in the Age of Caesar*, Berkeley/Los Angeles 1968, 150.

42) Cicero, *Pro Flac.* 21.

43) Plinius, *Pan.* 29.

44) Cf. LINDERSKI, *Buying the vote* (note 12 above), 92.

2. the introduction of penalties for helpers and associates in *ambitus*;

3. a more precise definition of the crime of *ambitus*, and the inclusion in it of a number of previously allowed practices: limitation of the number of *sectatores* and possibly the ban on *nomenclatores*.

It seems that until about 70 B.C., *ambitus* was a rather limited concept, probably only comprising bribery committed by the candidate personally in the form of *congiaria* and other *largitiones*, and this only in the immediate context of the elections. The first prohibition of *nomenclatores* is linked with Cato's candidacy for the military tribunate in 68; the *lex Calpurnia* of 67 probably included the first measures against *divisores*; the growing numbers of *sectatores* were dealt with by the *lex Fabia* in 64. Cicero's *lex Tullia* came down on the organization of Games and meals by candidates and even future candidates, and again tackled the part played in the elections by *divisores*, *salutatores* and *sectatores*, obviously because the *lex Calpurnia* had failed to provide the final answer. The *lex Licinia* is said to have extended 'normal' *ambitus* to include the *crimen sodalicium*. Within a very short period, the meaning of *ambitus* had developed considerably.

How can we explain the sudden amount of legislation on *ambitus* after 70 B.C.(45)? Two important explanations have

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45) Disregarding Sulla's *lex Cornelia* of 81, which seems to have been a part of a larger reform operation rather than a reaction to a specific need to do something about undesirable practices in the elections.

been put forward over the years for the increase in electoral bribery and other illegal behaviour in the context of the elections, which would have provoked it:

1. Influx of money, starting towards the end of the third century B.C. This may for instance form the background of the laws of 181 and 159. There is a general belief among Roman authors that corruption started to develop seriously in the second century B.C. The availability of more and more money explains the development of bribery in the elections as such, but I do not think it can explain the sudden increase in legislation in the first century.

2. The decline of patron-client relationships as a mechanism for social cohesion. This may have played a part. One who does not control voters through these relationships may look for other means to do so. If fewer and fewer voters are tied to a patron, more and more of them, logically, become available to the highest bidder, possibly in the form of organized groups like *centuriae* and *sodalitates*. Still, I do not think that this factor alone can explain the increase in the first century either. It is generally thought that the decline of patron-client relationships set in in the early second century (46), and I see no reason why this decline should suddenly have gone so much faster after 70 B.C.

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46) E.g. LINDERSKI, *Buying the Vote* (note 12 above), 89-90. If the patron-client relationship had lost much of its meaning anyway, this would help to explain why there was relatively little controversy over the *leges tabellariae*, which made it impossible to check whether one's clients voted correctly: LINTOTT, *JRS* 80 (1990) 7 note 38.

Both these factors, I think, played a part in the development towards increased *ambitus*. But one would expect a reasonably slow development. Neither separately nor combined can they explain the increase in *ambitus* and legislation to counter it. The real explanation must lie elsewhere.

The aftermath of the Social War

Still, the key to *ambitus* is the reliability of the relationship between voter and candidate. *Ambitus* indicates employing illegal means to persuade a voter to vote for a certain candidate. It must have been most successful in the case of a voter who was not tied to anyone in particular (although it was also possible, of course, to persuade a voter to change his loyalty through sufficiently interesting promises or substantial gifts). Now these "free" voters can come from two directions. They can, for instance, be ex-clients who are no longer faithful to their patrons. But they can also be new voters, not yet tied into the structure of traditional clientships, *decuriae* or *sodalicia*. And there was one occasion when a large number of new voters appeared on the scene.

In the years 91-89 B.C., the Italian allies of the Romans revolted, starting the so-called Social War. They defeated the Romans a few times in the year 90, but Rome used clever tactics to divide the opposition. A *lex Julia* in that year granted Roman citizenship to all the allies who had remained faithful, and in 89 a *lex Plautia Papiria* promised amnesty to everyone who would surrender. The final outcome of the Social War was a Roman victory, but also the granting of Roman citizenship throughout

Italy to the south of the river Po. So in 89 the number of Roman citizens was increased by this large-scale granting of citizenship. One might expect bribery in the elections to flare up immediately in order to win the votes of these new citizens. But if we look at the legislation we see no corresponding measures before at least 70. The explanation is that a Roman citizen could only vote if he was listed on the *census*-rolls. And that was a step which was not taken, in the case of the Italian allies, until the *census* of 70-69.

The enrolling of the new citizens on the occasion of the *census*, in fact, was a hot political issue just after the Social War. In 88 Marius and the tribune of the plebs P. Sulpicius Rufus were trying to get them enrolled in all 35 *tribus* instead of a small number, which would have reduced their impact on the balance of political power, but their plans were frustrated when Sulla marched on Rome and took control (47). The censors of 89 had not managed to draw up new *census* lists, and in view of this failure new censors were elected for 86. Although these did manage to enrol a certain number of new citizens and finish the *census*, the latter was far from complete. Not until 70, well after Sulla's death, were the political circumstances such that a *census* could be completed. In that year, Pompeius, who was consul, restored legislative power to the tribunes of the plebs and saw the *census* held without obstruction from them. The total of citizens enrolled was almost double that of 86 and a large number of Italian aristocrats must have come to register for the first time

47) A.W. LINTOTT, *The tribunate of P. Sulpicius Rufus*, in: *Classical Quarterly* NS 21 (1971) 444; 451.

(48). Many of them probably qualified for the first two *classes* of the *comitia centuriata*.

So it seems that the *census* of 70-69 was the catalyst which led to increased *ambitus* and to attempts to counter it. Suddenly, a large number of new voters without any ties of loyalty became available to candidates (49). And so the fight over the new voters broke out. The early ban on *nomenclatores* illustrates the candidates' need for help in remembering all those new names. It seems logical that it took a few years before one realized that things were really getting out of hand on a larger scale than ever before. If all this is true, then the *lex Calpurnia* of 67 fits the interpretation perfectly.

There is a second reason as well why the *census* of 70-69 must be considered to be the breakpoint. Apart from enrolling all the new citizens, the censors removed 64 people from the senate (50). Logically, these people would try to get back in as soon as possible, and the way one got into the senate was to hold public office. So there were more people than usual competing for the offices and the competition must have been keen for that reason

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48) WISEMAN, *JRS* 59 (1969) 65-66; 70.

49) There is a kind of parallel with the foundation of two new rural *tribus*, which gave rise to the *lex Poetelia de ambitu* of 358.

50) TAYLOR, *Party Politics*, 67 note 98; E.S. GRUEN, *The Last Generation of the Roman Republic*, Los Angeles/London 1974, 44; 213; J. SUOLAHTI, *The Roman Censors. A study on social structure*, Helsinki 1963, 463 (with a list of sources).

alone, albeit mainly in the *comitia tributa*, where the lower magistrates were elected (51).

Conclusions

All this shows, I think, that it is fruitless to attempt to define *ambitus* as a clear-cut crime in Roman penal law with a gradual development that can be traced through Roman history. For the early centuries of the Republic there is not enough reliable evidence. For the first century B.C., there is much more evidence, but the pressure on the elections brought about by the influx of a relatively large number of new voters, was such that the situation was far from normal, and consequently we should not try to force first-century *ambitus* into line with the little we know about its earlier history.

The broad definition given at the beginning of this article, though, still holds good. There was a Roman notion of *ambitus* in the sense of 'illegal behaviour in the context of the elections'. The boundaries between legal and illegal shifted, especially in the first century, but the notion itself is a constant factor.

This brings us to some important questions about *ambitus* put by GRUEN and HÖLKESKAMP: Why, in the view of the Romans,

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51) One more additional piece of evidence: a certain Cethegus had a reputation during the seventies of the first century B.C. as a man who could fix the elections for the highest bidder. It may well be significant that he was 'out of the picture by the year 70': L.R. TAYLOR, *Party politics* (note 3 above), 70.

did *ambitus* have to be suppressed (52)? Why did the illegal practices during the elections matter to the Roman aristocracy? What kind of guiding, stabilizing and disciplinary effects could the *crimen ambitus* and the penalties for it have for such an aristocratic élite (53)?

I think the answer to these questions lies partly in what has been called by DAUBE 'The Protection of the Non-Tipper' (54). The real motive behind many laws is not so much to prevent something as such, but rather to protect people who feel pushed to do things which they are under a great deal of social pressure to do, but would prefer to avoid doing:

> «We might start from a situation familiar to all of us. Many clubs have a rule against tipping. (...) Admittedly concern for the dignity of the personnel may be one of the reasons, but another is that the system is easy on the member who is unwilling to tip (whether from lack of funds or from meanness) and would otherwise feel pushed».

DAUBE adduces several examples from both Roman civil and penal law. The *leges sumptuariae* are one example. But I think the principle of protecting the non-tipper may play a part in the

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52) Taken from LINTOTT, *Electoral bribery* (note 14 above), 10, who refers to GRUEN, *The Last Generation of the Roman Republic*, Berkeley/ Los Angeles/ London 1974, 66. But there are no such questions on that page.

53) HÖLKESKAMP (note 18 above), 796.

54) D. DAUBE, *Roman Law. Linguistic, social and philosophical aspects*, Edinburgh 1969, 117-128.

ambitus laws as well. Certainly in the early centuries of the Republic the laws tried to protect the interests of the established political class, whose members preferred to obtain magistracies through their network of friends and clients and resented having to present themselves openly as candidates (the *lex de ambitu* of 432), or having to go canvassing outside Rome (*lex Poetelia* of 358), or investing large sums of money in ostentatious generosity (second century B.C.) (55).

I do not imply that the laws against *ambitus* were symbolic ones, or mere statements of a code of behaviour. That the Romans took them seriously is shown by the establishing of a *quaestio perpetua de ambitu*. People were accused of *ambitus*, tried and even (occasionally) convicted. Marius was acquitted in 116; the consuls-elect for 65 were convicted, their defeated opponents in the elections acting as accusers. Conviction for *ambitus* was a distinct possibility. Yet relatively few people appear to have been convicted or even accused, although we may be sure that large sums of money changed hands at election time.

It must of course always be remembered that Rome had a system of criminal prosecution which was everything but efficient and impartial. There were no public prosecutors; an accuser had to be found to bring a charge, which was not a popular thing to do. There was a much brighter political future in being a defence lawyer. Also, juries could be bought, unduly

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55) In the fifties of the first century B.C., the amount of money spent on the elections was such that interest rates doubled: TAYLOR, *Party politics*, 68.

influenced by a clever speech, impressed by character witnesses, or intimidated. There was really no guarantee whatsoever that a lawbreaker would be brought to trial, let alone be convicted. It all depended on the balance of power between his friends and his enemies.

This brings us to a second point where the notion of *ambitus* was of use to the Roman aristocracy. The *crimen ambitus* could be used to maintain the importance of the system of *amicitiae*, which ensured the position of the existing élite. Anyone who had enough *amici* among the *nobilitas* could go further in practising *ambitus* than someone who had not. There is a revealing passage in Cicero's *Pro Sestio* (134), where Cicero wonders at someone's political innocence:

> *Facit apertissime contra legem; facit is qui neque elabi ex iudicio iucunditate sua neque emitti gratia potest, neque opibus et potentia leges atque iudicia perfringere.*

The implication is that with enough support based on *amicitiae* within the *nobilitas*, one could break the law and get away with it. Either there would be no accuser, or if there was one, you could intimidate or buy the jury. On the other hand, the unconnected outsider could be kept in check by the threat of an *ambitus* charge if he risked buying his way to a magistracy. The existence of the *crimen ambitus* kept the Roman old boys' network going for a long time, until the arrival of a mass of new voters proved too much for it.

Finally: may we call *ambitus* corruption? I doubt it. According to SCHULLER, corruption can only exist "wenn es eine

feste rationale staatliche Organisation mit verbindlichen Normen gibt, gegen die verstoßen wird" (56). "Was als Korruption zu bezeichnen ist, hängt ... wesentlich von den vorherrschenden gesellschaftlichen Organisationsformen und Verhaltensnormen und dem Ausmaß ihrer Akzeptierung ab. Korruption wird nämlich von uns als ein öffentliches Verhalten definiert, das in privatem oder Gruppen-Interesse derartige vorherrschende oder auch nur offiziell vorherrschende Verhaltensnormen verletzt" (57).

I would think that the norm on *ambitus* is not sufficiently clearly established at any point during the Republic, to be able to call *ambitus* corruption. And what is certain, is that there were double standards. It appears to be more important for a candidate to have the right friends than to follow the norm on *ambitus*. A good example may be found in the consular elections in 60 B.C. Intent on getting Bibulus elected, the *optimates* did not hesitate to throw some money around:

> *optimates ... auctores Bibulo fuerunt tantundem pollicendi, ac plerique pecunias contulerunt, ne Catone quidem abnuente eam largitionem e re publica fieri* (58).

If Cato approved, it must have been the right thing to do. *Ambitus* is a failure to be one of the old boys rather than a form of corruption.

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56) W. SCHULLER, *Korruption im Altertum*, Konstanzer Symposium Oktober 1979, München/ Wien 1982, 10.

57) SCHULLER, *Korruption*, 11.

58) Suetonius, *Jul.* 19,1.