

BOOK REVIEW

Libertas and the Practice of Politics in the Late Roman Republic. By VALENTINA ARENA. Cambridge and New York: Cambridge University Press, 2012. Pp. ix + 324. Hardcover, \$99.00. ISBN 978-1-107-028173.

Valentina Arena's important book, a revision of her dissertation written at University College London, is at its heart a study of how the concept of *libertas* was (or might have been) theorized so that it could effectively be deployed in political debate between the termini of Sulla's victory and the Caesarian civil war. This naturally first entails (Ch. 1) defining the concept of *libertas* as it was generally understood ("a status of non-subjection to the arbitrary will of another person or group of persons," (6), taking a leaf from the "Cambridge School" of modern republican theorists), then (Ch. 2) reviewing the various "rights" or *iura* that expressed and protected that freedom, i.e. *suffragium*, *provocatio*, the rights of the tribunes and the rule of law generally.

Arena contends that while all parties in Rome understood the core definition of *libertas* in the same way ("non-domination" rather than "non-interference" — language drawn from P. Pettit and Q. Skinner in their rebuttal to the doctrine of purely "negative liberty"),¹ the same concept could be theoretically or ideologically articulated in two divergent directions by *optimates* and *populares* respectively. These constituted two "discourses," "intellectual traditions," or "families of ideas" (5, 7) about how to realize and protect *libertas* in political life both at the level of constitutional arrangements and of specific debates over distinct kinds of policy, such as land distribution. At the constitutional level (Ch. 3), Arena argues, for instance, that *optimates* insisted that the "mixed constitution," in which power was divided and spread over three parts, was essential for the preservation of *libertas*, and while the People remained sovereign, direction and leadership was left in the hands of the Senate. *Populares* on the other hand assigned a far more robust role to

¹ A classic essay that will help orient readers to understand the terms and implications of this larger debate is Q. Skinner, "The Idea of Negative Liberty: Machiavellian and modern perspectives," in *Visions of Politics*, vol. 2 (Cambridge 2002) 186–212.

the popular assembly and even are supposed to have claimed “that, in order to preserve political liberty, every citizen should not only participate in political affairs, but also play a central role in governance” (117).

Turning to the level of policy and public debate, Arena notes that only certain types of disputes consistently encouraged notable invocation of *libertas* (at least by *optimates*): proposals for “extraordinary commands,” the so-called *senatus consultum ultimum*, and plans for agrarian distribution (Ch. 4). She sketches out the saliency of the idea of freedom for each one: in brief, *optimates* objected to “extraordinary commands” as inevitably undermining freedom by investing excessive power in individuals and waiving real accountability; they advocated the *s.c.u.* as a necessary defense against tyranny or domination, while on the other hand opposing agrarian distribution as another way of concentrating unchecked power in the hands of an individual or group. *Optimates* resorted to the language of *libertas* because they needed “legitimation” of their opposition by means of arguments that might plausibly construe their opponents as undermining *the* fundamental Roman value while correspondingly representing themselves as its protector (Ch. 5).

Finally, in an Epilogue, Arena suggests that in the 40s, which is, strictly speaking, outside the period she has defined for her study, *libertas* underwent an important “conceptual change” along the lines of a process modeled by Skinner. As a result of debates over the *s.c.u.*, *libertas* came to be invoked in a new way, as being dependent on an individual’s moral judgment rather than on the laws; and when this new application of the old concept came to be accepted by the community of language-users (the Roman People), then the concept itself could be said to have changed.

The argument is ambitious and elegant but is vulnerable to several objections. Above all, Arena’s cherry-picking of doctrines and principles enunciated, often implicitly, in a variety of genres (historiography, speeches, and essays) without controlling for the varying rhetorical demands imposed by their audiences leads to a vision of public debate that suggests far greater ideological polarization than what we find when actual debates are examined. Nothing in Tiberius Gracchus’s defense of his removal of a tribune from office (for Arena, a paradigm case of the *popularis* ideology of the absolute sovereignty of the popular assembly) conflicts with Polybius’ sketch of the functioning of the “mixed” or “balanced” constitution, supposedly the bedrock of a partisan, *optimata* constitutional ideology: Gracchus’s key point that the tribune must carry out the People’s *will* (not its “true interest” as judged paternalistically by the Senate) is indeed contained explicitly therein.

It is *Cicero*, not some firebrand tribune, who in court before a jury of senators, equites, and other well-off citizens, praised a tribune for not recognizing a veto and therefore preventing one man's voice—albeit a sacrosanct tribune's—from suppressing the judgment of the entire citizenry (*Corn.* I 31 Cr.). Arena adduces the Pseudo-Sallustian *Second Letter to Caesar* (here treated as an authentic document of 50 bc) as testimony for the optimate “preoccupation with a morally strong senate, to which a central role in the government of the commonwealth is assigned” (99)—yet a dozen pages later she acknowledges that it “focuses on a democratizing reform of the *comitia centuriata*” as well as other *popularis*-sounding initiatives (112).

Even the *senatus consultum ultimum*, which Arena presents as an exclusively optimate weapon, does not appear to have been opposed as such after the acquittal of L. Opimius in 120; neither Caesar (*B.C.* 1.7.5-6) nor Sallust (*Cat.* 29.2-3) challenges its legitimacy as an emergency measure to protect the Republic from violent insurrection. (It is, by the way, surprising that Arena can still assert without argument that the execution of the so-called “Catilinarians” was legally justified by reference to the *s.c.u.* after A. Drummond's effective demolition of this idea: *Law, Politics and Power* (Stuttgart, 1995), 95–105.) And it is quite a stretch to assume (again, without argument) that the “democratic” speech mouthed by “Scipio” in the *De re publica* (*Rep.* 1.47-50) reflects actual contemporary political discourse rather than the lecture-hall, which after all must be the source of Scipio's subsequent assertion that monarchy was the best political system (*Rep.* 1.54-64: just try that in a *contio!*). Can *any* Roman *popularis* honestly be called a “democrat”? (So at pp. 172, 181.)

Far from the sharp contestation of political principle in public debate that Arena's analysis would imply, orators in *contiones* competed by positioning themselves as the authentic heirs of Roman political tradition: *popularis* politicians never openly objected to the *auctoritas* of the Senate in principle but to the failure of corrupt senators of the present to uphold it, while *optimates* never openly disputed the principle that the decisions of the assembly of the People were sovereign (though they might claim that the People's sovereign will had been subverted by procedural failures such as violence or religious neglect). No *popularis* is ever known to have publicly advocated a truly fundamental change of the traditional institutions that would eliminate the great influence of the Senate or subordinate it to the People, much less actually try to bring it about that “every citizen should ... play a central role in governance” (above).

In her introduction Arena declares that the voting audience of the plebs will not be included in her analysis and therefore that her book “is not meant to be a direct contribution to the very lively debate on the nature of Roman political culture” (12). It may be churlish to complain that Arena did not write the kind of book she did not intend to write, but what is missing in my view is, unfortunately, the very core of the matter. It was the audience of voters, the *Roman People*, who were the chief persuasive target of the major political debates reviewed in this book, and consequently they indirectly determined what arguments could and could not successfully be made.

It is not enough to assert that optimates needed to invoke *libertas* “if they wished to entertain any serious hope of success” (255); why exactly, and within what parameters? No optimate could hope to persuade the majority of tribes that land distribution was unjust and therefore destroyed the very foundations of the community (as Cicero argues outside the public eye in *De off.* 2.78-84), but there was just a chance—not, in fact, a very good one, statistically speaking—that, like Cicero in the *de lege agraria* speeches, he could succeed by exploiting his audience’s incomplete knowledge by representing a land bill as an insidious plot against their freedom.

Nor, for all the lavish attention Arena gives to this ill-fated line of argument, did optimates ever actually succeed in persuading the majority of the tribes that “extraordinary commands” were likely seriously to undermine *libertas*. What is even more important than L. Catulus’ arguments against the *lex Gabinia* (detailed here at inordinate length given that Dio 36.31–6 is a relatively free composition by the third-century historian) is the fact that few voters believed them. By leaving the audiences of public debate mostly out of the picture Arena’s long—and certainly thoughtful—exegesis of possible or real political theory fails to get real “traction” on what is, after all, expressly a study of “the practice of politics” (as expressed in her subtitle).

However, these are matters for respectful debate. The quarrel I have with the way in which Arena carries out her project should not obscure the many valuable contributions made by the book. She offers an interesting new view of the fundamental Roman conception of freedom which accepts M. Roller’s claim that political *libertas* derived its meaning essentially from the contrasting metaphor of legal slavery but develops it in a manner inspired by Skinner and Pettit: there was consensus across the political spectrum that *libertas* consisted in a status of “non-subjection to the arbitrary will of another person or group of persons” (6). But, *contra* Roller and Bleicken before him, she holds that this does not mean that the Romans

lacked an abstract political idea of freedom—that is, that the concept was undeveloped or relatively empty. Arena has given us a thoughtful and intellectually challenging survey of the connection between the contemporary conception of *libertas* and some of the most persistent and bitterest controversies in the history of the late Republic. Her book serves as a highly salutary reminder of the absolute centrality of a strong concept of *libertas* in the political ferment of the Late Republic.

ROBERT MORSTEIN-MARX

University of California, Santa Barbara, morstein@classics.ucsb.edu