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## Magistrates-elect and their *potestas contionandi* in the Late Roman Republic

**ABSTRACT:** The ancient sources mention speeches being delivered in the late Republic in *contiones* by both consuls-elect and tribunes of the plebs designate. It has usually been assumed that as magistrates-elect they did not have the right to summon a popular assembly. In this paper it is suggested that magistrates-designate – or at least some of them – had this privilege. This should be understood in the more general framework in which the *designati* played a political and institutional role during the late Republic.

*Keywords:* contio, oratory, Roman Republic, magistrate-designate, consul, tribune of the plebs

The ancient sources mention speeches being delivered in the late Republic in *contiones* by both consuls-elect and tribunes of the plebs designate. It has usually been assumed by scholars – myself included – that as magistrates-elect they did not have the right to summon a popular assembly. This would mean that a magistrate in office, probably a tribune of the plebs, had convoked the *contio* and invited them to speak. This is the otherwise well-known legal procedure of *producere in contionem* or *contionem dare*, frequently attested in political practice throughout the Roman Republic, particularly during the first century BC. This explanation is perfectly plausible. However, the name of the presumed magistrate convoking an assembly for the magistrates-designate is never given, which raises the question of whether magistrates-elect had *potestas contionandi*. Could they summon a *contio* by themselves in order to address the people? In this paper I will suggest that magistrates-designate – or at least some of them – had this privilege. This should be understood in the more general framework in which the *designati* played a political and institutional role during the late Republic, when they had the priority to speak in senatorial debates (see below).

In the year 71, after returning from Hispania, Pompey the Great was elected consul for the first time.<sup>1</sup> Since he refused to dismiss his army until Metellus Pius returned from Hispania to celebrate a joint triumph, Pompey was to remain out of the *pomerium* until the last day of the year, when he entered the city as a triumphator.<sup>2</sup> While he was a consul-elect, he delivered a speech to the people in which he promised to restore

1 App. *b.c.* 1.121; Liv. *per.* 97. On the circumstances of the election see R. Seager, *Pompey the Great*, Oxford 2002, 36–37.

2 The elections in the first century BC usually took place in summer. That means that the magistrates-elect enjoyed this condition several months before taking office. For consuls see F. Pina Polo, *The consul at Rome: The civil functions of the consuls in the Roman Republic*, Cambridge 2011, 284–290.

full tribunician powers and to reform the courts during his consulate. Cicero's description leaves no room for doubt: Pompey's first *contio* took place "ad urbem" being a "consul designatus".<sup>3</sup> Nevertheless, he does not mention the name of the assembly's convener. Who was he?

The scholarship has accepted as probable that M. Lollius Palicanus was the tribune of the plebs who summoned the *contio* for Pompey.<sup>4</sup> The hypothesis is based on a passage written by a late grammarian, known as the Pseudo-Asconius, in his commentary to Cicero's *Verrinae*. The text referred to Cic. *Verr.* 1.45 as follows: "Cum primum contionem ad urbem consul designatus. Ad urbem in urbe... Pompeius autem pro consule de Hispania Sertorio victo nuper venerat et statim habuerat contionem de restituenda tribunicia potestate, Palicano tr.pl."<sup>5</sup> As can be seen, the commentator does not state that Palicanus had convened the assembly for Pompey. He mentions him as a chronological reference: Pompey's speech to the people was held, Palicanus being a tribune of the plebs. Why would the Pseudo-Asconius use Palicanus as a chronological remark? The answer is because he was well known to every reader of a commentary on the *Verrinae*. As a tribune of the plebs Palicanus had spoken *in contione* on behalf of Sthenius of Himera, one of the victims of Verres in Sicily.<sup>6</sup> Apparently, Palicanus was also active during his tribunate, advocating the restoration of the powers of the tribunes of the plebs. That connected directly with one of the issues Pompey addressed in his speech. Indeed, the Pseudo-Asconius had already mentioned Palicanus in his commentary among the tribunes who had struggled in the seventies for the *tribunicia potestas*, together with Sicinius and Quinctius.<sup>7</sup>

In short, by alluding to Palicanus the Pseudo-Asconius intended to establish a chronology for Pompey's *contio*: the speech had been delivered, Pompey being a consul-elect, while Palicanus was still a tribune, that is before 10th December 71, the

3 Cic. *Verr.* 1.45: "Ipse denique Cn. Pompeius, cum primum contionem ad urbem consul designatus habuit, ubi (id quod maxime exspectari videbatur) ostendit se tribuniciam potestatem restitutum, factus est in eo strepitu, et grata contionis admurmuratio. Idem in eadem contione cum dixisset populus vexatasque esse provincias; iudicia autem turpia ac flagitiosa fieri; ei rei se providere ac consulere velle; tum vero non strepitu, sed maximo clamore, suam populus Romanus significavit voluntatem." Cf. *Sall. hist.* 4.44 M.

4 Cf. F. Millar, *The crowd in Rome in the late Republic*, Ann Arbor 1998, 63–65; P. McGushin, *Sallust. The Histories*, vol.2, Oxford 2007, 158–159: "It was Lollius who, as tribune in 71, gave Pompeius the opportunity, as consul-elect, to address the people"; "Lollius' participation in this meeting is indicated by Ps.-Ascon. 220 St." I myself pointed out Palicanus as the probable convener in F. Pina Polo, *Las contiones civiles y militares en Roma*, Zaragoza 1989, 287 n°241. Recently I have reiterated the same hypothesis in F. Pina Polo, *The political role of the consules designati at Rome*, *Historia* 62, 2013, 443–444, in which I emphasised that Pompey as a *consul designatus* "had no *potestas contionandi*".

5 Ps.-Ascon. 220 Stangl.

6 Cic. *Verr.* 2.2.100: "etiam in contione tribunum plebis de causa Stheni, M. Palicanum, esse questum." Later on, Cicero alludes to a tribune who denounced Verres' cruelty and even introduced into the assembly a citizen who had been flogged: "Quam rem etiam tribunus plebis in contione egit, cum eum quem iste virgis ceciderat in conspectum populi Romani produxit." Ps.-Ascon. 250 Stangl makes clear who this tribune was: "Tribunus plebis. M. Lollius Palicanus."

7 Ps.-Ascon. 189 Stangl: "Iudiciorum desiderio tribunicia potestas effl. Primus Sicinius tr.pl. nec multo post Quintius et postremo Palicanus perfecerant ut tribuniciam potestatem populo darent consules Cn. Pompeius Magnus et M. Licinius Crassus."

day on which Palicanus ceased to be a tribune. Palicanus, and not another tribune of the plebs, was mentioned because he was by far the most popular and active tribune in 71. Actually, he is the only tribune for that year of whom some traces have been preserved in our sources.<sup>8</sup> We can easily assume that Palicanus supported Pompey in the restoration of full tribunician powers. Very likely he was part of the audience that listened very attentively and approvingly to the speech of the consul-designate. But it is not necessary to suppose that he was the convener of the assembly. Nothing in our sources prevents us from thinking that Pompey himself could have summoned the people to a *contio* outside the *pomerium*. According to Cicero, the assembly raised high expectations, and Pompey increased his popularity by promising to resolve during his consulate problems that were present within Roman society. It was surely an intelligent political move on the part of Pompey before celebrating his triumph and before entering the first magistracy to which he had been elected by the people.

The other evidence for consuls-elect speaking in a *contio* occurs in the year 44. Cicero delivered his first *Philippica* in the senate on 2nd September 44. In his speech he alluded to the Kalends of June as a turning point in the political situation, once Antonius had strengthened his position. Cicero depicted a political atmosphere without freedom to the extent that the *consules designati*, he states, were afraid to attend meetings of the senate. However, these same consuls-elect praised Caesar's assassins in all their speeches and in *contiones*: "quos tamen ipsi consules in contionibus et in omni sermone laudabant"<sup>9</sup> These are C. Vibius Pansa and A. Hirtius, who had been elected for the year 43. The speeches should have been delivered in the time between the consular elections and the first *Philippica*, namely in July and/or August.<sup>10</sup>

Again we have some information about the orators who intervened in these assemblies – the plural in Cicero's text suggests more than one *contio* – as well as about the topic, but there are no traces of the convener or conveners of the meetings. In the confused months that followed the assassination of Caesar, it was not unusual for a tribune of the plebs to give somebody the chance to address the people. L. Antonius and Ti. Cannutius summoned *contiones*, in May and the autumn of 44 respectively, in which the young Octavian had the opportunity to introduce himself as the legal and political heir of his adoptive father Caesar. M. Servilius, tribune in 43, gave the floor to Cicero on 20th December of 44: Cicero delivered before the people his fourth *Philippica*. On 4th January 43, it was the tribune P. Appuleius who summoned a *contio* for Cicero, who pronounced his sixth *Philippica*. In this labile political framework we must not discard the possibility that a tribune could have convoked an assembly for

8 See T. R. S. Broughton, *The Magistrates of the Roman Republic*, vol. 2, 122. On Palicanus Cic. *Brut.* 223; Sall. *hist.* 4.43 M.; Quint. *inst. orat.* 4.2.1: "M. Lollius Palicanus, humili loco Picens, loquax magis quam facundus."

9 Cic. *Phil.* 1.6: "Ecce enim Kalendis Iuniis, quibus ut adessemus, edixerat, mutata omnia: nihil per senatum, multa et magna per populum et absente populo et invito. Consules designati negabant se audere in senatum venire; patriae liberatores urbe carebant ea, cuius a cervicibus iugum servile deiecerant; quos tamen ipsi consules in contionibus et in omni sermone laudabant."

10 Cf. Pina Polo, *Contiones*, 310 n°357.

Vibius Pansa and/or Hirtius, although it is striking that no name is mentioned. However likewise we should not discard the possibility that the consuls-designate summoned the *contiones* in which they addressed the people either together or separately.

One more speech of Vibius Pansa before the people is mentioned by Cicero in his twelfth *Philippica*.<sup>11</sup> Cicero refers to the speech held in the senate by Piso on the Kalends of August in the year 44, in which the eminent senator criticised Antonius.<sup>12</sup> Pansa had praised Piso's speech both in the senate and *in contione*. Cicero does not provide further information, so we know neither the circumstances nor the date. Pansa's speech could certainly have been delivered during his consulship in 43. Nevertheless, the Ciceronian words suggest, in my opinion, a date closer to the Kalends of August 44, when a public reaction to Piso's statements is more plausible than some months later. Consequently, Pansa delivered his speech before the people probably as consul-elect in the weeks following Piso's intervention, very likely in August 44.<sup>13</sup>

We have two examples of tribunes-designate speaking in *contiones*. According to Sallust, the tribune-elect C. Memmius condemned in 112 before the people the suspicious activities of King Jugurtha.<sup>14</sup> The exact words used by Sallust are: "C. Memmius tribunus plebis designatus... populum Romanum edocuisset..." The sentence implies, in my opinion, the celebration of at least one *contio* in which Memmius instructed the Roman people about what Jugurtha and his henchmen were doing. Where else could a tribune-elect inform the people? Once more we know the speaker, but our sources fail to mention the convener of the assembly. Again nothing prevents the speaker from having been the convener. As a tribune in 111, Memmius fought tirelessly until the war against Jugurtha was officially declared. To this end he carried out a political campaign in *contiones* following the path that he had begun as tribune-designate.<sup>15</sup>

Plutarch describes the reluctance of Cato Uticensis to become tribune of the plebs. He changed his mind when he found out that Metellus Nepos – an enemy of the *res publica* in his opinion – was willing to stand as a candidate. Both Cato and Nepos were finally elected. Seeing that bribery was present in the consular elections, Cato reprimanded the people and finished his speech swearing to prosecute whoever was

11 Cic. *Phil.* 12.14: "Cum iis facta pax non erit pax, sed pactio servitutis. L. Pisonis, amplissimi viri, praeclara vox a te non solum in hoc ordine, Pansa, sed etiam in contione iure laudata est. Excessurum se ex Italia dixit, deos penatis et sedes patrias relicturum, si, quod di omen averteret, rem publicam oppressisset Antonius."

12 This speech had already been mentioned by Cicero in his first *Philippica*: 1.10; 1.14–15. News of the speech reached Cicero at Leucopetra, when he was travelling to Greece. Piso's attack against Antonius made him conceive hopes, so that he changed his mind and decided to return to Rome.

13 Pina Polo, *Contiones*, 310–311, n°358.

14 Sall. *Iug.* 27: "Ac ni C. Memmius tribunus plebis designatus, vir acer et infestus potentiae nobilitatis, populum Romanum edocuisset id agi, ut per paucos factiosos Iugurthae scelus condonaretur, profecto omnis invidia prolatandis consultationibus dilapsa foret: tanta vis gratiae atque pecuniae regis erat."

15 Sall. *Iug.* 30–31; 33–34 (Memmius brought King Jugurtha himself to a *contio*, and tried unsuccessfully to make him speak to the people). Cf. Pina Polo, *Contiones*, 280, n°201–202; D. Hiebel, *Rôles institutionnel et politique de la contio sous la République romaine (287–49 av. J.-C.)*, Paris 2009, 432–433.

guilty, with the exception of his brother-in-law Silanus.<sup>16</sup> According to Plutarch's report, there is no doubt that Cato delivered this speech to the people as tribune-elect, indeed shortly after his election in year 63.<sup>17</sup> Once again there is no hint of the convening of the assembly in our sources.

Cato was particularly active as tribune-elect. He fulfilled his promise and prosecuted – together with the defeated candidate Ser. Sulpicius Rufus – the consul-elect Murena in autumn, while he was still a tribune-designate and in the midst of the political storm caused by the Catilinarian conspiracy.<sup>18</sup> As is well known, Murena was defended by the consul Cicero, as well as by Hortensius and Crassus, and was acquitted. Cato spoke in the senate in the session of 5th December 63. His proposal to execute the Catilinarians was eventually passed. In this session he took advantage, as a tribune-designate, of his priority to speak after consulars and senators of praetorian rank. Otherwise he would hardly have been able to take the floor, being only a *quaestorius*.<sup>19</sup> As a result, before taking office on 10th December 63, Cato was already able to strengthen his profile as a man of virtue and integrity.<sup>20</sup>

Such are the scarce sources that describe a magistrate-designate speaking to the people in a *contio*. In a recent article I have argued that, at least in the first century BC, consuls-elect had a well-established institutional visibility that encouraged their collaboration with consuls in office and facilitated continuity in the management of the *res publica*.<sup>21</sup> *Consules designati* had the priority to speak first in senatorial debates, perhaps a long-established privilege, as well as the prerogative to issue edicts. If this interpretation is correct, it is reasonable to assume that they also had the right to summon *contiones* and to speak before the people without needing the intervention of tribunes or magistrates in office to convene an assembly for them. Their *potestas contionandi* should be understood as a privilege in the context of the political and institutional role they played: they had priority in the senate; they had the right to speak to the people.

Praetors and tribunes of the plebs designate also had priority to speak in the senate, in the first case before the praetors in office and senators of praetorian rank, and in the second before the tribunes in office and senators who had reached tribunician rank.<sup>22</sup>

16 Plut. *Cat. min.* 21.2–3.

17 Pina Polo, *Contiones*, 292, n°265 (Cato was *tribunus plebis designatus*, not *suffectus*!). Hiebel, *Rôles institutionnel et politique de la contio*, 443, wrongly calls him tribune of the plebs.

18 Broughton, *The Magistrates of the Roman Republic*, 2.174.

19 Previously he had made use of this same right in the senate, threatening to indict a candidate to the consulate, as he had also done in a *contio*: “Dixi in senatu me nomen consularis candidati delaturum.” (Cic. *Mur.* 62).

20 On the image of incorruptibility built by Cato see C. Rosillo-López, *La corruption à la fin de la République romaine (IIe–Ier s. av. J.-C.)*. *Aspects politiques et financiers*, Stuttgart 2010, 83–84; H. van der Blom, *Oratory and Political Career in the late Roman Republic*, Cambridge, forthcoming.

21 Pina Polo, *Consules designati*, esp. 451–452.

22 See Th. Mommsen, *Römisches Staatsrecht*, Leipzig 1878–85, III 973–974; Chr. Meier, *Res publica amissa. Eine Studie zu Verfassung und Geschichte der späten römischen Republik*, Wiesbaden 1966, 258–259; Th. Hantos, *Res publica constituta. Die Verfassung des Dictators Sulla*, Stuttgart 1988, 152–153. Cf. Pina Polo, *Consules designati*, 420–421.

This procedure was clearly in evidence in the senatorial debate about the Catilinarians on 5th December 63.<sup>23</sup> It is therefore legitimate to wonder whether they could have *potestas contionandi* as well. We do not possess any evidence of praetors-elect speaking before the people. This is not remarkable, since praetors do not seem to have been very active in *contiones*. As a matter of fact we know of a limited number of speeches delivered by praetors to the people throughout the Republic in comparison to those of consuls and especially tribunes of the plebs. On the contrary, the cases of Memmius and Cato suggest that tribunes-designate might have had *potestas contionandi*.

As we have seen, the sources never mention who had convoked the assembly in which the magistrates-designate spoke. In my opinion this was not necessary, since the convener and the speaker were one and the same person. There is no doubt that this argument *ex silentio* is admittedly not definitive. However, it becomes stronger if we take into account that in most of the known cases – certainly not in all of them – in which a politician was introduced or brought forth to the speaker's platform, the name of the convener, or at least his magistracy in office, is mentioned.<sup>24</sup>

Nonetheless, the scarcity of known examples might indicate that magistrates- and tribunes-designate did not make habitual use of their *potestas contionandi*. According to our sources, it appears to be rather exceptional behaviour. In this regard, the political strategy followed by the *designati* who spoke to the people shows similarities. All of them conducted before and after their election veritable political campaigns on subjects about which they were concerned or even obsessed. Memmius wanted to unmask King Jugurtha and his henchmen in Rome in order to justify a war against him. Pompey had reached the highest magistracy as a successful general but without fulfilling the requirements of the *cursus honorum*. His famous *contio* as consul-elect was a means of showing his civil political leadership in response to popular claims, looking for a kind of legitimation for his consulate. Cato wanted to be seen as the champion of morality and the enemy of corruption. He no doubt strengthened his image with his speeches in the senate and to the people while he was a tribune-designate, as well as with the prosecution of Murena. Finally, in the explosive and bewildering political and social situation that followed the death of Caesar it was inevitable for the consuls-elect for the year 43 to proclaim their political preferences both in the senate and to the people, particularly if we bear in mind the absence from Rome of relevant magistrates and politicians. Consequently, in all these cases the speeches delivered in *contiones* served to keep the focus on the magistrates-designate from their election

23 The first speaker was the consul-elect Silanus. Then a number of consulars intervened, followed by the praetor-designate Caesar. The tribune-elect Cato spoke after the senators of praetorian rank. See App. *b.c.* 2.5–6; Sall. *Cat.* 50–52; Cic. *Att.* 12.21.1.

24 See F. Pina Polo, Political alliances and rivalries in *contiones* in the late Roman Republic, in H. van der Blom, C. Gray and C. Steel (eds.), *Institutions and Ideology in Republican Rome: Speech, Audience and Decision*, Cambridge, forthcoming, in which all the examples of *contionem dare* and *producere in contionem* in political *contiones* are collected and discussed. We know the name or the office (usually tribune of the plebs) of the convener in around 65% of the cases. In other 10% the convener can be supposed with a degree of certainty.

until the time they took office, the tribunes on 10th December and the consuls on 1st January, and constituted a very effective means of keeping alive within public opinion the political demands that they advocated.

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