

*Cartographies of Power*

Power in history's earliest states was typically central and singular. In the first cities and empires of the Mediterranean world, public decisions were commonly made by a sole ruler and executed by administrators, soldiers, and scribes.<sup>1</sup> Democratic Athens was a noteworthy exception, but its control of territory *extra muros* was brief and its capacities of judgment earned grave skepticism.<sup>2</sup>

Rome was different. From 509 BCE to Cicero's lifetime, its expanding empire was governed by a plural cast of magistrates, chosen by assemblies and serving a single year in each post. Elections were hotly contested and made winners and losers on each step of the ladder of power. And for all the richness of Roman public law, no constitution established these offices or defined their limits. An agglomeration of written statutes (*leges*), judicial precedent (*ius*), and ancestral custom (*mos maiorum*) were the main constraints on the ambitions of Rome's politicians.<sup>3</sup> If one magistrate's interpretation of law or custom conflicted with another's, no higher court save that of public opinion could resolve the dispute.

At its most successful, this distribution of power produced a dynamic equilibrium capable of great resilience – as in the Republic's recovery from staggering defeat at Cannae (216 BCE) to triumph over Carthage.<sup>4</sup> But by Cicero's lifetime, this model – apparently as successful as it was

<sup>1</sup> See generally van de Mieroop 1997, 118–41; Will 1998, 811–35; Chavalas 2005, 34–47, 48–62.

<sup>2</sup> See most notably Pl. *Resp.* 303a4–6; Arist. *Pol.* 1279a17–21, 1289a38–b11 (democracy as one of the “deviant” constitutions); Cic. *Rep.* 1.43–44. Cf. Schofield 2005, 225, 245–51; Cartledge 2016, 33 (“the tradition of thought about politics that started with the age of Herodotus was resolutely and overwhelmingly anti-democratic”). See generally Roberts 1994.

<sup>3</sup> Wieacker describes the Roman Republic as a conglomerate of “institutions and formalized rules of political action that, as a whole, were perceived and practically applied as a legally binding” and only occasionally “endorsed, reformed or developed by laws,” that is, by statutory law; Wieacker, 1988, 345, 353. Cf. Lintott 1999, 94–104; Hölkeskamp 2010, 17; Straumann 2016, 47–62. On sources of judicial precedent in the republican period, see Chapter 2, n.84.

<sup>4</sup> This is of course the principal subject of Polybius's *Histories*. For Cannae, see Polyb. Bk. 3.

unprecedented – had reached a breaking point. Rome had won a vast empire, but politics at home were in disarray. A chasm had opened between rich and poor, and the popular institutions designed as counterweights – the tribunes, courts, and *contiones* – could no longer budge an intransigent senate.<sup>5</sup> Frustration and ambition led to increasingly radical strategies; rivalries once contained by *auctoritas* and *suffragium* now spilled onto the battlefield. The dam of civil peace broke in 132 BCE with the murder of reformer T. Gracchus, setting in motion a wave of violence that only broke with Octavian's victories a century later. Strife and emergency were the constants of Cicero's career.

The next three chapters examine how he used the notion of will to rationalize Roman politics as they came undone. Will is firstly for Cicero the animating force of this venerable equilibrium. The wills of Rome's magistrates should be a public asset, vectors to inscribe reason on the world. These forces are naturally counterbalanced by respect for colleagues and for the *maiores*. This is the system Polybius had described in other terms at its pre-Gracchan zenith and that inspired later notions of "checks and balances."<sup>6</sup> In his early career, Cicero describes and defends this equilibrium in which senators, magistrates, and assemblies all participate. Reciprocity is central in the constitution Cicero later frames: "For the man who governs well must have obeyed in the past, and he who obeys dutifully will be seen fit later to govern."<sup>7</sup>

This ideal equipoise of will, already damaged at the time of Cicero's birth, was increasingly tipped toward bloodshed. The mature Cicero watches Pompey and Caesar overwhelm all collegiality and constraint; worse still, Cicero finds himself arguing to suspend those same constraints, such as in the Catilinarian conspiracy and with Pompey's extraordinary commands. To this crisis of norms, as Straumann shows in a masterful recent study, Cicero applies constitutional thinking.<sup>8</sup> In the face of enactments he considers unjust, Cicero appeals to *ius* as a body of norms with superior force. Legislation by his *popularis* opponents can thus be annulled for procedural reasons – disrespect of auspices or votes carried by violence – but also for substantive or material ones. Clodius' bill to strip Cicero of his

<sup>5</sup> See Brunt 1988, 6–19; Lintott 1999, 199–213; Hölkeskamp 2010, 20–22; Arena 2012, 68–72, 137–60.

<sup>6</sup> Polyb. 6.11–59; see Lintott 1999, 16–26, 247–55; Straumann 2016, 151–61; Atkins 2018b, 13–24; Schofield 2021, 45–46.

<sup>7</sup> *Leg. 3.5: nam et qui bene imperat, paruerit aliquando necesse est, et qui modeste paret, videtur, qui aliquando imperet, dignus esse* (after Loeb trans.).

<sup>8</sup> See Straumann 2016, esp. chs. 1, 3, and 4; Steel 2017b.

house cannot properly be *lex* because it defies a central norm of Roman *ius*: Legislation targeting one citizen (*privilegium*) is forbidden.<sup>9</sup>

When will cannot be tempered by the diffusion of power into many hands, some new constraint must be found. This constraint, argues Cicero, is natural law (*ius naturae*), discovered by Greek Stoics but given life in Rome's legal and political heritage. *De republica* and *De legibus*, written after the crises of his consulship and exile, show Cicero at the summit of political creativity. Here, we find his strongest normative statements about how will should balance the Republic. Cicero throughout his life had presented will as subject to rational limits – and, further, as the force necessary to make reason effective. In these works, however, the constraints on will are no longer primarily horizontal and organic: They are inherent, substantive, and governed by higher-order principles of natural law as interpreted by a rational elite. As Straumann and others have capably shown, though these principles failed to save Cicero's republic, they unwittingly laid the foundation for much of modern constitutionalism and thus for much of the political fortunes and misfortunes of today.<sup>10</sup>

The present chapter will show how Cicero employs the idea of will to map his political environment, the intentions of its leading players, and the lawful boundaries of their power. In letters and speeches, we find both artful political commentary and heartfelt appeals to place will under reason's control. In Chapter 4, we will see how a particularly Roman coinage – *voluntas mutua* or “mutual goodwill” – serves Cicero and his colleagues in stabilizing a fast-growing empire. Here, the crisis of Caesarism impels him to engage with theories of reciprocity and friendship. Chapter 5 will bring Cicero's political beliefs most fully into view. We will explore how *voluntas* creates the relationship between sovereign citizen and governing elite, producing an idea unknown to Plato and Aristotle: the will of the people.

In its contemporary form, powermapping is the discipline that traces and interprets the dynamics of a social system.<sup>11</sup> Its purpose is to derive

<sup>9</sup> *Dom.* 43; Straumann 2016, 136–39.

<sup>10</sup> Straumann 2016, 16–21, 303–41. For a range of viewpoints on this influence, see, e.g., Lintott 1999, 247–55; Millar 2002, 100–34; Connolly 2015, 1–22; Remer 2017, 152–66; Atkins 2018b, 192–99. Atkins in particular stresses how modern theorists have tended to misread their Roman predecessors.

<sup>11</sup> Though network analysis is described in various ways in the many disciplines that employ it, “powermapping” begins in the academic literature in the context of social psychology. See Hagan and Smail 1997, 257–67; Noy 2008, 3–18. Interestingly, Hagan and Smail 1997, 258, present their approach as a challenge to the “regnant paradigm in clinical and therapeutic psychology,” the

from the raw data of personalities, laws, and events a blueprint of influence to help an advocate advance their goals. Powermapping encompasses a range of techniques and frameworks; it has no definitive textbook. It is manifest, rather, in certain practices and habits of mind that, from the evidence of their texts, may have been as useful to ancient analysts as to their modern counterparts. Among these are: realism, an attention to informal influence as well as formal status; interdependence, an interest in the second- and third-order effects of a given event; and dynamism, a recognition that as roles shift and relationships evolve the transaction of power can undergo radical change. Each of these principles is evident in Cicero's attention to the equilibrium – and, more often, the discord – of Rome's willful politicians.

For Cicero, powermapping was literally a means of survival. Lacking an army, street gang, or family compound, he depended on intellectual gifts to stay out of harm's way. Uncovering the designs of a Pompey or Catiline required sophisticated intelligence-gathering and a new toolkit of expressions. Mapping networks of influence first helps Cicero clear a path to high office. He begins gauging the preferences of senatorial colleagues more than a year before his campaign for consul, signaling to Atticus, "when I have made out the wills of the nobles, I shall write to you" (*cum perspexero voluntates nobilium, scribam ad te*).<sup>12</sup> Descriptively, the notion of will helps Cicero trace finer gradations of support and opposition, notably in the phrases *sua* or *summa voluntate*. In a more normative tone, it helps him reframe party conflict and distinguish his opponents from the "good citizens" who included senate and people alike.

But powermapping was not only an instrument of self-protection. To map is to order a disorderly world. From his first speech against Verres to his final Philippic, Cicero is propelled by the duty – dimmed but never extinguished – to restore *mos maiorum* and return the republic to her better self.<sup>13</sup> Here, Cicero's normative claims for reason and will come to the fore. At home and abroad, *voluntas* should transact within a plural order of *auctoritas*, with rational will prevailing over violence. His acknowledgment in *De republica* that politics "may defeat reason" does not refute but rather

premise that the psychological problems can be solved through individual "will-power" alone. Similar techniques are common in information systems and management theory; see, e.g., DeSanctis and Gallupe 1987; Mendelow 1991. Powermapping is a technique of growing importance to community-level advocacy campaigns; see, e.g., "A Guide to Power-Mapping" by the advocacy network Move to Amend, available at [www.movetoamend.org/guide-power-mapping](http://www.movetoamend.org/guide-power-mapping).

<sup>12</sup> *Att.* 1.10.3.

<sup>13</sup> See Annas 2013, 222.

emphasizes the standard that reason must set.<sup>14</sup> With help from Stoic and Platonic ideas, Cicero takes the *voluntas* of common usage and builds a case for the priority of self-mastery over brute force. Where *vis* overwhelms *voluntas* in Roman politics, as Laelius predicts in *De republica*, “those who up to the present have obeyed us by will are held faithful by fear alone [*qui adhuc voluntate nobis oboediunt, terrore teneantur*].”<sup>15</sup> On the other hand, will bereft of reason is *temeritas*, a selfish ambition that “runs beyond the mark.” In letters and speeches, Cicero constantly strives to raise the practice of politics to a rational plane where the rough edges of ambition are refined by wise law and prudent action. But whereas for Cicero the politics of *voluntas* stand diametrically opposed to those of *vis*, Caesar enforces his own will at the point of a sword.

### 3.1 Intentions, Alliances, and Schemes

Cicero’s map of Roman power begins with the wills of its leading men. In the early days of his public career, this task centers upon an uncommonly changeable politician: Gnaeus Pompeius Magnus. Writing to his ally Lentulus Spinther in 56 BCE, Cicero relates that while Pompey has nominally supported his friend’s appointment to restore the exiled king of Egypt, support of an alternative measure among Pompey’s friends “intensifies suspicion as to Pompey’s will [*auget suspicionem Pompei voluntatis*].”<sup>16</sup> This discrepancy between words and intentions has immediate consequences for Lentulus: To oppose the alternative bill is to risk angering Pompey, while allowing it would undermine his own standing. The interdependent stances of these actors carry serious consequences and thus must be carefully recorded.<sup>17</sup>

In his cartography of power, Cicero enlists the help of young Caelius Rufus. In their correspondence, they explore the hidden wills of Rome’s major players. If Cicero meets Pompey, writes Caelius,

be sure to write and tell me what you thought of him, how he talked to you, and what will he showed [*quam orationem habuerit tecum quamque ostenderit voluntatem*]. He is apt to say one thing and think another, but is usually not clever enough to keep his real aims out of view.<sup>18</sup>

As elsewhere with the spirit of a law and the goodwill of an audience, in this exchange will is a durable inner force that can alter over time. Unlike

<sup>14</sup> *Rep.* 2.57: “[T]he essential nature of the commonwealth often defeats reason [*sed tamen vincit ipsa rerum publicarum natura saepe rationem*].” See generally Atkins 2013.

<sup>15</sup> *Rep.* 3.41.    <sup>16</sup> *Fam.* 1.12.3.    <sup>17</sup> See, e.g., *QFr.* 6.3; *Fam.* 1.19.2.    <sup>18</sup> *Ibid.* 1.77.3.

with *sententia*, a stated opinion on a single issue, reading *voluntas* is an ongoing concern in which surface positions can mask true intent. Principles of political realism must apply: In the most favorable cases, a politician's *voluntas* can be "plainly noted" (*plane perspecta*), such as in the timing Pompey seeks for Caesar's withdrawal from Gaul.<sup>19</sup> But most often, as Cicero writes Brutus, "people's wills [are] concealed and their dispositions complex [*occultas hominum voluntates multiplicisque naturas*]." <sup>20</sup> Indeed, Cicero recognizes the utility of obscuring his own *voluntas* at delicate moments. When Dolabella emerges as a potential son-in-law during his prosecution of one of Cicero's allies, Caelius advises him to "show nothing whatsoever of your will [*nihil de tua voluntate ostendas*]." <sup>21</sup> Political will can also be weaker than it appears: Caelius recounts the soft opposition of the Catonians to public honors for Cicero following his victories in Cilicia "because they merely showed the measure of their will without fighting for their position, whereas they could have been a nuisance [*tantum voluntatem ostenderunt, pro sententia cum impedire possent non pugnarunt*]." <sup>22</sup>

Caelius' gifts were rare, though, and Cicero could betray frustration with those who lacked his *protégé's* subtlety. As Caesar marches from Gaul in 49 BCE, Cicero remonstrates with Atticus for making special efforts to go welcome him, adding that Pompey had blundered, too, by extolling Caesar's "most brilliant achievements" (*rebus gestis amplissimis*) in public. The smarter move was, of course, to pacify Caesar without elevating him: "[A]ll this blurs the signs that might distinguish sincerity from pretense [*quibus voluntas a simulatione distingui posset*]." <sup>23</sup> In Cicero's politics, prudence demanded not sincerity but a scrupulous insincerity that served both his reputation and his survival.

The flexibility required of a budding politician made *voluntas* an ideal term to denote all manner of schemes. In his speeches, the notion of will adds fire to his invective. He vilifies Catiline and his friends for their "unscrupulous will and purpose" (*voluntas et causa impudentissima*), <sup>24</sup> or when, though depriving his *popularis* enemies of their swords, he cannot remove their "criminal and evil wills" (*voluntates . . . consceleratas ac nefarias*). <sup>25</sup> Conversely, he could use it to signify a righteous state of mind, as when praising the censor Gaius Cassius for erecting a statue of Concord: "His will was a lofty one, and worthy of all praise [*Praeclara*

<sup>19</sup> Ibid. 1.84.4; cf. 2.137.1.    <sup>20</sup> *Ad Brut.* 13.1.    <sup>21</sup> *Fam.* 1.88.2.

<sup>22</sup> *Fam.* 1.91.2. Note as well the "conjoined" *voluntas* shared by this group of political actors, to be explored further in Chapter 4.

<sup>23</sup> *Att.* 3.188.2.    <sup>24</sup> *Cat.* 2.18.    <sup>25</sup> *Sull.* 28. See also *Cat.* 2.16, 4.13; *Dom.* 116.

*voluntas atque omni laude digna*].”<sup>26</sup> Similarly, by presenting the will as measurable he can track it as it shifts, as when he expresses regret to Atticus that Lucceius’ *voluntas* is “more obstinate” (*obstinatior*) than before, requiring a new strategy to reconcile the two.<sup>27</sup>

Though these expressions were useful when analyzing an individual, the functional unit of Roman politics was the network. Here, too, *voluntas* helps Cicero trace hidden lines of influence. In the courtroom, he uses *voluntas* to link two individuals in a criminal conspiracy, tying Verres to a previous judgment against an ally for illegal taxation.<sup>28</sup> Conversely, Cicero uses will to decouple an aggrieved Sicilian from the corrupt governor who claimed to have seized his estate *voluntate*.<sup>29</sup> A new level of complexity arises with the formation of the First Triumvirate. To justify his volte-face toward the three men, Cicero recalls Pompey’s stern reminder that support for his return from exile was given *voluntate Caesaris*.<sup>30</sup> That Caesar’s will lay behind Pompey’s support adds leverage to the demand that Cicero reverse his opposition to Caesar in the senate, leverage to which Cicero ultimately yields.<sup>31</sup> Similarly, Caelius writes regarding Curio’s candidacy for tribune that his newfound goodwill toward the *boni* is not as it appears: “[I]ts origin and cause is that Caesar . . . has shown his indifference to Curio in no uncertain manner [*huius autem voluntatis initium et causa est quod eum non mediocriter Caesar . . . valde contempsit*].”<sup>32</sup> The second-order reasoning of a powermapper is well in evidence here: If Caesar’s rebuff was the true cause of Curio’s defection to the *optimates*, despite Caesar giving funds “to get the friendship of any guttersnipe,”<sup>33</sup> Cicero could conclude both that Curio was not to be trusted and that Caesar must have special cause for his ill will.

### 3.2 Sua and Summa Voluntate

In a dynamic and realistic powermap, purely “yes or no” positions are rare. More often, a multitude of shadings lies between opposition and support. With the phrase *sua voluntate* Cicero develops a semantic middle ground, previously unattested in Latin, between political neutrality and active adherence. When Athens’ municipal council, seeking to protect the ruins of Epicurus’ house, comes into conflict with the Roman senator owning

<sup>26</sup> *Dom.* 131. Cf. *Planc.* 33: “It was Granius too who often employed the license granted to his brusque wit in sarcastic comments upon the wills of L. Crassus or M. Antonius [*Ille L. Crassi, ille M. Antonii voluntatem asperioribus facetiis saepe perstrinxit impune*].”

<sup>27</sup> *Att.* 1.7.1.      <sup>28</sup> *Verr.* 1.95; cf. *Div. Caec.* 34; *Sull.* 36.      <sup>29</sup> *Verr.* 2.18.44.      <sup>30</sup> *Fam.* 1.20.9.

<sup>31</sup> *Prov. cons.* 43.      <sup>32</sup> *Fam.* 1.81.2.      <sup>33</sup> *Ibid.*

the property, Cicero entreats his colleague to let it be known that the Areopagus had acted “according to your will” (*tua voluntate*).<sup>34</sup> If the senator could not explicitly reverse his stance without loss of face, *tua voluntate* will signify his implicit endorsement of the city’s plans, defusing the conflict.<sup>35</sup> Similarly, when the senate debates restoring Cicero’s house after his recall from exile, the tribune Serranus, dissuaded from interposing a veto, attempts to delay the proceedings. Seeing that the tide of opinion was in his favor, Cicero opts against confrontation: “[W]ith much ado, and with my willingness, the point was conceded him [*vix tamen ei de mea voluntate concessum est*].”<sup>36</sup> By taking the middle path designated by *mea voluntate*, Cicero again defuses a politically tense moment without harm to his own position: A decree in his favor passes the next day.

The sense of *mea voluntate* as implicit endorsement had a range of uses for Cicero. The phrase could save him time or annoyance, as when he importunes Atticus to handle a conversation with Clodius he would rather avoid.<sup>37</sup> Near the end of his career he uses the phrase counterfactually to ease political suspicions: In the fourteenth Philippic, Cicero accuses the Antonians of attempting to entrap him by offering fasces “as if done by my will” (*quasi mea voluntate factum*), a putative coup d’état they wanted as a pretext for murder.<sup>38</sup> A surviving letter from Antony shows that Cicero was not the only statesman to exploit the phrase. A month after Caesar’s murder, Antony expresses his wish to recall from exile a henchman of Clodius convicted for burning down the senate house seven years before. Antony claims to be recalling him with Caesar’s permission, but that he will only do so *tua voluntate*; that is, with Cicero’s consent.<sup>39</sup> Antony’s ploy is transparent: Though Cicero is a well-known enemy of Clodius, Antony wants to equate the absence of Cicero’s active opposition as a tacit endorsement of the man’s recall. (Whether he overestimated his own power to muzzle Cicero is another matter.)

The particular sense of *sua voluntate* comes into clearer relief in contrast with the related *sua sponte*, “of one’s own accord.” While *voluntas* is for

<sup>34</sup> *Fam.* 1.64.5.      <sup>35</sup> See also *Att.* 2.104.6, debriefing Atticus on the affair.

<sup>36</sup> *Att.* 1.74.4. Here, I think that “my willingness,” though a bit awkward in English, splits the difference between “willingly” and “by my will,” neither of which quite capture the subtlety of Cicero’s phrase. Though *voluntate* identifies a position relative to a specific act (as it had for Plautus and Terence), here it also signals Cicero’s *dignitas* as a political actor, making the *mea* or “my” important as well.

<sup>37</sup> *Att.* 3.270.1: “[Y]ou can do so with my willingness, in fact that is more convenient than what he asks of me, i.e. that I should write to Clodius myself [*potes id mea voluntate facere commodiusque est quam quod ille a me petit, me ipsum scribere ad Clodium*].”

<sup>38</sup> *Phil.* 14.15.      <sup>39</sup> *Att.* 4.367A.



Cicero a specifically human faculty, all creatures can act *sua sponte*; the phrase also implies, as *voluntate* does not, that its subject initiated the given action.<sup>40</sup> For example, Cicero writes to Atticus regarding a letter he has apparently sent at Atticus' behest, "recommending me to do something I had already done of my own accord [*mea sponte*] the day before."<sup>41</sup> To perform an act *sua sponte* was to do so deliberately and thus take ownership of the consequences – in this case, credit from one's friends. By contrast, *sua voluntate* allowed Cicero and his colleagues another shade of remove from acts they did not want too explicitly to endorse.

Similarly, the phrase *summa voluntate* allowed Cicero to keep himself at a comfortable distance from a given political act. In his defense of Murena, Cicero accuses the prosecutor, Servius, of having spoiled his campaign for consul by wasting time and capital on antibribery legislation. Though some of his bills had passed,<sup>42</sup> there were others "which a crowded Senate rejected with my strong approval [*quae mea summa voluntate senatus frequens repudiavit*]."<sup>43</sup> Cicero frames a battle of wills between himself and Servius; but whereas Servius has actively exerted himself, *summa voluntate* denotes Cicero's support – perhaps even his engineering – of the bills' rejection without deigning to oppose them openly. *Voluntas* thus maps Cicero in clear opposition to Servius while creating enough semantic distance to frame the conflict as one concerning principles, not personalities, and that in any event costs Cicero no effort to win.<sup>44</sup>

In some cases, *voluntas* could express strong favorability toward an event that Cicero had neither initiated nor actively supported. In his first political speech, he exhorts the senate to approve the granting of Pompey's special commission against Mithridates. He gently defuses his senior colleague Catulus, who opposes the motion on the grounds of its novelty (*novum*), by praising him and noting that such powers had recently been granted *summa Q. Catuli voluntate*.<sup>45</sup> The word *summa* serves the rhetorical purpose of emphasizing, without accusing his elder colleague of hypocrisy, that his past and present positions do not match. Moreover, Cicero submits that

<sup>40</sup> See, e.g., *Verr.* 2.5.18; *Clu.* 79, 138; *Att.* 1.1, 6.2; *Cat.* 1.13; *Dom.* 12; *Fin.* 1.25.

<sup>41</sup> *Att.* 4.25.27.

<sup>42</sup> *Mur.* 46: "[Y]our wishes and your standing were deferred to [*gestus est mos et voluntati et dignitati tuae*] ..."

<sup>43</sup> *Ibid.* 47.

<sup>44</sup> *Ibid.* See also *Att.* 1.19.9, a decree passed *summa voluntate* of senate rank and file, but not with our *auctoritas*; cf. *Pis.* 46, where Cicero gloats that Piso's loss of his army and his popularity were "beyond my prayers, but absolutely in accordance with my will [*praeter optatum meum, sed valde ex voluntate*]."

<sup>45</sup> *Leg. Man.* 61.

Catulus had actively participated in granting these powers, that these prior innovations “were brought about on the initiative of Quintus Catulus and the other honorable men of the same rank [*sunt in eundem hominem a Q. Catuli atque a ceterorum eiusdem dignitatis amplissimorum hominum auctoritate*].”<sup>46</sup> The notion of his colleague’s “honorable” if inconsistent will lets Cicero keep a pointed riposte within respectful bounds.

The phrase *summa voluntate* could also create protective distance from political liability. In the early stages of his campaign for consul, Cicero is contemplating defending Catiline against charges of extortion, and he reports to Atticus, “we have the jury we want, with full willingness of the prosecution [*iudices habemus quod volumus, summa accusatoris voluntate*].”<sup>47</sup> At least for the moment, Cicero was contemplating the defense of Catiline via collusion with Clodius – skirting the law with his soon-to-be bitterest foes! The phrase *summa voluntate* serves Cicero by adding semantic distance from this collusion, implying that Cicero and Clodius were working together while not explicitly assigning responsibility. Cicero creates a similar distance in writing to Quintus that the elections for 53 BCE have been continually postponed due to contrary omens “by the great willingness of all good men [*magna voluntate bonorum omnium*].”<sup>48</sup> Cicero knows that political opposition, not divine disfavor, is behind these “omens”; his phrase preserves a pious fiction by distancing the *boni* from their own tactics.<sup>49</sup>

Cicero seeks the same kind of protective distance in his famous “palinode” for Caesar, *De provinciis consularibus*. The speech to his fellow senators aims at a delicate and awkward goal. Though having vocally opposed Caesar’s land redistribution bill, and with his personal distaste well known, Cicero must now both support Caesar’s tenure in Gaul and suggest their relationship is sounder than it looks:

If you also thought it important to the good cause that Caesar’s will should not run counter to my well-being [*voluntatem Caesaris a salute mea non abhorrere*]; and if I have his son-in-law [Pompey], who is at once my witness for Caesar’s goodwill to me [*mihī testis de voluntate Caesaris*], and guarantor of my own to him . . . should I not eradicate from existence those most unhappy matters, at least wholly banish them from my heart? (43)

<sup>46</sup> Ibid. 63.    <sup>47</sup> *Att.* I.II.I.    <sup>48</sup> *Qfr.* 23.2.

<sup>49</sup> Divination is a Roman institution that presents a special challenge for Cicero. It is part of the *mos maiorum*, it is a useful tool for suppressing *popularis* agitation, and yet its claims to reading divine will in entrails cannot be taken literally. As he explains in a letter to Aulus Caecina, he believes the practice of divination – like the rest of Roman politics – can be reimagined as augury by reflection on history and nature’s laws; *Fam.* 2.234.2–12. Cf. *Sest.* 33–34; *Leg.* 2.21, 3.27; Polyb. 6.56.11; Lintott 1999, 187–90; Lévy 2020b.

The awkwardness of the moment impels Cicero to try not one but three rhetorical tricks: (1) the association of Caesar with his “son-in-law” Pompey, still a senate favorite; (2) the association of the senate with Caesar’s support; and (3) a qualified reference to his own rapprochement. The “reconciliation” of Caesar and Cicero is not between the two men personally, but rather between Caesar’s *voluntas* and Cicero’s *salus*. These semantic niceties help Cicero navigate a most uncomfortable turn of events.

### 3.3 *Voluntas as Affiliation*

A well-attested sense of the Greek *prohairesis* was an individual’s choice of life path.<sup>50</sup> Though this sense of *voluntas* was probably not original to Cicero,<sup>51</sup> he makes inventive use of it in his account of Rome’s civil strife. For decades, rival coalitions of *populares* and *optimates* had vied with one another with increasing violence.<sup>52</sup> Unwilling and unfit to join a battle of arms, Cicero attempts a maneuver in the combat of ideas. In his speech for Sestius (56 BCE), he explains:

There have always been two classes of men [*duo genera*] in this State who have sought to engage in public affairs and to distinguish themselves in them. Of these two classes, one willed to be, by repute and in reality, “the people’s men,” the other, “best citizens” [*alteri se populares, alteri optimates et haberi et esse voluerunt*]. (96)

He continues:

“Who then are these best citizens of yours?” In number, if you ask me, they are infinite; for otherwise we could not exist . . . All are “best citizens” who are neither criminal nor vicious in disposition, nor frantic, nor harassed by troubles in their households [*Omnes optimates sunt, qui neque nocentes sunt nec natura improbi nec furiosi nec malis domesticis impediti*]. (97)

In a move much imitated by modern politicians, Cicero thus reframes party labels to his and his allies’ advantage. Against the idea that Rome’s two political *genera* represent a recent emergency, Cicero claims that it was *always* the case that Roman leaders willed to be *optimata* or *popularis*. *Voluerunt* thus carries a double kind of permanence: lifelong commitment

<sup>50</sup> See Merker 2016, 364–71.

<sup>51</sup> In the opening lines of the Verres prosecution (70 BCE), his first major case, Cicero anticipates the criticism of abandoning the defense bar, of “a sudden change of will toward prosecution [*subito nunc mutata voluntate ad accusandum descendere*];” *Div. Caec.* 1. It is likely that this usage was already current if Cicero uses it without explanation in a forensic speech.

<sup>52</sup> See Brunt 1971, 74–111.

to one of two political tribes, themselves a permanent feature of the Roman landscape.<sup>53</sup> Interestingly, Cicero first gives equal treatment to the two camps, saying that these partisans sought to *habere* and *esse* their affiliation. He then shifts course, expanding the definition of *optimatus* from the moneyed elite to all Romans rich and poor who seek “calm with dignity” (*cum dignitate otium*, 98).<sup>54</sup> Cicero’s new framework excludes only those who are “by their natures unsound” (*natura improbi*) – an unobvious reference to his *popularis* opponents. In other words, the “party spirit” first presented as a venerable choice of sides is refashioned such that only criminals could fail to be considered “best citizens.”<sup>55</sup>

In the seventh Philippic, Cicero attempts a similar argument to reframe the political affiliations of his enemies – here, the allies of Mark Antony who remain in Rome:

Hence we see that all along they disliked the best condition of the community, and that they were not willingly the “people’s men” [*non voluntate fuisse popularis*]. How else does it happen that the same folk who were “people’s men” in evil causes prefer to be criminal rather than “popular” in the most popular cause that ever was, being also for the good of the Republic?<sup>56</sup>

We see the great distance that “willingness” has traveled from its Plautine origins as a lack of compulsion.<sup>57</sup> Cicero is certainly not claiming that these allies of Antony were forced to be *popularis*; rather, their current criminal behavior proves the insincerity of their previous *voluntas* (here, “adherence”) for the *popularis* cause. In a deft rhetorical turn, Cicero argues that whereas these men were false *populares*, he is now – due to the present emergency – a truer *popularis* than they are!<sup>58</sup> Here, the bivalence of will – its ability to serve good or evil – collides with Cicero’s normative ends. Instead of condemning his opponents’ “evil wills,” he wants instead to argue that they do not really have a “will” at all: Their *voluntas* is faulty, derived from a shaky grasp of public affairs.<sup>59</sup> Will as party affiliation can also be weighed and measured, as when Cicero laments that the gifted

<sup>53</sup> This type of *voluntas* as political affiliation should not be confused with *voluntas in* (or *erga*) *rem publicam*, a form of “public goodwill” more closely related to the *voluntas mutua* between statesmen, as explored in the following chapter. See, e.g., *Verr.* 1.34; *Cat.* 4.9; *Phil.* 1.10, 2.13, 2.30.

<sup>54</sup> There is a rich body of scholarship on this phrase that can only be acknowledged in passing here. See, e.g., Boyancé 1941, 172–91; Wirszubski 1954, 1–13; Wood 1988, 193–99; Frede 1989, 83–84; Kaster 2006, 32; McConnell 2014, 33–34; Zarecki 2014, 57–58.

<sup>55</sup> In an inverse and particularly daring act of reframing, in his first speech before the Roman people as their consul Cicero “reveals” himself as a *popularis* and proceeds to redefine *popularis* toward his own political views. See *Leg. agr.* 2.6–7. Cf. Morstein-Marx 1998, 262–63.

<sup>56</sup> *Phil.* 7.4. <sup>57</sup> See Chapter 1. <sup>58</sup> *Phil.* 7.4–5. <sup>59</sup> Cf. Yavetz 1969, 41–57.

*popularis* C. Gracchus was not “turned toward a better mind and will [*ad meliorem mentem voluntatemque esse conversā*].”<sup>60</sup>

As conflict deepens between triumvirs and senate, Cicero faces a dilemma over where his own *voluntas* should lie. In a letter to Lentulus Spinther in 54 BCE, he describes feeling caught between the ideals of a *bonum civem*, loyalty to the Republic over faction, and a *bonum virem*, honoring his friendship with Caesar and Pompey.<sup>61</sup> In this tour de force of rationalization, Cicero floats three separate arguments, each of which hinges on *voluntas* as a deep but alterable affiliation. He first pleads the superior claim of Pompey’s service to the Republic and their bonds of friendship. How could Cicero be criticized if “in certain speeches I changed my tack a little and aligned my will with the dignity of this great man [*me immutassem meamque voluntatem ad summi viri de meque optime meriti dignitatem adregassem*]?”<sup>62</sup> Second, he complains that even if he had kept his former stance, there are no longer *optimates* worthy of the name: “[A]ccordingly, men of sense, of whom I hope I am and am considered to be, have now completely to reshape their will and position [*et sententia et voluntas mutata esse debet*]” (20.18).<sup>63</sup> In a final appeal to Lentulus, Cicero maintains that, after all, it was the *boni* who shifted their wills first (*ac bonorum voluntatibus mutatis*, 20.21), and therefore, “we must move with the times [*temporibus adsentendum*].”<sup>64</sup> Besides suggesting what we would call a guilty conscience, this variegated plea shows the importance of *voluntas* as affiliation and the lengths to which Cicero went to justify his own.

### 3.4 Boundaries of Political Will

#### 3.4.1 *The Status Quo and Its Problems*

As Straumann demonstrates, Roman constitutionalism was, somewhat paradoxically, the result of political failure. Derived in great part from unwritten norms,<sup>65</sup> the principal constraints of the early republican

<sup>60</sup> *Har. resp.* 41. <sup>61</sup> *Fam.* 1.20.10. <sup>62</sup> *Ibid.* 1.20.11.

<sup>63</sup> An echo of this rationalization can be heard in the famous remark of the conservative US President Ronald Reagan, a former trade unionist: “I didn’t leave the Democratic Party, the Democratic Party left me.” Remarks delivered at Rosemont, Illinois, August 12, 1986 (video available at [https://commons.wikimedia.org/wiki/File:President\\_Reagan%27s\\_Remarks\\_at\\_Illinois\\_State\\_Fair\\_on\\_August\\_12,\\_1986.webm](https://commons.wikimedia.org/wiki/File:President_Reagan%27s_Remarks_at_Illinois_State_Fair_on_August_12,_1986.webm)).

<sup>64</sup> *Fam.* 1.20.11; cf. *Prov. cons.* 25, referring to Caesar’s persuasion of the senate, *posteaquam rebus gestis mentes vestras voluntatesque mutastis*.

<sup>65</sup> Straumann 2016, 47–62. On the Republic’s diverse sources of constitutional law, see also Lintott 1999, 3–8.

constitution were procedural and temporal, not substantive. Despite endemic tensions between patricians and plebeians, laws passed by proper order in the assemblies were typically perceived as legitimate, especially following the *Lex Hortensia* of 287 BCE.<sup>66</sup> As we have seen in this chapter, a magistrate's scope of action was limited by the complementary powers of his colleagues and the expiration of his term of office – following which, in extreme cases, he could be prosecuted for abuses of power.<sup>67</sup> While “entrenched” norms such as the individual right to a trial before the people (*provocatio*) are in evidence prior to the Gracchan crisis,<sup>68</sup> explicit arguments for those norms – properly “constitutional” claims – only emerge, in Straumann's view, in the partisan battles of the late 2nd and early 1st centuries BCE.<sup>69</sup> Only as the constitution was collapsing, in other words, did constitutional thought come into its own.

Could a people's assembly give Sulla the power to declare Roman citizens enemies of the state?<sup>70</sup> Could a law to redistribute land be held invalid in the face of a higher-order right to property?<sup>71</sup> Though sources for disputes like these are often from Cicero's lifetime or later, Straumann shows how *ius* and *mos maiorum* may have been increasingly evoked after 132 BCE to annul otherwise lawful acts. His main area of focus involves the limits to popular legislation, a topic I examine more fully in Chapter 5.<sup>72</sup> For the purpose of individual magistrates, the point is that by Cicero's lifetime the collapse of traditional “checks and balances” required new forms of argument to counter the willful and ambitious.<sup>73</sup>

The problem of legitimacy was mirrored in the essential instability of *voluntas* in common usage: The same word marked both a lawful decision and the personal desires one might place above the law. This linguistic ambiguity was reflected in the problem of self-help: Since Rome had no state police force, when a magistrate invoked emergency powers, he was not only able but expected to enforce those powers with violence.<sup>74</sup> As

<sup>66</sup> Livy, *Per.* 11; Pliny, *HN* 16.37; Gell. *NA* 15.27.4.

<sup>67</sup> See Lintott 1999, 14–15, 26, 94–104. The standard legal language was “as they judge to be in accordance with the public interest and their own good faith.” *Ibid.* at 94.

<sup>68</sup> I use Straumann's term. For *provocatio*, see also Brunt 1971, 64–67; Lintott 1999, 33–34.

<sup>69</sup> Straumann 2016, 30–62; cf. Lintott 1999, 89–93.

<sup>70</sup> Brunt 1971, 104–11; Lintott 1999, 210–13; Straumann 2016, 77–100.

<sup>71</sup> Brunt 1971, 77–79; Lintott 1999, 96; Straumann 2016, 139–45.

<sup>72</sup> Straumann 2016, 119–29.

<sup>73</sup> Lintott argues that the principle of collegiality should not be seen “as a form of constitutional check” *de jure* but notes many examples of magistrates having power to assist or obstruct their colleagues in practice. Lintott 1999, 99–120.

<sup>74</sup> Finley 1983, 130, relates the institution of the *senatus consultum ultimum* to habits of military obedience “deeply embedded in the psyche of the ordinary Roman citizen.” In a society without

a young orator, Cicero exploits this ambiguity when it suits his needs. He could argue that the seemingly dubious *voluntas* of a magistrate was legitimate, as in the case of Sulla, for whom “the people of Rome passed a law that gave his own will legal force [*legem populus Romanus iusserat ut ipsius voluntas ei posset esse pro lege*].”<sup>75</sup> Conversely, in another case he cautions a jury not to accept the censors’ judgment against his client as binding, being “their will or opinion, whichever it was [*sive voluntas sive opinio*].”<sup>76</sup> Similarly, he describes the augurs’ assignment of Verres to the city praetorship as “more gratifying to his own will and Chelidon’s than to the will of the Roman people [*magis ex sua Chelidonisque, quam ex populi Romani voluntate*].”<sup>77</sup> Even where Cicero admits that a magistrate’s *voluntas* was used legally, he can signal that political will and public interest may not be the same.<sup>78</sup>

### 3.4.2 Cicero’s Bounded *Voluntas*

As he confronts the rise of violence and the shattering of old norms, Cicero pleads more strenuously for rational limits to the exercise of political will. Reading together references from his letters and speeches, we find the primary tenets of the pluralist system he envisions.

Firstly, each of Rome’s public officials has a scope of action within which he can exercise independent judgment. In his letter to Quintus on how best to govern a province, Cicero advises his brother that his signet ring, symbol of his magistracy, be “not the tool of other men’s wills but the witness of your own [*minister alienae voluntatis sed testis tuae*].”<sup>79</sup> Like *imperium*, will carries the double sense of the governor’s decision at a given moment and a durable faculty or power.<sup>80</sup> Depending on his place in the hierarchy, a magistrate should be expected to carry out the wills of others;<sup>81</sup> so, too, was he free to alter his own will as circumstances

prisons, moreover, “force” meant either exile or, more often, death. See Nippel 1995, 16, 25; Lintott 1999, 149–62.

<sup>75</sup> *Verr.* 2.3.82 (after Loeb trans.). <sup>76</sup> *Clu.* 125.

<sup>77</sup> *Verr.* 1.104. See also *ibid.* 2.3.69, certain Sicilians submitted to a rigged judicial proceeding “rather than to submit to any terms dictated by [Verres’] own will [*quicquam cum isto voluntate denique*];” cf. *Leg. Agr.* 2.64, if unprecedented powers are given to agrarian decemvirs, they will “buy whatever and from whomever suited his will [*ex sua voluntate fecisset, tum denique emeret, a quibus vellet*].”

<sup>78</sup> See, e.g., *Att.* 1.19.4, Pompey “set his will upon the bill going through [*ad voluntatem perferendae legis incubuerat*];” *Mur.* 46, the prosecutor Sulpicius passed superfluous antibribery legislation by “your will and standing [*et voluntati et dignitati tuae*].”

<sup>79</sup> *QFr.* 1.1. See also *Prov. cons.* 18.43; *Att.* 1.17.7; *Fam.* 1.91.2.

<sup>80</sup> See *Verr.* 1.153; *Caecin.* 56; *Att.* 1.17.7; *Phil.* 2.13. On *imperium*, see Lintott 1999, 96.

<sup>81</sup> *Fam.* 1.68.5.

changed.<sup>82</sup> Critically, his will operates within a framework of written law, as when Cicero accuses Verres of subverting *voluntate ac sententia legis*.<sup>83</sup> In sum, a magistrate's will, though unforced, should align both with the statutes and customs of the past and with the *consilia* of Rome's best men.<sup>84</sup> As such, a wise statesman both honors and augments the *voluntas* of Rome's ancestors.<sup>85</sup>

Secondly, in Cicero's republic, will is not singular and self-regarding but one voice in a polyphony. Though independent in judgment, a leader must take account of where his colleagues stand, as does the consul-elect Plancius in "elicit[ing] the wills of my fellow governors and commanders in adjoining provinces [*eliciendae etiam voluntates reliquorum*]."<sup>86</sup> Those of more senior rank will expect and deserve deference on certain matters,<sup>87</sup> requiring prudent compromise; Cicero affirms to Atticus that even in the second speaking slot reserved for ex-consuls, "one's will is not too much fettered by one's sense of the consular favor [*voluntatem non nimis devinctam beneficio consulis*]."<sup>88</sup> In all things, one must respect the wills of one's colleagues and not harm or diminish (*laedere*) them.<sup>89</sup> Hard cases arise when private and public status collide. When the tribune Flaminius carries a land bill "against the wishes of the senate and in contrary to the wills of the best men [*invito senatu et omnino contra voluntatem omnium optimatum*]," his father exerts *patria potestas* and drags him off the rostrum.<sup>90</sup> But

<sup>82</sup> See, e.g., *Fam.* 1.20.18–21; *Rosc. Am.* 95. <sup>83</sup> *Verr.* 2.3.193.

<sup>84</sup> See *Caecin.* 56, in which the rejected line of argument flouts "the principles of law, the force of the injunction, the will of the praetor, the policy and authority of wise legislators [*ratio iuris interdictique vis et praetorum voluntas et hominum prudentium consilium et auctoritas*]"; cf. *Leg. Man.* 69; *Mur.* 70.

<sup>85</sup> When referring to rules established by the *maiores*, Cicero characterizes them of having "willed" (*velle*) these laws. See, e.g., *Rosc. Am.* 151 (that both juries and senate hold *consilium publicum*); *Clu.* 120 (that judges be accepted by both disputants); *Leg. agr.* 2.15 (that tribunes be guardians of liberty); 2.18 (that the *pontifex maximus* be elective); 2.26 (that certain offices be elected by two *comitia*); *Flac.* 15 (that *contiones* be subject to *comitia* process); *Dom.* 74 (that urban *plebs* have *conventicula*, "little councils").

<sup>86</sup> *Fam.* 3.371.3.

<sup>87</sup> Cf. *QFr.* 6.3, Cicero's duty was to "[meet] Pompey's wishes in fine style [*voluntati Pompei praeclare satis fecimus*]"; see also *Fam.* 1.19.2, 1.61.1.

<sup>88</sup> *Att.* 1.13.2. See also *QFr.* 1.32, Cicero's warning to Quintus, regarding the thorny matter of the Roman tax farmers in Asia, of the "great obstacle to this your will and endeavor [*difficultatem magnam . . . huic tuae voluntati ac diligentiae*]."

<sup>89</sup> See *Flac.* 6, the accusation that Flaccus' administration of justice "flouted the wills of many men of influence [*tot hominum gratiosorum laesae sint voluntates*]"; cf. *Rosc. Am.* 145. Cicero's use of *laedere* recalls the definition of an "offensive argument" (*offensum*) in *De inventione* as "one which wounds the sensibilities of our audience [*quod eorum qui audiunt voluntatem laedit*]"; *Inv.* 1.92.

<sup>90</sup> *Inv.* 2.52. Cicero gives the example of Flaminius as a classic "hard case" of *lèse-majesté*. Later sources are clearer that *patria potestas* does not carry into the exercise of a son's public functions; see *Dig.* 1.6.9: "A *filius familias* counts as a *paterfamilias* in public affairs, e.g. for holding magistracies or



these hard cases underscore the general principle that the *voluntas* of each man be proportional to his place in a common order.

Thirdly, a statesman should use the notion of will to temper conflict. In its legal sense, to act *contra voluntatem* meant to defy a person with *auctoritas* over oneself; Cicero uses this sense in reassuring his ill servant Tiro that he has not acted *contra meam voluntatem* in remaining absent.<sup>91</sup> In his politics, however, he often seeks to portray opposition not as defiance but rather as a temporary dissonance of will. When assigned the second slot in the speaking list of ex-consuls, Cicero counters the slight by observing that it will allow him to speak *contra voluntatem* of the first-place Piso, a former legal client he doesn't much like.<sup>92</sup> Positioning himself between *optimates* and triumvirs after the conference at Luca, Cicero notes bitterly that since speaking *contra Pompei voluntatem* had not won over the *boni*, he might as well tack toward Pompey again.<sup>93</sup> In both of these cases, the phrase *contra voluntatem* makes clear that speaking against Piso or Pompey in the senate does not mean that the men are eternally *inimici*. Cicero's opposition is not aimed at their persons but their *personae*.<sup>94</sup> Some of his peers apparently accepted this usage; Lepidus, on the march against Antony, pardons Silanus and Culleo out of considerations of past friendship, despite their having assisted Antony *contra meam voluntatem*.<sup>95</sup> The phrase thus gives a stable frame to an otherwise provocative act, depersonalizing the conflict and favoring a reconciliation.<sup>96</sup>

### 3.4.3 Outer Limits: Violence and Temeritas

As we have seen, the earliest surviving use of *voluntas* is the ablative *voluntate* to signify willing action.<sup>97</sup> In Cicero's corpus, the word underpins one of his closest-held convictions: that brute force should yield to free choice in public affairs. In *De inventione*, he proposes that justice first arose in human society when, by the power of oratory, men abandoned

guardianships"; *Dig.* 36.1.14: "[T]he right of parental control does not apply to the duties of public office [*quod ad ius publicum attinet non sequitur ius potestatis*]." Cf. Crook 1967, 109; Lintott 1999, 35–36; Arena 2012, 23–25.

<sup>91</sup> *Fam.* 2.185.1. In a less formal sense, it can signify any act of speech contravening someone of greater power. See, e.g., *Rosc. Am.* 18, 48, 60; *Verr.* 2.3.39, 2.3.135; *Fam.* 1.65.1; *Mur.* 42.

<sup>92</sup> *Att.* 1.13.2. <sup>93</sup> *Ibid.* 1.80.2.

<sup>94</sup> The idea of *persona civitatis* ("role of state") is one Cicero later develops in *De officiis*; see *Off.* 1.124, discussed in Chapter 8.

<sup>95</sup> *Fam.* 3.396.2.

<sup>96</sup> For other occurrences of *contra voluntatem* to reduce political conflict, see, e.g., *Att.* 1.42.2, 4.310.2; *Sull.* 32. The usage had resonance in Cicero's personal life as well; see *Att.* 1.17.7.

<sup>97</sup> See discussion in Chapter 1.

rule by the strongest and learned “to obey others willingly [*aliis parere sua voluntate*].”<sup>98</sup> Similarly, in Book 3 of *De republica*, Laelius argues that the Republic will decline “if the habit of lawlessness begins to spread and changes our rule from one of justice to one of force [*ad vim a iure traduxerit*], so that those who up to the present have obeyed us willingly are held faithful by fear alone [*qui adhuc voluntate nobis oboediunt, terrore teneantur*].”<sup>99</sup> Both at the Republic’s beginning and at its end, the primacy of lawful will over brute force is Cicero’s criterion of civilization.

Free choice is, Cicero insists, the very soul of Roman law. In his defense of Caecina, Cicero asserts that no citizen can be compelled to renounce his citizenship: Those Romans who downgrade their status by joining colonies do so “either of their own will or to avoid a penalty imposed by law [*aut sua voluntate aut legis multa profecti sunt*]: had they been willing to undergo the penalty, they could have remained within the citizen body.”<sup>100</sup> He employs a similar argument to ensnare Verres’ lawyers, who had accused his Sicilian witnesses of bias. Cicero argues that certain statues erected in Verres’ honor were either *sua voluntate statuisse* (“set up of their own will”), refuting the alleged bias, or were extorted illegally by Verres himself.<sup>101</sup> “Will anyone doubt,” Cicero concludes, “that a man who is bound to be your deadly enemy, who has sustained the heaviest wrongs at your hands, paid the money supposed to be for your statue because he was ordered and forced [*vi atque imperio adductus*], and not because he was obligated or willed it [*non officio ac voluntate*]?”<sup>102</sup> The contrast of *vis* and *voluntas* and the link between the farmers’ will and their duty frame the justice of Cicero’s claim.<sup>103</sup> At the other end of the moral spectrum, Cicero decries the evil *voluntas* of Catiline’s cronies and links Clodius’ *voluntas* to his *impudentia*, *audacia*, and *cupiditas*.<sup>104</sup> Rather than resolve the bivalence in

<sup>98</sup> *Inv.* 1.3.

<sup>99</sup> *Rep.* 3.41. Cf. *ibid.* 1.11, a wise man does not generally descend *sua voluntate* into statecraft but does not decline the duty when circumstances require.

<sup>100</sup> *Caecin.* 98. The more natural English expression is “of their own free will.” I take up the relation of *libertas* and *voluntas* in Chapters 4 and 6. On lack of coercion as a principle of Roman law, cf. *Balb.* 27: The legal principle governing citizenship “depends not merely upon the laws of the State but also upon the will of individuals [*non solum in legibus publicis positum, sed etiam in privatorum voluntate*].”

<sup>101</sup> *Verr.* 2.2.151. <sup>102</sup> *Ibid.* 2.2.153.

<sup>103</sup> In a telling contrast, years later Cicero relates to Quintus that the communes of Asia had proposed to dedicate temples to him “by their highest will [*summa sua voluntate*] in recognition of their great indebtedness to me and the signal benefits of your government”; *QFr.* 1.26 (60 or 59 BCE). The phrase is infelicitous in English but captures that the dedication was not only “willing” (i.e. uncoerced), but that the communes themselves initiated it. Cicero claims to have graciously declined the offer.

<sup>104</sup> *Dom.* 166.

his notion of will, Cicero heightens it for rhetorical effect. This nebulous space between lawful and self-serving will is the gap through which Caesar will march his legions.

The utmost expression of will was *temeritas*. The word's etymology is complex. It shares the same root as *tenebra*, a shadow, yet Cicero also links it to the Greek *propeteia*, "running beyond the mark" in a moral sense.<sup>105</sup> In nonphilosophical use, the word covers a wide spectrum from simple thoughtlessness to criminal ambition.<sup>106</sup> Its political purpose, however, is to mark the responsibility of actors whose volition carries them beyond ancestral norms. Cicero locates *temeritas* in the arrogance of his *popularis* enemies;<sup>107</sup> in his speech for Plancius, he accuses them of carrying the Roman people along with them in their recklessness, "by impulse and temerity [*impetu . . . et quadam etiam temeritate*]."<sup>108</sup> *Temeritas*, Cicero wants to say, is will unbridled by reason.<sup>109</sup> But whereas Cicero's typical adversaries can be painted as reckless monsters, the case of Caesar is not so simple. His cognitive gifts are beyond question; his excesses cannot be compared to the *temeritas* of a grasping child, as Cicero does with Piso.<sup>110</sup> Cicero insists that Caesar's unbounded will is *temeritas*, but rather than emphasizing its lack of self-control, he focuses instead on the "error of opinion" (*opinionis error*) that led such a brilliant man to a misguided use of his will.<sup>111</sup> Unsurprisingly, Caesar rejects this label – *nihil temere agendum*, he writes in *Bellum Gallicum*<sup>112</sup> – and he may also have applied Greek ideas to suit his needs. Lévy observes: "Caesar, perhaps because he had learned from Epicureanism that action is determined by calculation, asks his soldiers for an unwavering will, which is something else entirely from *temeritas*."<sup>113</sup> Cicero calls for a rationally bounded will; Caesar, only an unfailing one.

### 3.5 Caesar's *Voluntas*

Caesar had several assets in his drive to refashion the rule of law around himself. There was the immediate pretext of Pompey's overreach and

<sup>105</sup> *Temere, temeritas*. Ernout and Meillet 1960, 683; Hellegouarc'h 1963, 247, 258. Cicero uses *temeritas* over 200 times in his corpus. See generally Lévy 2018.

<sup>106</sup> See, e.g., *Inv.* 1.25, 2.10; *Prov. cons.* 11; *Att.* 9.10.2, 11.8.1. Cf. Lévy 2018, 6. <sup>107</sup> *Rep.* 1.52.

<sup>108</sup> *Planc.* 9. On *temeritas multitudinis*, see *Sest.* 103; *Mil.* 11; *Flac.* 19.

<sup>109</sup> Cf. *Marcell.* 7; *Tusc.* 2.47. <sup>110</sup> *Pis.* 39.

<sup>111</sup> *Off.* 1.26: "We saw this proved but now in the effrontery of Gaius Caesar, who, to gain that princely power which by a depraved imagination he had conceived in his fancy, trod underfoot all laws of gods and men [*Declaravit id modo temeritatis C. Caesaris, qui omnia iura divina et humana pervertit propter eum, quem sibi ipse opinionis errore finxerat, principatum*]."

<sup>112</sup> *Caes. BGall.* 5.28.3. <sup>113</sup> Lévy 2018, 4.

the senate's dubious treatment of his allies.<sup>114</sup> More importantly, he could call on the venerable principle of self-help: Victims of a crime, whether private or public, bore the primary responsibility to redress it. Where the danger was particularly grave and urgent, Roman tradition allowed for the emergency use of force, as Cicero himself had sanctioned against Catiline and his allies. Curiously, in that very case Caesar may have argued to constrain the will of Rome's consul by citing a law that extended *provocatio* to the military sphere – a speech in which, if Sallust is correct, Caesar warned about the precedent of removing limits to individual power!<sup>115</sup> Caesar famously exploits the institution of the dictatorship – to which he had been elected by a vote of the assembly<sup>116</sup> – and the precedent of Sulla, whose *voluntas* Cicero admits had been given the force of *lex*.<sup>117</sup> Consequently, Caesar did not need to invent a new vocabulary to justify his regime – only stretch the one that already existed.<sup>118</sup>

If Cicero's *voluntas* is a force governed by ethical restraint, the dictator's will obeys only itself. Merely describing this new order could be a struggle. Cicero writes to a friend that Caesar's consolidation of power has made all things uncertain, "when the path of legality has been forsaken, and that there is no guaranteeing the future of what depends on someone else's will, not to say his whims [*quod positum est in alterius voluntate ne dicam libidine*]." <sup>119</sup> Each of the principles Cicero had defended – that individual will be constrained, balanced, and uncoerced – Caesar rejects. Freedom of speech is gone; Cicero must "say nothing offensive to his will or those of people he likes."<sup>120</sup> Caesar's intentions are now the only ones worth mapping: Cicero finds himself reassuring the senate that no one could doubt "what is Caesar's will with regard to war [*quae Caesaris de bello voluntas fuerit*]," <sup>121</sup> and he is at pains to excuse any wartime actions "less according to Caesar's will" (*minus ex Caesaris voluntate*) as "extremely unwilling" (*invitissimum*) and "someone else's idea" (*aliorum consilio*).<sup>122</sup> A man's orientation to Caesar's will is now the sole indicator of his standing, as when Cicero pleads to Caesar that Ligarius had never been

<sup>114</sup> See Rawson 1975, 184–90. <sup>115</sup> Sall. *Cat.* 51.21–36; cf. Straumann 2016, 130–32.

<sup>116</sup> Caes. *BCiv.* 2.21.5; Dio Cass. 41.36.1. On the evolution of the dictatorship, see Straumann 2016, 74–88.

<sup>117</sup> *Verr.* 2.3.82. <sup>118</sup> See Yavetz 1969, 41–57. <sup>119</sup> *Fam.* 2.190.3.

<sup>120</sup> Ibid. Atkins 2018a, 768–70, argues that the blow to Cicero's freedom is not primarily due to his submission to Caesar's arbitrary will, but rather that Caesar has foreclosed the political space needed by Cicero and his elite colleagues to enhance their own *dignitas* through political action.

<sup>121</sup> *Marcell.* 15. <sup>122</sup> *Fam.* 3.282.7. Cf. *Att.* 3.176.1, 3.200.1.

“distant from your will [*alienae a te voluntatis*],”<sup>123</sup> or when Caecina worries that Caesar has judged some of his writing to be *contra suam voluntatem*.<sup>124</sup> To act *contra voluntatem Caesaris* was no longer to create a temporary opposition in a stable order, but rather to defy the *voluntas patris* of Rome itself.

After Caesar's death, Cicero was briefly optimistic that Rome's traditional equilibrium could be restored. He thanks Oppius for his advice that Cicero join Pompey's camp, in which “you thought more of my duty than of [Caesar's] will [*antiquius tibi officium meum quam illius voluntas fuit*].”<sup>125</sup> The restoration of Rome's liberty is, in Cicero's retelling, a triumph of many wills over one: “And so, all decent men killed Caesar so far as it was in them to do so: some lacked design, some courage, some opportunity; none lacked the will [*aliis consilium, aliis animus, aliis occasio defuit, voluntas nemini*].”<sup>126</sup>

Yet history shows that Caesar accelerates a semantic process in which an *imperator's* will would not only be unbound by constitutional restraint, but would become the very source of law. As the dictator's heirs take control of the “restored” republic, they cannily adjust the language of authority. The jurist Modestinus writes, regarding the crime of electoral bribery (*ambitus*) against which Cicero had so often inveighed: “[T]his law is obsolete in Rome today, because the creation of magistrates belongs to the care of the emperor, not the favor of the people [*quia ad curam principis magistratum creatio pertinet, non ad populi favorem*].”<sup>127</sup> The overturning of republican tradition is accomplished not by direct attack but by the introduction of new phrases – “the care (*cura*) of the emperor” – suggesting a benevolent *paterfamilias*, not a domineering *tyrannus*. In civil disputes, a citizen's *voluntas* remains a key criterion of justice,<sup>128</sup> but in high public matters, as Ulpian writes, “that which has been decided by the emperor has the force of law [*quod principi placuit, legis habet vigorem*].”<sup>129</sup> And yet, an idea of constraint lingers in the Roman legal psyche. To the above dictum, the jurist adds this explanation: “because the emperor himself is given his *imperium* and power by a law of the people [*utpote*

<sup>123</sup> *Lig.* 6; see discussion in the Introduction.

<sup>124</sup> *Fam.* 2.237.2. See also *ibid.* 3.319.1, Cicero praises a legate for carrying out his orders “according to the will of Caesar [*ex voluntate Caesaris*].”

<sup>125</sup> *Fam.* 3.335.1. <sup>126</sup> *Phil.* 2.29. <sup>127</sup> *Dig.* 48.14.1.

<sup>128</sup> See, e.g., *Dig.* 1.6.8pr., 1.7.5, 1.7.18. Cf. *Dig.* 1.1.10pr (Ulpian): “Justice is the constant and perpetual will to render to each what is his [*Iustitia est constans et perpetua voluntas ius suum cuique tribuendi*].”

<sup>129</sup> *Dig.* 1.4.1.

*cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat*].”<sup>130</sup> Centuries after Cicero, the unbound-  
edness of imperial will continued to complicate Rome’s greatest idea: its  
rule of law.

<sup>130</sup> Ibid. See also *Dig.* 1.3.32: “For given that statutes themselves are binding upon us for no other reason than that they have been accepted by the judgment of the populace, certainly it is fitting that what the populace has approved without any writing shall be binding upon everyone. What does it matter whether the people declares its will by voting or by the very substance of its actions [*nam quid interest suffragio populus voluntatem suam declaret an rebus ipsis et factis*]?” (trans. Watson).