

# Officers of the People: On Tribunes, Censors, and Protectors

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## ABSTRACT

Contemporary democracies have an oligarchic problem. Extreme inequality of wealth has resulted in corruption and the systematic violation of the rights of the most vulnerable in society. To help redress patterns of abuse, constitutions have incorporated autonomous watchdog institutions, such as the ombudsman. However, they have been mostly unsuccessful, lacking binding power to force governments to make changes and adequately protect people from oppression. To envision more effective watchdog institutions for our oligarchic times, in this article I offer, as resources for institutional imagination, a review of two ancient anti-oligarchic monitoring offices, the Roman Tribune and Censorate, their reverberations in history, and their reinterpretation and repurposing in the history of ideas. I show that there are two strands of interpretation: one elitist, in which these offices have little power and are subordinated, and another plebeian, in which these are conceived as anti-oligarchic offices, powerful enough to control the ambition of the few. Based on these experiences, I sketch a proposal for an Officer of the People, a collective office empowered to effectively guarantee human rights, redress patterns of abuse, and curb corruption.

We are living in an age of acute oligarchisation, in which the super rich profit through global corporations that exploit humans and nature at unprecedented rates. While records show that the material power of oligarchy rose during the COVID-19 pandemic, with the richest 10% of the world's population owning a staggering 76% of the global wealth,<sup>1</sup> the inequality problem is even worse than we are able to measure; the proliferation of tax havens makes it impossible to account for the millions secretly stashed away by the super rich.<sup>2</sup> While persistently high levels of wealth inequality evidence the lack of institutional solutions to the apparently endless accumulation of capital, pervasive precarity and poverty show that human rights are not adequately guaranteed within the rule of law.

Even if most countries are governed by representative democracies that recognize basic rights in their constitutions, too often the rights of the most vulnerable are not respected in practice. Structural forms of domination coexist with constitutional protections, and basic rights such as access to clean water, housing, and healthcare are violated all around the world, even in the most 'advanced' democracies. For example, In the United States nearly half of all rivers and lakes are contaminated,<sup>3</sup> more than half a million people are homeless,<sup>4</sup> and 530 thousand go bankrupt every year due to medical bills.<sup>5</sup> In the United Kingdom inequality is so acute that 17 people own more wealth than the bottom 50% of the population, and one in three preschool children live in poverty.<sup>6</sup> And even in the most egalitarian democracies such as Denmark, Norway, or Finland, the richest 10% of the population still appropriates about half of the total national wealth,<sup>7</sup> while profiting from extractivism and pollution mostly abroad.<sup>8</sup>

In the quest to find a solution to the increasing oligarchisation of power, democratic theory has been only marginally useful, offering proposals to reform, replace, or abolish basic institutions that have been captured by oligarchy. These paths have yielded either small gains, unlikely to produce transformation of the matrix of power in society, or seem extremely difficult to implement because representatives would have to agree to eliminate their own future power. Within an epistemic democracy framework, Hélène Landemore's recent push for incorporating non-binding mini-publics into representative democracies falls short at giving citizens effective power to set limits to oligarchy and protect communities and nature.<sup>9</sup>

If attempting reforms through corrupt institutions that are in the grip of oligarchy has proven challenging and mostly ineffective, replacing or abolishing these institutions seems virtually impossible through institutional means. Those in power want to hold on to it. Proposals to replace elected Senates with lottery-based ones, like the one proposed by Arash Abizadeh for example, even if not impossible,

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<sup>1</sup> Since 1999 wealth inequality has been slowly increasing. [World Inequality Database](#).

<sup>2</sup> The Tax Justice Network estimates that in 2023 there were \$21 to \$32 trillion in financial assets stashed in tax havens. <https://taxjustice.net/>

<sup>3</sup> "The Clean Water Act at 50: Promises Half Kept at the Half-Century Mark" *The Environmental Integrity Project* (March 16, 2022).

<sup>4</sup> Homeless Population by State 2022, [World Population Review](#)

<sup>5</sup> D. Himmelstein, et al., "Medical Bankruptcy: Still Common Despite the Affordable Care Act," *American Journal of Public Health* 109.3 (March 1, 2019): 431-433.

<sup>6</sup> "New Poverty Stats: One in Three Preschool Children Are Living in Poverty. That's More Than Any Other Age" Group Save the Children, 28 March, 2022.

<sup>7</sup> Denmark (51%), Norway (52%), Belgium (52%), Finland (56%), Iceland (56.5%), UK (57%), Canada (58.5%) and Sweden (59%). [World Inequality Database](#).

<sup>8</sup> For example, part of the Norwegian salmon farming industry operates in Chile, where it has polluted the waters and destroyed unique ecosystems. F. Asche, et al., "The Salmon Disease Crisis in Chile," *Marine Resource Economics*, 24.4 (2009), 405-11.

<sup>9</sup> H. Landemore, *Open Democracy: Reinventing Popular Rule for the Twenty-First Century* (Princeton: Princeton University Press 2020). See our critical dialogue in *Perspectives on Politics* 20.3 (September): 1059-1064.

would entail an extremely difficult, altruistic decision by political leaders to eliminate their own position of power.<sup>10</sup>

As resources for institutional imagination, this article offers an intellectual history of institutional solutions for the problem of oligarchy within the republican tradition, a theoretical framework emerging from the model of a dynamic *mixed* constitution in which counterpower institutions keep corruption at bay. Within this tradition, the way to deal with the inevitable oligarchisation of power haunting popular governments is not to *abolish* or *reform* core institutions, but to *add* new counterpower offices to the basic structure. If a new actor with binding power is inserted into the institutional field, the existing order is bound to adapt and radically change without the need for a total overhaul. And the same as Rome transitioned from an aristocratic to a popular republic through the introduction of the Tribune as a counterpower institutions, our oligarchic representative democracies could also transition towards a more plebeian political system, able to guarantee liberty to those who today are oppressed via the introduction of new anti-oligarchic watchdog institutions able to disrupt corruption patterns. I argue an ‘officer of the people’ empowered to detect systematic abuse that prevents the enjoyment of rights, and to redress it, could spearhead an anti-oligarchic/pro-plebeian process through which we could finally begin to bridge the gap between the few and the many, and stop the systemic corruption of representative democracies.

To reimagine anti-oligarchic offices for the current time, it seems fruitful to study ancient and modern institutions designed to serve similar purposes. Of special interest are offices devised to contain the power of the wealthy and, in this way, prevent the corruption of popular governments into oligarchies. The most powerful anti-oligarchic institutions in antiquity were the plebeian Tribune and the Censorate. Except for a few republican theorists like John McCormick, and historians like Cristina Rosillo López,<sup>11</sup> scholars have mostly neglected these offices as arcane institutions with trivial value for contemporary societies, and thus little has been written about them, especially since the early 1990s. To fill this gap in the scholarship, in the first section I offer a historical account of these ancient institutions in the Roman Republic. I also briefly engage with similar institutions that developed within dynastic empire in China and Spanish colonial rule in the Americas, to show the similarities of these offices tasked with overseeing government from the point of view of the oppressed.

Through a republican lens I argue that, in the reception of the Roman of offices in Europe, there are elitist and plebeian strands of interpretation and repurposing. In the second section I give an intellectual history of the elitist reception based on Cicero in the thought of Bodin and Rousseau. In the following section I engage with the plebeian reception, paying especial attention to the tribunician-censorial innovations contained in Machiavelli’s 1520 constitutional proposal for Florence, in the 1776 Constitution of Pennsylvania, and in Condorcet’s 1793 constitutional proposal for France. I dedicate the fourth and concluding section to a critical analysis of the contemporary heirs of the ancient and monitoring institutions —ombudsman offices and *defensorías*— and to offer a sketch for an anti-oligarchic institution that combines features of ancient and modern officers of the people: an

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<sup>10</sup> Probably ending their political careers. For a proposal for a sortition-based Senate see A. Abizadeh, “Representation, Bicameralism, Political Equality, and Sortition: Reconstituting the Second Chamber as a Randomly Selected Assembly,” *Perspectives on Politics* 19.3 (2021): 791-806.

<sup>11</sup> Most notably J. McCormick: “Contain the Wealthy and Patrol the Magistrates: Restoring Elite Accountability to Popular Government,” *APSR* 100.2 (2006), 147-163; “‘Greater, More Honorable and More Useful to the Republic’: Plebeian Offices in Machiavelli’s ‘Perfect’ Constitution,” *International Journal of Constitutional Law*, 8.2 (April 2010): 237–262; *Machiavellian Democracy* (Chicago: University of Chicago Press 2011). See also E.J. F. Drogula, “Plebeian Tribunes and the Government of Early Rome” *Antichthon*, 51 (2017), 101-123; C. Rosillo-López, “The Memory of Populism: Popular Tribunes and Popular Political Culture in the Late Roman Republic” in *Popularitas*, G. Urso, ed. (Rome: L’Erma di Bretschneider, 2021), 101–126.

assembly-based institution selected through a bottom-up procedure following the recent experiments with citizen assemblies in Belgium, Italy, France, and Ireland, and empowered to guarantee the adequate fulfilment of the rights contained in the International Covenant on Economic, Social and Cultural Rights<sup>12</sup> and curb corruption.

### I. Tribunes, Censors, and Protectors

In contrast to contemporary constitutional democracies, which have been understood as finished models that need to be protected and conserved to avoid their corruption, republicanism as a theoretico-political tradition, conceives the constitution as a dynamic organisation of power, and the republic as a work in progress in which new basic institutions need to be established to counteract inequality of material power and promote the common good. The most influential constitutional model within this strand of thought is the Roman republic. By establishing the plebeian Tribunate, Rome became one of the first mixed political orders to include specific institutions to protect the interests of the popular sectors.

While in the mythical origin of Rome Romulus had created voluntarily the Senate to limit his own power as a monarch, the Tribunate and the binding power that originated from the recognition of plebeian authority, came about through struggle, extracted from the ruling elites by force during the conflict of the Orders. It was in a context of war that working-class soldiers were able to threaten a strike and force the nobles to allow plebeians to have their own leaders recognised within the political order. After this initial gain, plebeian institutional power progressively grew. While at the beginning resolutions passed in the assemblies of the plebs (*concilia plebis*) only bound the commons, and tribunes were limited to obstructing political acts (*intercessio*) and protecting individuals from magistrates (*auxilium*), after *Lex Hortensia* in 287 BCE plebeian resolutions (*plebiscita*) were binding for all citizens. While in our contemporary political systems this *positive* lawmaking power of tribunes has been concentrated in legislative institutions such as parliaments, the *negative* function to protect the common people from oligarchic oppression, which entailed the juridical protection of plebeians as well as the veto power over senatorial action, has been partially taken up today by the high courts, which protect individual rights and sanction the constitutionality of law and policy.

At least formally, the Tribunate was completely independent from the other offices. Ten tribunes were selected by the *concilia plebis* to obstruct patrician power whenever the liberty of the common people was at stake.<sup>13</sup> Fulfilling their role, in the Late Republic tribunes sponsored a series of sumptuary laws regulating luxury,<sup>14</sup> of anti-corruption laws preventing corrupt aristocrats from exercising power,<sup>15</sup> and of welfare laws subsidising grain for the poor and redistributing land to plebeians.<sup>16</sup>

While authority based on tradition, seniority, knowledge, and wealth rested with the Senate, which directed government action, the authority to protect the liberty of plebeians rested with the assembled plebeians and their ten tribunes. Because tribunitian authority was rooted in the people's

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<sup>12</sup> Approved in 1966 by the UN and ratified by 173 countries. The US, as well as Saudi Arabia, Malaysia, Bhutan, and a few others, remain outside of the pact.

<sup>13</sup> Cicero, *On the Commonwealth* in *On the Commonwealth and On the Laws* (New York: Cambridge University Press, 2009), Book II.58.

<sup>14</sup> Beginning with *lex Metilia* (220 BC) regulating garments and *lex Oppia* (215 BC) restricting the possession of gold jewelry. H. Flower, ed. *The Cambridge Companion to the Roman Republic* (Cambridge: Cambridge University Press, 2004), 168-169. For an analysis of these laws in relation to liberty see V. Arena, "Roman Sumptuary Legislation: Three Concepts of Liberty" *EJPT* 10.4 (2011), 463-489.

<sup>15</sup> Such as *lex acilia repetundarum* (123 BC) and *lex Cassia* (104 BC).

<sup>16</sup> *Lex frumentaria* (123 BC) and *lex agraria* (133, 122 BC).

*actual* power, manifesting periodically in their massive presence in the *Forum Romanum*, it remained linked to extra-legal political means (e.g., occupation of public space, violence). This made the Tribune, especially during socio-political crises, a dangerous post. Even if the assembled people of Rome, as guardians of liberty, armed their tribunes with a “sacrosanct” authority, this promise of non-violence by the elite towards the people’s representatives was backed up by an uncertain threat of collective plebeian violence, which could only happen *ex post facto*.<sup>17</sup> Tribunes such as Tiberius and Gaius Gracchus, who at a moment of growing wealth inequality pushed for an agrarian reform to redistribute public land that was held illegally by patricians, were murdered in the street. Even if riots ensued afterwards, the tribunes still lost their lives, and the agrarian laws were disregarded.

Within the topography of power in Rome, tribunes were strategically set in the *Forum*: outside the doors of the *Curia Hostilia*—which allowed them to monitor Senate debates and promptly exercise the *intercession* to veto its resolutions—and between the tribunal of the *praetor urbanus* and the road to the prison—which allowed plebeians to easily request tribunician *auxilium*.<sup>18</sup> Tribunes, sitting on low wooden benches<sup>19</sup> on the main road, could provide protection to plebeians who were being judged and thrown into jail unjustly by invoking *provocatio*, and physically interposing their bodies to stop the officer.<sup>20</sup> Even if by the Late Republic the plebeian Tribune appeared as a strong institution able not only to give protection to individuals against magistrates, but also to obstruct the Senate and initiate legislation, it was unable to ultimately thwart the overgrowth of the power of the few. The republic kept progressively drifting into oligarchy mainly due to the co-optation of tribunes into patrician ranks and the Senate’s disregard of plebiscites.<sup>21</sup>

In addition to the Tribune, the Roman Republic had another office designed to fight corruption and control oligarchic tendencies: the Censorate. Within the Roman political structure, the Censorate was perhaps the most powerful office. It oversaw the allocation of an increasing inflow of wealth through large-scale contracts for public works and the leasing of public land, and had the power to punish individuals engaging in fraudulent registrations and tax evasion, poor cultivation of land, and corruption.<sup>22</sup> Even if their decisions were final and their authority could not be contested by other magistrates,<sup>23</sup> censors did not have *imperium*.<sup>24</sup> In 440 BCE two censors were originally selected for a period of five years by the *Comitia Centuriata*—the most oligarchic of the Roman assemblies<sup>25</sup>—to conduct the census, i.e., counting the Roman people, registering their property and their tribal affiliation, and imposing fines and loss of status on financial transgressors. Even if at the beginning only nobles could be elected to become censors, by 131 BCE both censors were of plebeian background.

In a context of growing wealth and population, together with increasing accumulation of property in fewer hands, censors played a crucial role in curtailing systemic corruption and the further

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<sup>17</sup> Sacrosanctity “implies that the plebeians had formed a separate body in the state and had compelled the government to take an oath to respect the persons of their representatives under penalty of divine vengeance.” Tenney, *An Economic History of Rome*. See also Lintott, *The Constitution of the Roman Republic*, pp. 33, 121–124.

<sup>18</sup> Eric J. Kondratieff, “Reading Rome’s Evolving Civic Landscape in Context: Tribunes of the Plebs and the Praetor’s Tribunal” *Phoenix* Vol. 63, No.3/4 (2009), pp. 322-360.

<sup>19</sup> *Subsellia*. The positioning of tribunes, close to the ground, symbolises the plebeian and democratic character of the Tribune.

<sup>20</sup> Lex Valeria passed in 300 BCE made the disregard of *provocatio* a criminal offence. Lintott, *The Constitution of the Roman Republic*, p. 33

<sup>21</sup> CH. Wirszubski, *Libertas as a Political Idea at Rome During the Late Republic and Early Principate* (Cambridge: Cambridge University Press, 1968); Andrew Lintott, *The Constitution of the Roman Republic* (Oxford: Oxford University Press, 2009).

<sup>22</sup> Lintott, *The Constitution of the Roman Republic*, 118.

<sup>23</sup> They were still liable to *intercessio* by the tribunes. *Ibid.*, 116.

<sup>24</sup> Executive power to command the military or other offices.

<sup>25</sup> This was a soldiers’ assembly, organized in centuries grouped according to property.

oligarchisation of power by monitoring financial restrictions, redistributing wealth through public works, and punishing corrupt individuals. And just as censors periodically measured, redrew, and policed the boundaries of citizenship, property, and power in Rome, they also controlled moral behaviour, especially extravagance and luxury.<sup>26</sup> If the two censors agreed that a transgressor needed to be punished, the name was included in a public list, bringing dishonour to the person. However, this loss of status was only social, not juridical.

The moral censure of individual mores emerged according to historian Andrew Lintott as “a piece of elite self-regulation,” which became the central function of this office after Sulla’s oligarchic dictatorship.<sup>27</sup> This disciplinary censorial function was “an extraordinary, and arbitrary, supplement to the jurisdiction of the courts,” a way to impose penalties to those powerful enough to have been acquitted or managed to escape prosecution.<sup>28</sup> Around 318 BCE a political aspect of this moral disciplinary function was codified in *lex Ovinia*, which gave the censors the task of selecting and dismissing senators.<sup>29</sup> Being able to handpick and purge the Senate, which controlled the republic’s finances, gave censors the power to impose a strict code of conduct on the selected few to uphold public morality, while having the freedom to embark in long-term public investments without fear of financial retaliation.<sup>30</sup>

As superintendents of public works, censors had considerable impact on the socio-economic conditions of the city, especially after 312 BCE when Appius Claudius embarked in large-scale projects such as the Via Appia, “demonstrating the potential of the office.”<sup>31</sup> In addition to public aqueducts and roads, censors initiated and supervised the building of spaces for commerce, such as the emporium on the Tiber and other exchange markets for wood-dealers and artisan shops.<sup>32</sup> As Rome’s wealth grew after taking control over agricultural and pastoral lands, forests, mines and quarries, harbours and markets, the amount of services that the Roman republic required to manage these assets also increased. Censors were tasked with the supervision of the letting of contracts for the provision of these services. In this way, the Roman Censorate was a powerful and complex office that combined the measuring of people and property to determine tax collection (done today by national statistics offices), the executive power to build large-scale public projects (similar to the Ministry of Public Building and Works in the UK between 1962 and 1970), the overseeing of all public accounting (as Comptrollers and Auditors), the honour-based punishing of financial corruption, the appointing and recalling of senators, and the conservation of traditional morality.

While the Roman Censorate was mostly forgotten in Europe after its demise in 22 BCE and the rise of Empire, a similar censorial institution developed in dynastic China. The Censorate, established in 221 BCE, acquired its highest level of sophistication during the Ming dynasty in the mid-14<sup>th</sup> century. The Ming Censorate was one of three agencies in the top level of the governmental structure supervising routine governmental chores. Members were part of a civil service that was recruited primarily through public examinations.<sup>33</sup> The office had nine chiefs and an army of 110 censor investigators who were “the ears and eyes of the emperor,” undertaking thorough routine inspections in the provinces, conducting judicial reviews of local prisoners to spot evidence of

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<sup>26</sup> Valerius Maximus, *Memorable Deeds and Sayings*, Book II, 9.4. See also Plutarch, *The Life of Cato the Elder*, §18.

<sup>27</sup> Lintott, *The Constitution of the Roman Republic*, 119.

<sup>28</sup> *Ibid.*

<sup>29</sup> Until then, senators were appointed by consuls.

<sup>30</sup> The Senate approved budgets for the different offices and gave advice to magistrates, suggestions that were always followed to avoid the cutting of funding.

<sup>31</sup> A.E. Astin, “The Role of Censors in Roman Economic Life,” *Latomus* 49.1 (Janvier-Mars 1990), 32.

<sup>32</sup> Lintott, *The Constitution of the Roman Republic*, 19.

<sup>33</sup> Charles O. Hucker, “The Traditional Chinese Censorate and The New Peking Regime” *APSR* 45. 4 (Dec., 1951), pp. 1041-1057

injustice, checking public granaries and storehouses, visiting schools, and collecting criticisms and complaints from other officials or from the public.<sup>34</sup>

The Censorate was not only the emperor's monitoring institution, but also exercised judicial and executive powers in the provinces when necessary. Censors were “judges at large,” exercising substantive judicial prerogatives by taking part in judging major offenders and conducting special trials and judicial investigations.<sup>35</sup> They could also formulate and implement government policies, as well as authorise relief measures in disaster areas without the need of imperial approval.<sup>36</sup> In addition to this judicial and extraordinary executive roles, Ming censors had an important anti-corruption function: they were tasked with rating the merit of public officials and requesting the removal of corrupt or negligent ones. Emperors took positive action on approximately four-fifths of the censors' denunciations,<sup>37</sup> which evidences the immense power of the Censorate. The office was maintained until the end of the 19<sup>th</sup> century, reemerging after a brief period, albeit with diminished powers, under the Kuomintang. In 1931 a Control *Yüan* was established and granted the specific powers of impeachment and auditioning—even if it could not decide on the outcome of these actions—and also the prerogative to send proposals or recommendations to government agencies—even if it could not enforce them.<sup>38</sup>

Similar offices to the Censorate and Tribune, tasked with monitoring government officials and protecting the common people from abuse, were also present in the Inca Empire, modern day Peru. The *Trucuyricuy* (the one who sees all) was an office that operated between the 11<sup>th</sup> and 16<sup>th</sup> centuries. Similar to the Ming Censorate, the *Trucuyricuy* was tasked with monitoring the Imperial Council—the government and its bureaucracy—and reporting directly to the emperor. In the 15<sup>th</sup> century Inca Topa Yupanqui created another office focused on defending the most vulnerable subjects: the protector of the poor, *Runa Yánapac*, which had presence in every province and was active until the Spanish invasion.<sup>39</sup> These roles of monitoring government officials and protecting the oppressed re-emerged a century later within the colonial structure. At the initiative of Fray Bartolomé de las Casas, the Spanish monarch established the *Protectoría de Indios* in 1516, in charge of protecting the indigenous populations from the abuse of settlers and local officials.

Similar to the Roman tribunes, who were protectors of the plebs and were considered sacrosanct, protectors of indigenous peoples were at the beginning churchmen, commanding not only temporal authority through a kingly order, but also divine authority that was generally recognized by settlers and indigenous communities alike. The protectors were legally entitled to intervene in civil and criminal trials involving indigenous peoples, could reduce their tax rates and temporarily suspend their tribute payments, and make recommendations on policy and law to benefit indigenous communities.<sup>40</sup> Even if the *Protectoría* performed a protective role like that of the Roman Tribune, the relation of the office with those it protected was not one of equality. While tribunes in Rome were elected by plebeians and thus had duties towards them, the Spanish *Protector de Indios* was appointed by the king, and thus to him (and God) he owed his allegiance—not to the indigenous communities that were systematically disempowered and infantilised.

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<sup>34</sup> Ibid., p. 1054

<sup>35</sup> Ibid., p. 1046.

<sup>36</sup> Ibid, pp. 1046–47.

<sup>37</sup> Ibid, pp. 1050–51

<sup>38</sup> Ibid, pp. 1052

<sup>39</sup> F. Cuenca, “Utilización pragmática del derecho romano en dos memoriales indios del siglo xvii sobre el protector de indios,” *Revista de estudios histórico-jurídicos* 20 (1998).

<sup>40</sup> F. Morales, *Teoría y leyes de la Conquista*. Chapter 16 “El Protector de indios” (Madrid: Ediciones Cultura Hispánica del Comité Iberoamericano de Cooperación, 1979).

Even if they could not act independently in cases of corruption, in their role as informers of the Crown, protectors had direct communication with viceroys and reported directly to the king on the behaviour of government officials regarding their mistreatment of indigenous populations and general corruption issues. Consequently, the *Protectoría* served a monitoring role not only on how law and policy were applied to indigenous peoples, but also on the behaviour of civil servants in general, and thus performed a valuable anti-corruption function like that of the Censorate. This colonial institution aimed at protecting the people from abuse and purging the civil service from corrupt individuals was abolished after the independence movements of the early 1800s.

## II. Elitist Interpretations of Tribunes and Censors

In the modern European reception of the Roman Tribunate and Censorate there are two main strands of interpretation: an *elitist* view originating in Cicero, which echoed in 16<sup>th</sup> century oligarchic Venice and monarchical France, and a *plebeian* strand stemming from Machiavelli's analysis of the Roman order and its anti-oligarchic capabilities. In this section I trace the elitist strand to show how these necessary counterpower institutions were reconceptualised, modified, and ultimately neutralised, leaving oligarchic power without effective restraint, and the common people vulnerable to oppression.

Perhaps the most influential account from antiquity of Tribunes and Censors comes from Cicero. Writing at a moment of severe institutional crisis, and from an aristocratic position, Cicero attributed the corruption of the Roman republic to the loss of “ancestral morality” and “outstanding men.”<sup>41</sup> He proposed to regain virtue, not reigning in oligarchic power, but by reasserting the dominance of a potentially virtuous ruling elite. The best republic was for him the one “controlled by its best citizens,” in which the liberty of the plebs corresponds only to the “power of honourably pleasing respectable citizens.”<sup>42</sup> Within this framework, the Tribunate was a necessary evil that had to be kept subordinate to elite authority. Cicero recognised that plebeian tribunes were necessary for peace and that they promoted stability to the mixed constitution because they symbolised plebeian political equality vis-à-vis patrician leadership.

When the Senate yielded this power [of representation] to the plebeians, the weapons were put down, the sedition was calmed, moderation was discovered, which allowed the lesser people to think that they were made equal to the leaders; and that was the single source of salvation for the state.<sup>43</sup>

Despite not being particularly fond of the Tribunate, for Cicero legitimacy, which required the political inclusion of the lower classes, was key to the stability of the republic itself.<sup>44</sup> He identified the Tribunate as “devoted to the interests of the people,” a “guardian and defender of their rights and liberties.”<sup>45</sup> He thought of the tribunes as a necessary for the stability of the republic not only because they protected plebeians from abuse but also because it tamed popular power. For him “some things [are] set aside for the judgment and wishes of the people” to avoid giving the plebs reasons to revolt.<sup>46</sup> Cicero saw in the Tribunate a stabilising institution through which the crowd could channel their demands without violence, and because these demands would end up being moderated by representatives who tended to be more cautious than the masses who elected them. Nevertheless, he

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<sup>41</sup> Cicero, *On the Commonwealth*, III, 159.

<sup>42</sup> Cicero, *On the Laws* in *On the Commonwealth and On the Laws*, III §38

<sup>43</sup> *Ibid.* III §23-24.

<sup>44</sup> See M. Hawley, *Natural Law Republicanism: Cicero's Liberal Legacy* (Oxford: Oxford University Press 2022).

<sup>45</sup> Cicero, *Pro Rabirio Perduellionis Reo Oratio Ad Quirites* (Cambridge: Cambridge University Press, 1882), 57 (§12).

<sup>46</sup> Cicero, *On the Commonwealth*, III §69



thought the power of the Tribune was excessive, so he proposed a way to “obstruct many useless but appealing initiatives” by allowing magistrates to “take the auspices and make judgment” on laws passed in the *concilia plebis*.<sup>47</sup> And since priestly power was supreme, and the interpretation of the requirements of the gods remained an aristocratic prerogative,<sup>48</sup> Cicero wanted to add in this way an indirect veto power of the few over the people via an appeal to the divine.

Despite the prominent role of censors in initiating public works and supervising public investments, Cicero does not mention this function in any of his references to the Censorate in his texts. When detailing the faculties of the censors for his ideal republic in *De legibus*, he includes, among other roles, the recording of the age and property of the population, to “watch over the temples, roads, watercourses, treasury and taxes of the city,” to prohibit celibacy and “regulate the morals of the people,” and remove unworthy people from the Senate,<sup>49</sup> but leaves out the power to initiate large-scale public works and to impose fines and loss of status for corruption. This omission of the Censorate’s central prerogatives to monitor and direct public investment as well as to punish financial transgressions, reduced the office to a ‘moral police,’ successfully stripping away the prerogatives that made it effective at containing systemic corruption and the oligarchisation of power in society.

The prominence of Cicero in the Renaissance bequeathed an elite-tinted view of the Tribune and Censorate. In the early 16th century European thinkers, following Cicero’s elitist interpretation, dismissed the beneficial role of tribunes and analysed the censors exclusively as guardians of the republic’s moral order. The statesman and intellectual Domenico Morosini proposed a censorial institution for the aristocratic republic of Venice that was an elite organ aimed at curbing electoral fraud, disciplining the nobility’s behaviour, and undermining plebeian interests. According to James Parsons, “Morosini’s censors would oversee the mores of the citizens, but they would devote most of their attention to investigating any hint of demagoguery on the part of public officials,” having the power to “eject from the Senate those who shall have established populist pacts.”<sup>50</sup> Morosini not only wanted to discipline the conduct of plebeians, but also prevent their redistributive demands from being represented.<sup>51</sup> Partially based on Morosini’s ideas, in 1517 Venice established a judicial magistracy of two *censori*, elected by the Great Council for one year, to persecute election fraud.<sup>52</sup> The Venetian *censori* thus retained the ancient thrust of monitoring the few in government and fighting corruption, even if from an exclusively aristocratic perspective.

The type of ‘moral police’ inspired by Cicero’s elitist republicanism and endorsed by Morosini was then explored in monarchical France by Jean Bodin. Despite his absolute conception of sovereignty and the historical record of the strong executive functions exercised by Roman censors, Bodin proposed in his *Les six livres de la République* (1576) a censorial institution completely focused on its moral disciplinary task that “could see to it that religion was honoured, and blasphemy repressed,”<sup>53</sup> and could purge the body politic from those who deviated from the code.

Perfidy, one of the most abominable of vices is never punishable by law. But the censors, said Cicero, were more anxious to punish perjury than anything else. Again, drunkenness, gambling, fornication, and lust

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<sup>47</sup> Cicero, *On the Laws* III §27.

<sup>48</sup> Lintott, *Constitution of the Roman Republic*, 198.

<sup>49</sup> Cicero, *On the Laws*, III, 159.

<sup>50</sup> J. Parsons, “The Roman Censors in the Renaissance Political Imagination,” *History of Political Thought* 22.4 (Winter 2001): 565-586, 507.

<sup>51</sup> *Ibid*, 574.

<sup>52</sup> G. Cozzi, ‘Authority and the Law in Renaissance’ in *Renaissance Venice*. Hale, J.R. ed., (London: Faber 1973), pp. 293-345.

<sup>53</sup> Parsons, “The Roman Censors,” 579.

can be indulged in without check from the law. Who can remedy this state of things but the censor? One sees also how most commonwealths are afflicted with vagabonds, idlers, and ruffians who corrupt good citizens by their deeds and their example. There is no means of getting rid of such vermin save by the censor.<sup>54</sup>

The fundamental function of moral policing and the anti-plebeian bias of the censors in Bodin's work are intertwined since the crimes that officials needed to persecute and punish were mostly associated with the popular sectors, the poor and the homeless ("drunkenness, gambling"). In contrast, there is no discussion of the vices of the ruling elite. The task of Bodin censors was not to restrain the ambition and corruption among the nobles (which was also Cicero's concern), or to limit in any way the damage caused by the monarch putting up "honours, offices, and benefices up for sale"<sup>55</sup> in moments of financial necessity, but rather to discipline the common people and enforce strict religious practices among them. This moral function did nothing to limit excessive accumulation of wealth among the elite and prevent the systemic corruption of good government, but served only to enforce elite control over the crowd through the imposition of traditional cultural norms.

Two centuries later Jean-Jacques Rousseau in his *The Social Contract* (1762) picked up the lost thread of tribunes and censors. His proposed republic had a Tribune that was conceived not as the guardian of liberty as in ancient Rome, but rather as the protector of the laws and of the lawmaking power.

Sometimes it protects the sovereign against the government, as the tribunes of the people did in Rome; sometimes it upholds the government against the people, as the Council of Ten does now in Venice; and sometimes it maintains the balance between the two, as the Ephors did in Sparta.<sup>56</sup>

While the Tribune in Rome exclusively represented plebeians, Rousseau's Tribune is a 'neutral' institution that protects the rule of law against both elite and plebeian threats. By considering popular and oligarchic threats as equivalent, Rousseau denies the asymmetry of power between members of the elite and the crowd, which undermines the anti-oligarchic aim of the original Roman office. While the powerful few were able to bend the law and damage justice through bribery and undue influence, the common people did not have the resources to do the same and only rarely acted in concert to push back against oligarchic overreach.

This elitist reinterpretation of the Tribune was paired with a similar view of the Censorate. The main tasks of Rousseau's Censorship in the *Social Contract* were to declare "public judgment" and defend the law. To this end, it does not have executive power, but has the prerogative to veto, to "prevent anything from being done."<sup>57</sup> Rousseau conceived the censors as lacking a will of their own, as only declaring "public judgment" and administering "public opinion," and wielding no other power than the respect they command in society.<sup>58</sup> Even if in his theoretical writings Rousseau did not directly attach the disciplining of mores to the fight against corruption, in his constitutional proposal for Poland (1772) he recommends the establishment of a "board of censors" to guide public policy and rate the behaviour of individuals.<sup>59</sup>

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<sup>54</sup> J. Bodin, *Six Books of the Commonwealth*, translated by M.J. Tooley (Oxford: Blackwell, 1955), 90.

<sup>55</sup> Ibid., 169-170.

<sup>56</sup> J.J. Rousseau, *The Social Contract* in *The Social Contract and Discourses* (London: J.M. Dent, 1993), Book 4.5

<sup>57</sup> Ibid., Book 4.7

<sup>58</sup> Ibid.

<sup>59</sup> Rousseau, *The Government of Poland* (Indianapolis: Hackett, 1995), 95.

The board would be composed of the “most honourable citizens,” who would meet locally every other year “to examine proposals for innovations useful to the province,” taking into special consideration “the needs of hard-pressed families, of the disabled, of widows and orphans,” and, more importantly, to draw lists of citizens “whose conduct was worthy of honour and recompense,” and of indentured peasants, “who were distinguished for good conduct, education and morals, for their devotion to their families and for the proper fulfilment of all the duties of their station,” and therefore were deserving of manumission.<sup>60</sup>

Rousseau’s elitist reconceptualisation of ancient anti-oligarchic institutions —originally aimed at limiting the ambition of the rich and protecting the common people from domination— as ‘neutral’ and as enforcers of moral discipline and social control has not been adequately contested in the literature, which has contributed to these institutions’ relative obscurity.<sup>61</sup> In what follows I offer an analysis of an alternative plebeian reception of these ancient offices, focusing on three institutions designed to check the systemic corruption of good government and keep the republic free from domination.

### III. Plebeian Interpretations of the Officers of the People

A genuinely anti-oligarchic institution in Europe, aimed at protecting the liberty of ordinary people, was first proposed in 16<sup>th</sup>-century Florence. While censorial offices in the elitist republic of Venice and monarchical France were conceived mainly as anti-plebeian mores’ patrols, for the popular republic of Florence Machiavelli proposed a new anti-oligarchic institution that combined features of the Roman Tribune and Censorate. According to the plebeian interpretation of Machiavelli’s thought put forth by John Najemy, John McCormick, and Gabriele Pedullà among others, a regime of liberty demands a dynamic balance of power between the few and the many that is only achievable through institutionalised political conflict, allowing for the few to satisfy their ruling ambition and for the many to defend liberty through their active participation in political power.

In his analysis of Rome, Machiavelli states that plebeians rose up against the insolence of the powerful few and institutionalised their political power in the Tribune, an office “designed for the protection of Roman liberty,”<sup>62</sup> which allowed the republic to become a “perfect state.”<sup>63</sup> After the “nobility was obliged to grant the people their share,”<sup>64</sup> the conditions for the republic became firmer, and for “more than three hundred years, the dissensions in Rome rarely caused exile and very rarely bloodshed.”<sup>65</sup> Based on this model, Machiavelli chooses the common people over the elite to have final decisionmaking power. As I have argued elsewhere, by giving the people the institutional power to subvert oppressive rules to protect liberty, Machiavelli ties the plebeian power to resist oppression to the constituent power to establish new institutions and periodically remodel republics.<sup>66</sup>

In 1520 Machiavelli proposed a new office for the republic of Florence, the Council of Provosts (*proposti*), tasked with monitoring the implementation of the law to the benefit of the common people.<sup>67</sup> The Council was designed as a plebeian office, composed of sixteen Gonfaloniers

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<sup>60</sup> Ibid.

<sup>61</sup> A notable exception is John McCormick’s critical analysis of Rousseau’s elitist reconstruction of the Roman Republic in *Reading Machiavelli. Scandalous Books, Suspect Engagements, and the Virtue of Populist Politics* (Princeton University Press 2018).

<sup>62</sup> Machiavelli, *Discourses on the First Decade of Titus Livius*, 1.4, in *Machiavelli Chief Works and Others*. Vol. 1. Translated by A. Gilbert (Durham, NC: Duke University Press, 1989), 204.

<sup>63</sup> Ibid., 1.2, 200.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid., 1.4, 203.

<sup>66</sup> C. Vergara, “Machiavelli’s Republican Constituent Power” in *Machiavelli’s Discourses on Livy. New Readings*, edited by D. Pires Aurélio and A. Santos Campos (Brill 2022).

<sup>67</sup> It also provided a tiebreak vote in matters of discord between political institutions.

of the Company of the People, selected by lottery, who would take turns residing in the palace with the *signores*, who run the government, to witness their proceedings. Similar to the Roman tribunes, who sat outside the doors of the Senate, ready to intervene and block decisions that were contrary to the interests of plebeians, provosts played an *in situ* anti-oligarchic supervisory role within Machiavelli's proposed constitutional structure, aimed at controlling government officials to "make them abstain from actions that are not good."<sup>68</sup> In this way, when exercising the prerogative to appeal the decisions of public officials the provosts would act like plebeian tribunes, and when taking away officials' powers when they do things contrary to the common welfare, they would act like censors.<sup>69</sup>

Even if the monitoring function of the provosts is clear, their actual power to obstruct oppressive motions coming from the few is far removed from the outright veto power wielded by the tribunes in Rome. But even if the provosts "would not have other authority than to delay [an executive] decision" by referring it to the Grand Council, they nevertheless would have been powerful "popular agents of elite accountability."<sup>70</sup> According to John McCormick, this was a plebeian office in which common citizens served as "the people's eyes and ears in both the republic's executive committee and senatorial council,"<sup>71</sup> and through which the most plebeian institution in the republic, the Great Council, would have "final judgment over public policy."<sup>72</sup> In this way, Machiavelli's Council of Provosts would have been a conduit for the Great Council to exercise a *negative* "guard of liberty," having the power to veto any potential encroachment on plebeian freedoms. Unsurprisingly, the Medici decided not to reopen the Great Council and consequently such a plebeian supervisory office was never actually implemented.

A tribunician-censorial office re-emerged as a solution to the systemic corruption of representative government during the founding of the United States. The 1776 Constitution of Pennsylvania incorporated in its article 47 a Council of Censors that had the duty to:

enquire whether the constitution has been preserved inviolate in every part; and whether the legislative and executive branches of government have performed their duty as guardians of the people...For these purposes they shall have power to send for persons, papers, and records; they shall have authority to pass public censures, to order impeachments, and to recommend to the legislature the repealing such laws as appear to them to have been enacted contrary to the principles of the constitution.<sup>73</sup>

In addition to its responsibility to review law and impeach corrupt government officials, the same as the Roman censors, the Council in Pennsylvania exercised a supervisory role on taxes and public spending, making sure "taxes have been justly laid and collected," that money was well spent, and law properly enforced.<sup>74</sup> The Council was staffed with two individuals elected directly by the people, was convened only once every seven years, and served for one year. While the strict time limit

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<sup>68</sup> Machiavelli, *A Discourse on Remodeling the Government of Florence*, in *Machiavelli Chief Works*, 111–112.

<sup>69</sup> Machiavelli, *A Discourse on Remodeling*, 112.

<sup>70</sup> McCormick, *Machiavellian Democracy*, 106.

<sup>71</sup> *Ibid.*

<sup>72</sup> McCormick, *Reading Machiavelli: Scandalous Books, Suspect Engagements, and the Virtue of Populist Politics* (Princeton: Princeton University Press 2018), 103. About a quarter of its members were drawn from plebeian ranks. J.M. Najemy, "Guild Republicanism in Trecento Florence: The Successes and Ultimate Failure of Corporate Politics," *The American Historical Review* 84.1 (Feb., 1979), 53-71.

<sup>73</sup> Constitution of Pennsylvania (1776), Art. 47.

<sup>74</sup> L.H. Meader, "The Council of Censors," *The Pennsylvania Magazine of History and Biography* 22.3 (1898): 265-300, 266.

imposed on this office is reminiscent of the Roman dictator, who was appointed for six months to resolve a crisis or deal with a particular task, and, to that end, was given extraordinary powers,<sup>75</sup> the seven-year interval echoes the periodical renewals of the republic that are necessary to fight corruption proposed by Machiavelli.<sup>76</sup> In addition to their power to subpoena and impeach public officials, and to review laws, taxes, and public spending, censors could also call a constituent convention for the people to review and amend the basic structure.<sup>77</sup> Mixing elements of tribunes and censors, and having the extraordinary power to call for an overhaul of the Constitution, the Pennsylvania Council of Censors was perhaps the most powerful modern anti-oligarchic counterpower institution ever implemented.<sup>78</sup>

Shortly after the abolition of the censors in Pennsylvania in 1790, on the other side of the Atlantic Nicolas de Condorcet proposed a republican constitution for post-revolutionary France. As president of the constitution committee in the National Assembly, Condorcet proposed that the people themselves, assembled at the local level, should exercise similar tribunician and censorial functions, and also be able to initiate constitutional reform. Instead of choosing an elected office to concentrate this immense power, Condorcet conceived of a network of local citizen assemblies as the only rightful bearer. The 1793 Constitution codified the “right of censure” allowing for a “legal means of protest which could cause any law to be re-examined.”<sup>79</sup> Any citizen, after collecting 50 supporting signatures, could request his primary assembly to review an existing law, consider proposing a new one, or even call a constituent assembly.<sup>80</sup> After being presented with a simple proposition, citizens had eight days to deliberate on the matter and cast their vote in their assemblies during the next session. If a resolution was passed in one assembly, then this assembly could call on all other assemblies in the district to decide.

Given that popular demands without enforcement may be dismissed, Condorcet devised a mechanism that would make representatives’ deviation from the people’s will less likely. In case that the representative assembly refused to legislate, contradicting the decision emanating from primary assemblies, then representatives “would seem to have lost the nation’s trust and must be replaced”<sup>81</sup> by new representatives who can carry out the expressed popular will. In this way, Condorcet builds into the lawmaking process an enforcement mechanism of the popular will and a way to indirectly censure and recall representatives for their decisions. Therefore, politicians would have had a strong incentive to track the will emanating from primary assemblies.

In addition to a decentralised system of popular accountability and constitutional renewal, Condorcet proposed a Council of Overseers, a tribunician-censorial office with narrower powers than the Pennsylvania Council of Censors, but potentially more effective in closing the gap between law and its application, given its permanent character and its sharper focus on monitoring representative government.

The council will supervise the observance and execution of the laws and arrange the details of general administrative measure, so that they can be applied. It will carry out the will of the nation and inform the people’s representatives of anything which may require new

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<sup>75</sup> Incorporating a dictatorship office within the republican order was supported by Machiavelli and later Rousseau.

<sup>76</sup> Machiavelli, *Discourses*, Book 3.1.

<sup>77</sup> The calling of a convention required a 2/3 supermajority. All other decisions were taken by simple majority. Constitution of Pennsylvania (1776), Art. 47.

<sup>78</sup> It was in use in Pennsylvania from 1776 to 1790, and also in Vermont from 1777 to 1869.

<sup>79</sup> Condorcet, “A Survey of the Principles Underlying the Draft Constitution” in *Condorcet: Foundations of Social Choice and Political Theory*. I. McLean and F. Hewitt, eds. (Cheltenham: Elgar, 2007), 192.

<sup>80</sup> *Le Girondine*, Title VIII, art. 3; Title IX, art. 5 & 6

<sup>81</sup> *Le Girondine*, Title VIII, Art. 22-26.

resolutions to be made. This link, which is necessary for social order, should not be regarded as a true power. The council can have no individual will; it can only supervise. Its task is to ensure that, once the nation has expressed its will, it is carried out precisely, in an orderly and safe fashion.<sup>82</sup>

Condorcet framed his Council of Overseers as an enforcer of the law, but the office itself was not the tool of the Legislature but acted independently from it. Members of the Council, selected by lot from primary assemblies, were “officers of the people and not of the representatives.”<sup>83</sup> As liaisons between the people and the Legislature, overseers resembled tribunes, serving as the link between the crowd and the government, and acting as brokers as well as defenders of the people’s will against the ruling class. However, similar to Rousseau’s Censorship, which was a protector of the law, overseers were also conceived as enforcers of the law, having no will of their own, but merely declaring the expressed will of the people and then acting accordingly. But differently from Rousseau’s theory, in which the assembly of the people was convoked by representatives on limited questions, in Condorcet’s constitutional system the lawmaking power obeys the general will emanating from primary assemblies, and therefore the overseers acted like tribunes because the law was not merely the output of an elite representative institution, but of the general will of the republic constructed from the ground up, through deliberations and decisions on simple propositions at the local level. Consequently, the overseers were protectors of the people’s will, which was expressed through law, and not of law *per se*. For instance, the people’s will could contradict a particular law or how the law was being applied at any given time, and force its repeal, with the overseers making sure that the law and all its public policy derivatives are in fact eliminated. In this case, the overseers acted as protectors of liberty, not law, and thus as tribunes, imposing, in the name of the people, courses of action against laws and policies deemed oppressive and unjust, and in favour of the people.

Even if from the point of view of primary assemblies Condorcet’s overseers had a tribunician character, they were also an extension of the Legislature: “the hand which enables the legislators to act and the eyes with which they can observe the execution of their decrees and the effects they produce.”<sup>84</sup> This made the authority of overseers much stronger than that of the Roman tribunes, which was never properly severed from plebeian force. As a legislative agent, the Council of Overseers could force the executive to apply the law in a determined manner—for the benefit of the common people, against the oligarchic tendencies of government—and in this way perform a popular anti-corruption role to make sure that oligarchic domination does not creep into the gap between formal rules and their material application.

#### IV. An Officer of the People for the 21<sup>st</sup> century

With the consolidation of the bureaucratic state also came the need for a censorial-like office able to deal with negligence, inefficiency, arbitrariness, abuse of authority, discrimination, corruption, unfair policies and laws, or violation of regulations. One of the first institutional responses to these problems was the office of the ombudsman. In 1713 the Swedish King Charles XII established a monitoring office known as *Högsta Ombudsmannen* to supervise that “the law was enforced and that

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<sup>82</sup> Condorcet, “A Survey of the Principles,” 204–5.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

public servants performed their duties properly.”<sup>85</sup> In 1809 Sweden established a Parliamentary Ombudsman, the *justitieombudsman*, appointed by the Legislature to investigate and prosecute members of the government for offenses involving “dereliction of duty or abuse of authority.”<sup>86</sup> Since then the Swedish Ombudsman has had the duty to supervise the observance of laws, investigate complaints, initiate prosecutions, recommend disciplinary action on public officials, detect defects in laws or their application, and emit advisory opinions to promote the appropriate application of the law.<sup>87</sup>

This autonomous monitoring office was replicated in other Nordic countries more than a century later, first in Finland in 1919 and then in Denmark in 1955 and Norway in 1966. However, only in Finland did the ombudsman office, the *Eduskunnan oikeusasiamies*, retained the power to impose sanctions and prosecute. In all other countries, the office was stripped of its judicial power and could only advise those in office, relying on its symbolic authority to exert pressure and protect individuals against patterns of state negligence or abuse. For example, in Norway while the ombudsman focuses on ensuring that the State does not do “any injustice against any citizen and that civil servants and other services of the administration do not commit errors or neglect duties,” it can only express opinions and make recommendations, without the legal power to compel compliance.<sup>88</sup> In addition to different prerogatives, ombudsman offices vary regarding their jurisdiction. While some can only monitor the administrative apparatus, others, understanding that citizens may be abused not only by civil servants but also by judges, also investigate the behaviours of the courts.

A few European countries such as the United Kingdom, France, and Austria incorporated the office in the late 1960s. The UK developed a modified version of the non-binding Nordic ombudsman within its parliamentary supremacy system.<sup>89</sup> The main function of its censorial office is to receive complaints from aggrieved citizens, write a report, and recommend courses of action to Parliament. Once a complaint is endorsed by a member of the House of Commons, the ombudsman has the power to initiate an investigation and emit a report, but it does not have the power to unilaterally prosecute or invoke sanctions. It was only after the collapse of the Soviet Union in the late 1980s that the ombudsman office begun to spread to the rest of Europe. Eastern European countries, given their historical context of transition from authoritarian systems to liberal democracies, established specialised human rights ombudsman offices, which would later be replicated in Latin America in the 1990s.<sup>90</sup>

Even if ombudsman-like offices were established due to the recognition that there are patterns of abuse inevitably involved in the provision of basic civil and social services, so far these institutions have been mostly unsuccessful in protecting the basic rights of the most vulnerable. For instance, the 1994 South African Constitution, an example of the so-called transformative constitutionalism that codified social rights, proclaimed that the State was committed to land reform and its equitable access, and that everyone has “the right to have access to adequate housing.”<sup>91</sup> In addition it established a Public Protector to guard against maladministration and corruption. After almost three decades since the end of apartheid, results on land redistribution have been marginal: 72% of private farmland is

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<sup>85</sup> L.B. Orfield, “The Scandinavian Ombudsman,” *Administrative Law Review* 19.1 (Nov, 1966): 7-74, 7.

<sup>86</sup> *Ibid.*, 9.

<sup>87</sup> For an overview of the office and its role defending human rights see L.C. Reif, *The Ombudsman, Good Governance, and the International Human Rights System* (Martinus Nijhoff Publishers, 2004).

<sup>88</sup> R. Gregory and P.G. Hutchesson, *The Parliamentary Ombudsman* (1975), Chapter 11, cited in A.W. Bradley “The Role of the Ombudsman in Relation to the Protection of Citizens' Rights,” *The Cambridge Law Journal* 39.2 (Nov., 1980): 304-332, 317.

<sup>89</sup> For an analysis of the first decade of the British Ombudsman see Bradley, “The Role of the Ombudsman.”

<sup>90</sup> For comparison of Ombudsman offices in Latin America see A.M. Moure Pino, *El Ombudsman: Un estudio de derecho comparado con especial referencia a Chile* (Madrid: Editorial Dykinson, 2014).

<sup>91</sup> 1994 South African Constitution, Art. 26.1

owned by white people, who make up only 9% of South Africa's population, and less than 10% of agricultural land has been transferred through land reform.<sup>92</sup> In addition, the right to housing is being denied to almost 14% of South Africans who live in inadequate dwellings, without access to basic social services in the more than 2,700 informal settlements across the country.<sup>93</sup> The persistence of extreme inequality and precarity in South Africa shows that, despite declaring social rights in the constitution and having an ombudsman-style office, basic rights continue to be denied, common people are still vulnerable to abuse, and the pernicious pattern of accumulation by dispossession is still in full operation.

Monitoring offices, which only have the prerogatives to suggest recommendations for law and policy, have no real power to wield and so cannot truly guarantee the adequate fulfilment of the rights of the most vulnerable. Without binding decisionmaking power these officers of the people cannot effectively shield individuals and communities from abuse, or control systemic and individual political corruption. At this moment of acute inequality and climate crisis, it seems necessary to think outside the legal and try alternative institutional arrangements that could effectively incorporate ordinary people into the decisionmaking process and grant them the power to actively defend their rights and fight corruption. Rethinking ombudsman-style offices through the lens of historical institutional innovations helps us cross the boundaries of our modern systems, based almost exclusively on elitist representative institutions selected through elections, and look at neglected plebeian solutions to oligarchic power. Only by establishing genuine officers of the people and giving them the power to demand real changes (not merely to suggest them) and to oust corrupt officials, will representative systems be responsive to the common people and make the realisation of their rights a genuine priority.

To detect patterns of carelessness, abuse, and corruption, and help reverse them, an effective officer of the people needs to be both the people's watchdog and champion, sharing traits with censors and tribunes. In what follows I sketch the main features, in terms of membership and prerogatives, of an Officer of the People for the 21<sup>st</sup> century. While most monitoring offices are selected through procedures within the current structure of checks and balances, which has enabled the partisan control and neutralisation of the office, recent innovations with citizen assemblies would give better results in terms of including ordinary people in the decisionmaking process. Rather than outsourcing judgment to one individual, like Condorcet's Overseers an Officer of the People should be a collective office selected by lot from the common people.

Building on the recent permanent citizen assemblies established in Brussels and Milan to deal with the climate crisis, I propose an assembly-based officer of the people with members chosen via random sampling for a period of six months.<sup>94</sup> Every six months a third of the office would renew to allow for collective learning.<sup>95</sup> This method of lottery and rotation would allow for the inclusion of an increasing number of ordinary people in the political process, and offer strong protection against co-optation. Adopting this model would also make it easier to implement, thanks to the snowballing effect of the citizen assembly movement within environmental politics.

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<sup>92</sup> *High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change* (2017), Government of South Africa.

[https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High\\_Level\\_Panel/HLP\\_Report/HLP\\_report.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf).

<sup>93</sup> "Informal Settlements and Human Rights in South Africa," Socio-Economic Rights Institute of South Africa (May 2018), 6. <https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/InformalSettlements/SERI.pdf>

<sup>94</sup> While in Brussels the Citizens' Climate Assembly will be composed of 100 residents selected every year, in Milan the assembly will have 90 citizens sitting for six-months periods.

<sup>95</sup> Based on democratic procedures in ancient Athens.



In addition to the collective, lottery-based composition of the Officer of the People, it is necessary to radicalise its contemporary prerogatives to adequately equip the office to supervise that the basic rights of ordinary people are respected and fulfilled, and to keep corruption at bay. While most ombudsman offices and citizen assemblies can only recommend law and policy, and representative governments retain the final say regarding the feasibility of the people's suggestions, following ancient and modern examples, an Officer of the People needs to be able to force the hand of representatives who are beholden to short-term electoral politics, or are too self-serving to tax the rich and invest in materialising basic rights.

The main prerogatives of an Officer of the People should be then to issue binding reports triggering law and public policy aimed at guaranteeing human rights, and to initiate a popular impeachment procedure to oust corrupt politicians. Even if in the historical examples some of the offices had judicial prerogatives to deal with corruption, given that today corruption is extremely difficult to investigate and prosecute, the Officer of the People should only trigger a form of corruption-based recall mechanism to oust representatives without needing to prove corruption in court. A citizen jury selected by lot could be tasked with giving judgement on corruption cases after holding public hearings, independently from representatives and judges. If evidence is considered sufficient, government officials would be dismissed from their post. Politicians recalled through this popular impeachment mechanism would be barred from serving again for a period of time.

While the lottery-based selection process would make the Officer of the People, not 'neutral' and 'autonomous,' but a popular institution, its prerogatives would allow it to act like a tribune to protect and advance plebeian liberty, and like a censor to fight individual corruption by purging representative bodies from corrupt individuals. These powers would also help contain and eventually reverse systemic corruption, by having the ability to demand increased taxation of the rich and wealth redistribution via universal services to realise basic rights. Seen from this perspective, the Officer of the People would exercise tribunician functions to protect the popular sectors and advance their rights, and censorial functions to monitor and direct public investment for the benefit of the people, as well as to oust corrupt officials. An Officer of the People dedicated to the active defence of human rights would push for more equality and de-commodification of basic services, acting in this way as crowd-based anti-oligarchic institution. In addition to containing systemic corruption, if also empowered to investigate corrupt behaviour and initiate impeachment procedures, this watchdog institution could prove an effective way not only to deal with the oligarchic roots of corruption but also to get rid of the 'bad apples' in politics to keep representative governments free from corrupt individuals.

If we compare our contemporary constitutional orders with those of ancient popular governments, it is evident that they lack proper anti-oligarchic institutions to protect ordinary people, limit the power of the super rich, and fight corruption. For this, it is necessary to move away from non-binding institutional 'bandages' and embrace a more transformative solution: a counterpower institution able to effectively push for social justice from below, that can help us transition from a system that enables growing inequality into one in which oligarchic power is under control, and the rights of the common people are respected.