

## CHAPTER 4

# THE AUGUSTAN PRINCIPATE IN RELATION TO LIBERTAS

### I. PAX ET PRINCEPS

Even Tacitus, who found much to criticize in the Augustan Principate, did not deny it one great achievement, the restoration of peace: "Sexto...consulatu Caesar Augustus, potentiae securus, quae triumviratu iusserat abolevit, deditque iura quis pace et principe uteremur."<sup>1</sup> And in an earlier work he indicated that the coincidence of peace and the Principate was not accidental, "postquam bellatum apud Actium...omnem potentiam ad unum conferri pacis interfuit."<sup>2</sup> It is no doubt a fact of great moment for our estimate of the Principate that Augustus himself laid as much stress on the restoration of peace as on the restoration of the Republic.<sup>3</sup> And indeed it seems that the Romans, in so far as they had a free choice at all, willingly accepted the Principate, not because they believed that it was tantamount to the old Republican form of government, but above all because they realized that the new dispensation offered a prospect of lasting peace.

A people exhausted with fratricidal wars<sup>4</sup> needed and desired internal peace, stability, and order more than anything else. The decisive victory of Actium put an end to civil war. But while victories may bring peace, they cannot alone secure it. Sulla was victorious; he claimed to have established peace,<sup>5</sup> yet it did not last

<sup>1</sup> *Ann.* III, 28, 3; cf. I, 2, 1; *Dial.* 38, 2 *ad fin.* Philo, *Legat. ad Gaium*, 39, 309.

<sup>2</sup> *Hist.* I, 1, 1. Cf. *Ann.* IV, 33, 2. See also Lucan I, 670; Appian, *Bell. Civ.* I, 6, 24.

<sup>3</sup> Witness, e.g., the legend PAX on the coin on which Augustus is styled libertatis p. R. vindex (see H. Mattingly, *Coins of the Roman Empire in the British Museum*, vol. I, p. 112, no. 691, and plate 17, 4); the reference in the *Res Gestae*, 13, to the closing of the temple of Janus; the dedication of the Ara Pacis Augustae.

<sup>4</sup> Horace, *Epodes* XVI, 1 f.: Altera iam teritur bellis civilibus aetas Suis et ipsa Roma viribus ruit.

<sup>5</sup> See Sallust, *Hist.* I, 55, 24 M.

long. Caesar also was victorious, and the peace his victories brought was short-lived too. How could the hard-won peace be made to last? This was the heart of the problem that faced the Romans after Actium.

We have seen that in the Roman view, so far as it could be ascertained, the domestic troubles that beset the Late Republic were due to a rivalry for personal aggrandizement rather than to a conflict between divergent policies based on irreconcilable principles. The Civil War in particular was regarded as a contest for primacy between Pompey and Caesar, a contest for *dignitas* and *principatus*. It may therefore have seemed to the Romans that civil strife and civil wars would continue as long as ambitious men strove to advance their own *dignitas* by all means and at all costs, and as long as there existed conditions favourable to such pursuits. Cicero called for a change of heart. But it is easier to alter political institutions than to change human nature.<sup>1</sup> And in this respect the Principate offered a solution to the problem that defied Republican statesmanship and destroyed the Republic.<sup>2</sup>

If rivalry for *dignitas* was the root of civil strife, and if that rivalry was made possible by the fact that both civil and military power was distributed among many agents, a supremacy of one man, so firmly established as to leave no room for temptation to ambition, let alone for a trial of strength, seemed to remove the major source of civil war. Such ideas were not new at Rome. Sallust makes Aemilius Lepidus say of Sulla: “Neque aliter rem publicam et belli finem ait (Sulla), nisi maneat expulsa agris plebes, praeda civilis acerbissima, ius iudiciumque omnium rerum penes se, quod populi Romani fuit.”<sup>3</sup> Similarly, Caesar used to say: “Non tam sua quam rei publicae interesse uti salvus esset; se iam pridem potentiae gloriaeque abunde adeptum; rem publicam, si quid sibi eveniret, neque quietam fore et aliquando deteriore condicione civilia bella subituram.”<sup>4</sup> And history proved him to be right. It was no doubt

<sup>1</sup> Seneca, *De Benef.* II, 20, 2, says Brutus erred if he thought “civitatem in priorem formam posse revocari amissis pristinis moribus”.

<sup>2</sup> Cf. R. Syme, *The Roman Revolution*, p. 315.

<sup>3</sup> *Hist.* I, 55, 24 M. If this remark were representative of Sulla’s views, it would lend much point to Caesar’s criticism, “Sullam nescisse litteras, qui dictaturam deposuerit”, Suet. *Div. Jul.* 77.

<sup>4</sup> Suet. *Div. Jul.* 86, 2.

under the stress of recurrent civil war that the Romans came to the conclusion “non aliud discordantis patriae remedium fuisse quam ut ab uno regeretur”.<sup>1</sup>

It seems therefore that the Romans responded favourably to the establishment of the Principate, not because they erroneously believed that it meant no change in the old order, but precisely because they were well aware of the immense change that took place: instead of a quivering balance of discordant powers and an armed truce between competing dignitates, there emerged an accumulation of power at the top, and a dignitas surpassing all beyond challenge. One cannot help thinking that Mommsen, although he missed the actual reading of the *Res Gestae*,<sup>2</sup> was nearer the truth of the matter when he conjectured “praestiti omnibus dignitate” in Augustus’s famous definition of his place in the State.

As has been seen in the previous chapter, the Republic in its last stage laboured under two interdependent difficulties: the one was a “contentio libertatis dignitatisque”; the other, a conflict between libertas and otium; and the second was the result of the first. The Principate by its very existence put an end to the rivalry for dignitas; it brought the “dulcedo otii”;<sup>3</sup> but what happened to libertas?

<sup>1</sup> Tac. *Ann.* 1, 9, 5. Cf. *Ann.* 1v, 33, 2; *Hist.* 1, 1, 1 and 16, 1. See also Seneca, *De Clem.* 1, 4. E. Schönbauer, Untersuchungen zum römischen Staats- und Wirtschaftsrecht, Wesen und Ursprung des Prinzipats, *Z.d.Sav.-Stif. Rom. Abt.* XLVII (1927), pp. 310 ff., maintains that the favourable disposition of the Romans to the Principate resulted from the influence of Platonic and Aristotelian political ideas which were transplanted to Rome by Panaetius the Stoic and inspired first Scipio the Younger and later Cicero. (For this view cf. J. Kaerst, *N.J.f. Wiss.* v (1929), pp. 653 ff.) Formative influence of Stoicism upon the Principate is assumed by A. v. Domaszewski, Die philosophische Grundlage des Augusteischen Principats, in *Bilder und Studien aus drei Jahrtausenden, Gothein Festgabe*, 1925, pp. 63–71. But why vainly search in Stoic philosophy for the lessons the Romans had been taught in the hard school of civil war? Cf. R. Syme, *op. cit.* pp. 321 ff.

<sup>2</sup> 34, 3. See *Res Gestae Divi Augusti ex monumentis Ancyrano et Apolloniensi, iterum ed. Th. Mommsen* (1883), p. 144.

<sup>3</sup> Tac. *Ann.* 1, 2, 1. See also Virgil, *Ecl.* 1, 6 ff., with which compare Seneca, *Ep.* 73, 8 and 10–11.

## 2. "LIBERTATIS VINDEX": AN OUTWORN PHRASE

The *Res Gestae Divi Augusti*<sup>1</sup> opens with a statement about the liberation of the commonwealth from factious domination, and closes with a statement about the restoration of the government to the Senate and People of Rome, and the honours conferred on Augustus in recognition of that service. This arrangement of the *Res Gestae* makes it almost inevitable that the reader should tend to take both statements together. And in fact it seems that in recent times the beginning of the *Res Gestae* has occasionally been read and interpreted in the light of its end,<sup>2</sup> with the result that its opening sentence has been considered to be an enunciation of Augustus's political creed and constitutional intentions. In view of its direct bearing on the subject of this study it is necessary to examine the scope of the statement about the liberation of the commonwealth as well as the extent to which it may reasonably be accepted at its face value.

Annos undeviginti natus exercitum privato consilio et privata impensa comparavi, per quem rem publicam a dominatione factionis oppressam in libertatem vindicavi. Eo [nomi]ne senatus decretis honorificis in ordinem suum m[is]e adlegit C. Pansa et A. Hirtio] consulibus, consularem locum s[en]tentiae ferendae tribuens et i[m]perium mihi dedit.<sup>3</sup>

Since the adverbial "eo nomine" at the beginning of the second sentence refers both to the raising of an army and to the liberation of the commonwealth, the first sentence can only refer to the events of the last months of the year 44 B.C., and it is difficult to see how, without reading into them too much, the words "rem publicam a dominatione factionis oppressam in libertatem vindicavi" could refer to the battles of Mutina and Philippi<sup>4</sup> or still less Actium.<sup>5</sup> The senatorial decrees of the year 43 B.C., which Augustus mentions, were moved by Cicero, whose speeches delivered on that occasion

<sup>1</sup> Referred to here in the edition by Jean Gagé, *Res Gestae Divi Augusti*, Paris, 1935 (= Gagé, RG).

<sup>2</sup> See, for instance, Gagé, RG, pp. 73 ff.; E. G. Hardy, *The Monumentum Ancyranum*, Oxford, 1923, p. 27; H. Kloesel, *Libertas*, p. 58; V. Ehrenberg, *Monumentum Antiochenum*, *Klio* XIX (1925), p. 203.

<sup>3</sup> *Res Gestae*, I, 1-2.

<sup>4</sup> See Mommsen, *Res Gestae*<sup>3</sup>, p. 3.

<sup>5</sup> See Hardy, *Mon. Anc.* p. 27; Ehrenberg, *op. cit.* p. 203.

are extant.<sup>1</sup> Cicero made it clear beyond doubt that what he meant by the “liberation of the State” was the fact that Octavian with the Legio Martia and the Fourth Legion caused Antony to withdraw from Rome.<sup>2</sup> And he praised Octavian as a heaven-sent deliverer who “rem publicam privato consilio liberavit”.<sup>3</sup> All Augustus did in his *Res Gestae* was to repeat as closely as possible Cicero’s own words. Now, if to call the short relief provided by Octavian to the Senate a “liberation of the commonwealth” seemed somewhat extravagant even at Rome, the extravagance was in the first place Cicero’s, and many must have known that. But they must have also known that soon after that “liberation” the liberator marched on Rome and extorted a consulship for himself; that he severely punished the people of Nursia who erected a monument to their citizens slain in the battle of Mutina and inscribed upon it that they fell for liberty;<sup>4</sup> that he entered into a compact with the oppressor; and that that compact was followed by proscriptions.<sup>5</sup> Had Augustus only wished to proclaim that he was the liberator of his country he could have pointed to greater and more solid achievements than his successful move in 44 B.C., which was quite insufficient to justify so high a claim. But it may be that Augustus did not write the first sentence of his *Res Gestae* with a view to establishing his reputation as the restorer of freedom, or that his contemporary readers were not disposed to accept it in that sense, if he did.

Augustus’s intention becomes clear if the passage in question is viewed against the background of what happened late in 44 and early in 43 B.C., with which period that passage deals, and not in the light of the year 27 B.C. and after, with which it has nothing to do.

<sup>1</sup> See Cic. *Phil.* III, 37 ff. especially 38 *ad fin.* Cf. IV, 4; V, 46.

<sup>2</sup> *Phil.* III, 4; IV, 4; V, 23 and 42.

<sup>3</sup> See *Phil.* III, 3–5; IV, 2–4; V, 42–6. Cf. XIV, 25.

<sup>4</sup> Suet. *Div. Aug.* 12.

<sup>5</sup> Posterity did not forget nor gloss over Octavian’s early career. It is noteworthy that, in a work addressed to Nero, Seneca should have said: Divus Augustus fuit mitis princeps, si quis illum a principatu suo aestimare incipiat; in communi quidem rei publicae gladium movit. Cum hoc aetatis esset, quod tu (Nero) nunc es, duodevicesimum egressus annum, iam pugiones in sinum amicorum absconderat, iam insidiis M. Antonii consulis latus petierat, iam fuerat collega proscriptionis, *De Clem.* I, 9, 1. See also Tac. *Ann.* I, 10, 1–3.

When Octavian first entered Roman politics he was often spoken of as “puer”, which he resented.<sup>1</sup> As an old man he recalled, not without pride, that as a youth of nineteen he raised an army on his own initiative and with his own means. Contemporaries did not need to be told that in this he surpassed even Pompey the Great.<sup>2</sup> But his extraordinary feat was not above criticism by constitutional purists. Augustus and his contemporaries, as well as posterity, knew only too well that, in spite of Pompey’s notable precedent, “exercitum privato consilio comparare” was, strictly speaking, high treason.<sup>3</sup> And the view that unfriendly critics might take of Octavian’s action may be gathered from Tacitus: “Ceterum cupidine dominandi concitos per largitionem veteranos, paratum ab adulescente privato exercitum, corruptas consulis legiones.”<sup>4</sup> The only justification of that illegal action, even if it may have received a coating of retrospective whitewash, could be its motive and results. The soundness of such justification may be questionable, but the principle which underlies it was certainly acceptable to the Romans. Was it not the greatest Republican constitutionalist who said “L. Brutus...qui, cum privatus esset, totam rem publicam sustinuit, primusque in hac civitate docuit in conservanda civium libertate privatum esse neminem”?<sup>5</sup> And in fact Cicero gave his opinion as to whether Octavian’s undertaking was justified or not. In his Fourth *Philippic* Cicero says:

Nec enim, Quirites, fieri potest, ut non aut ii sint impii, qui contra consulem exercitus comparaverunt, aut ille hostis, contra quem iure arma sumpta sunt. Hanc igitur dubitationem, quamquam nulla erat, tamen ne qua posset esse, senatus hodierno die sustulit. C. Caesar, qui rem publicam libertatemque vestram suo studio, consilio, patrimonio denique tutatus est et tutatur, maximis senatus laudibus ornatus est.<sup>6</sup>

The real doubt that the senatorial resolutions removed was whether or not Octavian’s action was justified; and it is not unlikely that Cicero was answering unfriendly criticism of Octavian’s action although he pretended that it was above reproach.

<sup>1</sup> Suet. *loc. cit.*

<sup>2</sup> See Cic. *Phil.* v, 43–4.

<sup>3</sup> Cf., e.g., the motion for a S.C. *Ultimum* against Aemilius Lepidus, Sallust, *Hist.* 1, 77, 22 M.

<sup>4</sup> *Ann.* 1, 10, 1.

<sup>5</sup> *De Rep.* 11, 46. Cf. *Phil.* xi, 28.

<sup>6</sup> *Phil.* iv, 2.

Augustus, who in his *Res Gestae* emphasized the fact that he strictly observed the constitution,<sup>1</sup> certainly wished that contemporaries and posterity alike should be in no doubt about the legality of his political beginnings. The reasoning implicit in his statement is something like this: I raised an army on my own initiative, but I did it for the welfare of the commonwealth; witness the Senate which approved of what I had done and honoured me on that account. And Cicero's well-known *Philippics*<sup>2</sup> made things easy for Augustus.

As regards the phrase "rem publicam a dominatione factionis oppressam in libertatem vindicavi", it seems that the ancients, who were familiar with the political vocabulary of the Late Republican period, were probably not disposed, and perhaps not even expected, to attach to it great importance, let alone to take it literally. The phrases "dominatio factionis" and "rem publicam (or populum Romanum) in libertatem vindicare" were too much used and too often misused to retain their original content. A few examples will suffice:

P. Scipio, qui ex dominatu Ti. Gracchi privatus in libertatem rem publicam vindicavit (Cic. *Brut.* 212);

Ti. et C. Gracchus...vindicare plebem in libertatem...coepere (Sallust, *Jug.* 42, 1);

Neque eos (viz. the Optimates) pudet, vindices uti se ferunt libertatis (Sallust, *Hist.* III, 48, 22 M);

Se non malefici causa ex provincia egressum sed...ut se et populum Romanum factione paucorum oppressum in libertatem vindicaret (Caesar, *Bell. Civ.* I, 22, 5);

Tuus...pater (viz. Pompey) istuc aetatis cum esset et animadvertisset rem publicam ab nefariis sceleratisque civibus oppressam...Italiam urbemque Romam in libertatem vindicavit (*Bell. Afr.* 22, 2);<sup>3</sup>

L. Flaccus...laudem patriae in libertatem vindicandae praetor adamarit (Cic. *Pro Flacco*, 25);

Video Milonem, vindicem vestrae libertatis (Cic. *Pro Sest.* 144).<sup>4</sup>

<sup>1</sup> *Res Gestae*, 5–6.

<sup>2</sup> Tac. *Dial.* 37, 6.

<sup>3</sup> Cf. Cic. *De imp. Cn. Pompei*, 30. But a different view of Pompey's action is taken in *Phil.* v, 44.

<sup>4</sup> Milo's victim, Clodius, must have also posed as liberator, see Cic. *De Dom.* 110 and 131. It may be worth while mentioning that after the execution of Catiline's associates, Metellus Celer introduced a Bill demanding Pompey's return: ὡς δὴ καταλύσοντα τοῦ Κικέρωνος δυναστείαν, Plut. *Cic.* 23, 4; the phrase sounds something like "ut rem publicam dominatione M. Tulli oppressam in libertatem vindicaret". Dio Cass. XLIII, 44, 1, says that in 46 B.C.

As the above examples show, “*vindicatio in libertatem*” (in a political sense) was used to denote opposite extremes. During the Late Republic it was a much used political catchword and became as vague as *libertas* itself. It was the kind of “*speciosum nomen*”<sup>1</sup> which every one was glad to use because of its emotional value, but it retained little of its original positive meaning. It seems that at best it denoted a public-spirited intention and little, if anything, else. And it seems likely that Augustus used this phrase in his *Res Gestae* for this very reason; “*rem publicam in libertatem vindicavi*” was the conventional way of saying: I worked for the public good. And, at any rate, Augustus’s words at the beginning of his *Res Gestae* cannot, without strong support from other evidence (which does not seem to exist), bear the weight that has occasionally been put on them.

It also ought to be pointed out that although *prima facie* Augustus’s phrase seems to be reminiscent of the phraseology of the *Populares*, this impression is not necessarily true. As has been seen, the *Optimates* did not fall behind the *Populares* in their professions to be “*vindices libertatis*”. The only word that may have a peculiarly “*popularis*” tinge is “*factio*”. But through excessive use this word also lost its original meaning of an oligarchical clique,<sup>2</sup> and became a somewhat vague term of political abuse.<sup>3</sup> Augustus in his *Res Gestae* refrained from mentioning Antony by name. He could not possibly use in chapter 1 the circumlocution he used elsewhere<sup>4</sup> and write “*a dominatione eius cum quo bellum gesseram*”. “*Factio*” was

Caesar the dictator was hailed as liberator: αὐτόν τε (sc. τὸν Καίσαρα) ἐλευθερωτῆν (= *vindicem libertatis*?) καὶ ἐκάλουν καὶ ἐξ τὰ γραμματεῖα ἀνέγραφον, καὶ νεῶν ἐλευθερίας δημοσίᾳ ἐψηφίσαντο. Many more instances, some of which are irrelevant, will be found in W. Weber’s *Princeps, Studien zur Geschichte des Prinzipats*, 1936, n. 557, pp. 138–9.

<sup>1</sup> Tacitus (*Hist.* iv. 73, 3) put into the mouth of Cerialis the following remark about the Germans: *Ceterum libertas et speciosa nomina praetextuntur; nec quisquam alienum servitium et dominationem sibi concupivit, ut non eadem ista vocabula usurparet.*

<sup>2</sup> In the first century A.D. both Velleius Paterculus and Valerius Maximus use the term *factio* with regard to the *Populares*, see Vell. Pat. II, 18, 6, and Val. Max. III, 2, 17; IV, 1, 13.

<sup>3</sup> Sallust, *Jug.* 31, 15: *Sed haec inter bonos amicitia, inter malos factio est.* Cf. the references cited in the *Thes. Ling. Lat.* vol. VI, col. 137, 12 ff., and also s.v. *factiosus*, 138, 31 ff.

<sup>4</sup> *Res Gestae*, 24, 1.

a very handy substitute for Antony,<sup>1</sup> and it misled no one, except some modern scholars.<sup>2</sup>

In like manner, undue constitutional significance has been attributed to the well-known coin of the year 28 B.C. on the obverse of which Augustus is styled Imp. Caesar Divi f. cos. vi libertatis p. R. vindex.<sup>3</sup> There is, in the opinion of the present writer, more likelihood that this legend refers to the victory at Actium, that is to say, to the liberation of the Roman people from the danger of Cleopatra's domination, than to the restoration of the Republic<sup>4</sup> which only began to take place in 28 B.C. The reasons for this assumption are these: first, on the obverse is represented a laurel-wreathed head of Augustus, and on the reverse the goddess Pax holding a caduceus and trampling upon a torch. The laurel wreath on the obverse and the symbol of peace as well as the legend PAX on the reverse suggest victory in war, and not restoration of the constitution. Secondly, the fact that the legend "libertatis p. R. vindex" appears on a coin struck in 28 B.C. does not by itself imply that it refers to an event that occurred in the same year. The legend "Aegyptio capta" appears on dated coins of the years 28 and 27 B.C.,<sup>5</sup> although the conquest of Egypt did not take place in either year. "Civibus servateis" appears in 27 B.C.,<sup>6</sup> and "ob civis servatos" some time after 23 B.C.,<sup>7</sup> although both legends refer to the pardon of the vanquished in the Civil War. Therefore, the vindication of Roman freedom referred to on the above coin need not be associated

<sup>1</sup> That he meant Antony and no one else appears from Vell. Pat. II, 61, 1: Torpebat oppressa dominatione Antonii civitas; and from Cic. *Phil.* v, 6; 44; vi, 3; VIII, 5; XII, 14-15; *Ad Fam.* x, 1, 1; *Ad Brut.* I, 15, 5.

<sup>2</sup> Hardy, *Mon. Anc.* p. 27, thought "factio" referred to the Liberators. This is untenable in view of *Res Gestae* ch. I, ll. 3-5 and ch. 2, ll. 10-12. Kloesel, *Libertas*, p. 58, assumed that Augustus had in mind "die senatorische Reaktion", which is inconceivable, to say the least, in view of Augustus's subsequent statement about the honours he received from the very same Senate. It is true "factio" is a collective noun, but Antony had followers.

<sup>3</sup> See above, p. 97 n. 3.

<sup>4</sup> So Mommsen, *Res Gestae*<sup>2</sup>, p. 145. Mommsen's view has been generally accepted, even by numismatists, see H. Mattingly and E. A. Sydenham, *The Roman Imperial Coinage*, I, p. 60 n. 1; also M. Grant, *From Imperium to Auctoritas*, pp. 384 and 424.

<sup>5</sup> Mattingly and Sydenham, *op. cit.* p. 61, no. 19 and p. 62, no. 21.

<sup>6</sup> *Op. cit.* p. 62, no. 22.

<sup>7</sup> *Op. cit.* p. 64, no. 55, tentatively assigned by the editors to 19-15 B.C.

exclusively with events of the year 28 B.C. Thirdly, the very idea of *libertatis vindex* implies the existence of an oppressor. Who, it may be asked, oppressed the freedom of the Roman people in the year 28 B.C.? Is it likely that Octavian was styled *libertatis p. R. vindex* because he rescinded his own triumviral enactments?<sup>1</sup> And even so, is there any positive evidence that the coin was struck (in the mint of Ephesus) after that event?

Since the war against Antony and Cleopatra was waged in the name of Roman freedom and independence, there seems to be every likelihood that this coin is a specimen of the issues that commemorated the victory at Actium. Common sense, apart from the comparative study of coin-types, suggests that in dating legends and types one has to bear in mind that dies in the mint might not always catch up with the latest developments of political propaganda.

It might have amused Augustus had he seen that a facsimile of the obverse of the coin with the legend *libertatis p. R. vindex* significantly adorns the title-page of a book on the Augustan Principate.<sup>2</sup> He would perhaps have preferred to see there the reverse with the legend *P A X*.

But be that as it may, those who believe that the opening sentence of the *Res Gestae* and the coin of 28 B.C. enunciate the programme of Augustus have to face the plain fact that, for all its emotional value, it is as vague, elusive, and evasive as the "programme" of Caesar at the outbreak of the Civil War. Phrases like "*rem publicam in libertatem vindicare*" and "*libertatis populi Romani vindex*" were used primarily to obscure political issues and not to enunciate positive programmes. And, therefore, to judge the Augustan Principate on the strength of such conventional and vague pronouncements, if indeed they are pronouncements, is to misjudge it.

<sup>1</sup> Tac. *Ann.* III, 28, 3.

<sup>2</sup> M. Hammond, *The Augustan Principate*, 1933.

## 3. RES PUBLICA RESTITUTA IN THEORY AND IN FACT

ἐγίγνωτο τε λόγῳ μὲν δημοκρατία, ἔργῳ δὲ ὑπὸ τοῦ πρώτου ἀνδρὸς ἀρχή.  
Thucydides, ii, 65, 9.

In his *Res Gestae* Augustus asserts that, when he had put an end to civil wars, he surrendered the absolute power, which by universal consent he had been exercising, and transferred the administration of the commonwealth to the free disposal of the Senate and People of Rome (rem publicam ex mea potestate in senatus populi que Romani arbitrium transtuli). Officially no doubt the constitutional settlement of the year 27 B.C. was represented as a restoration of the Republic, witness “pacato orbe terrarum res[titut]a re publica” in the contemporary *Laudatio Turiae*,<sup>1</sup> or “corona quern[a uti super ianuam domus Imp. Caesaris] Augusti poner[etur] senatus decrevit, quod rem publicam] p. R. rest[i]tui[t]” in the *Fasti of Praeneste*.<sup>2</sup> And Velleius Paterculus (ii, 89, 3) went so far as to declare:

Finita vicesimo anno bella civilia, sepulta externa, revocata pax, sopitus ubique armorum furor, restituta vis legibus, iudiciis auctoritas, senatui maiestas, imperium magistratuum ad pristinum redactum modum, tantummodo octo praetoribus adlecti duo. Prisca illa et antiqua rei publicae forma revocata.

On the other hand, historians of a later date took an entirely different view of what, under Augustus, purported to be a restoration of the Republic. Tacitus said:

Posito triumviri nomine consulem se ferens et ad tuendam plebem tribunicio iure contentum, ubi militem donis, populum annona, cunctos dulcedine otii pellexit, insurgere paulatim, munia senatus magistratuum legum in se trahere.<sup>3</sup>

Suetonius briefly, and somewhat obscurely, remarked:

De reddenda re publica bis cogitavit. . . sed reputans et se privatum non sine periculo fore et illam plurimum arbitrio temere committi, in retinenda perseveravit, dubium eventu meliore an voluntate.<sup>4</sup>

<sup>1</sup> *C.I.L.* vi, no. 1527, p. 333, l. 25.

<sup>2</sup> *C.I.L.* 1<sup>2</sup>, p. 231, on the Ides of January. Cf. Ovid, *Fasti* 1, 589: Redditaque est omnis populo provincia nostro Et tuus Augusto nomine dictus avus.

<sup>3</sup> *Ann.* 1, 2, 1. Cf. iii, 28, 3; 1, 3, 1; 4, 1; 3, 7; *Hist.* 1, 1, 1.

<sup>4</sup> *Suet. Div. Aug.* 28, 1.

And Dio Cassius was convinced that Augustus established a real monarchy: Οὕτω μὲν δὴ τὸ τοῦ δήμου καὶ τῆς γερουσίας κράτος πᾶν ἐς τὸν Αὐγουστον μετέστη, καὶ ἀπ' αὐτοῦ καὶ ἀκριβῆς μοναρχία κατέστη· μοναρχία γάρ. . . ἀληθέστατα ἂν νομίζοιτο.<sup>1</sup>

In view of the fact that before the establishment of the Principate "res publica" was the principal embodiment of political "libertas", the new régime might be regarded either as restoration or as suppression of liberty according as it was a restoration or a suppression of the traditional form of government. This question, however, should not, even if it could, be decided on the strength of the extant appraisals of the Principate by the ancients. For if the contemporaries of Augustus are open to the charge of disingenuous flattery, his later critics may have been inclined to judge the Augustan Principate not on its own merits but in the light of its subsequent development under his successors.

Fortunately there is enough conclusive evidence to pass judgement on the nature of the "res publica restituta" without relying on questionable testimonials. It is quite obvious that, since the Princeps was the new and salient element in the reconstituted State, the extent to which the new dispensation amounted to a restoration of the traditional res publica depends in the first place on the extent to which the position of the Princeps was consistent with the Roman idea of a free State.<sup>2</sup>

<sup>1</sup> LIII, 17, 1. Cf. LII, 1, 1; LIII, 11, 5.

<sup>2</sup> Several scholars have considered the constitutional resettlement under Augustus to be a restoration of the Republic. See G. Ferrero, *The Greatness and Decline of Rome*, trans. by H. J. Chaytor, IV (1908), pp. 121–42; 235–55; and especially 134–6; Ed. Meyer, *Kaiser Augustus*, *Kl. Schr.* 1<sup>2</sup> (1924), pp. 425 ff., esp. 455 ff.; F. B. Marsh, *The Founding of the Roman Empire*<sup>2</sup>, Oxford, 1927, pp. 212–29, 290–3; H. F. Pelham, *The Early Roman Emperors, Essays*, Oxford, 1911, pp. 31 ff.; M. Hammond, *The Augustan Principate*, esp. pp. 4–5, 21 ff., 195–7. For various other interpretations of the Augustan Principate see Th. Mommsen, *Römisches Staatsrecht* 11<sup>3</sup>, part 2, and III, pp. 1252 ff.; D. McFayden, *The Rise of the Princeps' Jurisdiction within the City of Rome*, Washington Univ. Stud., Humanistic Series, x (1923), no. 2, pp. 181 ff.; H. Dessau, *Geschichte der römischen Kaiserzeit*, I (1924), pp. 15–62; M. Rostovtzeff, *The Social and Economic History of the Roman Empire* (1926), pp. 38 ff.; E. Schönbauer, *Untersuchungen zum römischen Staats- und Wirtschaftsrecht, Wesen und Ursprung des Prinzipats*, *Z.d. Sav.-Sif. Rom. Abt.* XLVII (LX) (1927), pp. 264–318, esp. 288 ff.; T. Rice Holmes, *The Architect of the Roman Empire*, I (1928), pp. 180 ff., 263 ff.; W. Kolbe,

Augustus described his own position after the restoration of constitutional government: "Post id tempus auctoritate omnibus praestiti, potestatis autem nihilo amplius habui quam ceteri qui mihi quoque in magistratu conlegae fuerunt."<sup>1</sup> For the sake of clarity his potestas and auctoritas will be examined separately, although they were interdependent and formed in effect one thing.

In so far as potestas means formal right to exercise power and not the actual ability to do so, Augustus's statement about his potestas is unassailable provided it defines the nature of his power in each single magistracy (although his tribunicia potestas was not a magistratus in the strict sense), and not the limit of the sum total of all the powers he held. As consul his was a consularis potestas equal to that of his colleague consul; Agrippa and, after his death, Tiberius were Augustus's colleagues in the tenure of the tribunicia potestas; as a holder of imperium proconsulare Augustus possibly possessed a potestas of the same kind as that of any other proconsul.<sup>2</sup>

Under the Republic the Romans set great store by the principle of par potestas, which they regarded as a cardinal constituent of Roman republicanism and freedom. It is therefore only natural that Augustus would have the Romans believe that his own power was in no way inconsistent with that principle. He was certainly anxious to remove any doubt about the constitutionality of his position in the State, and recorded that he refused the offices of dictator, consul for life, ἐπιμελητῆς τῶν τε νόμων καὶ τῶν τρόπων ἐπὶ μεγίστη ἐξουσίᾳ μόνος, as well as any power inconsistent with the established constitutional practice, ἀρχὴ παρὰ τὰ πάτρια ἔθη διδομένη.<sup>3</sup> In so far, therefore, as Augustus meant to say that he held no

Von der Republic zur Monarchie, in *Das Erbe der Alten*, Heft 20 (1931), pp. 39–65; Sir Henry Stuart Jones, *C.A.H.* x (1934), chaps. v–vi; F. E. Adcock, *ib.* pp. 583 ff.; H. Last, *C.A.H.* xi (1936), pp. 399 ff.; A. von Premerstein, Vom Werden und Wesen des Prinzipats, *Abh. Bay. Akad.* Heft 15 (1937); R. Syme, *The Roman Revolution* (1939), esp. pp. 313 ff.; M. Grant, *From Imperium to Auctoritas*, esp. pp. 408 ff.

<sup>1</sup> *Res Gestae*, 34, 3.

<sup>2</sup> For the purpose of this study it is of little consequence whether Augustus held an imperium proconsulare maius in all the provinces or not. There is therefore no need here to discuss this subject. For the latest discussion see M. Grant, *op. cit.* pp. 424 ff.; H. Last, 'Imperium maius': a Note, *J.R.S.* xxxvii (1947), pp. 157 ff.

<sup>3</sup> *Res Gestae*, 5 and 6.

non-collegiate potestas his statement is true. But the juxtaposition of "auctoritate omnibus praestiti potestatis autem nihilo amplius habui" etc. implies much more than that. The obvious inference from the antithesis of auctoritas and potestas is that the entire potestas of Augustus was not greater than that of his colleagues in office. And this is so manifestly untrue that only the uninformed in antiquity, or the dogmatic in more recent times, could believe it. For apart from the fact that Augustus enjoyed supremacy by virtue of his auctoritas (the implications of which will be seen presently), his potestas was not confined to one magistracy at a time, as was the normal constitutional practice, but consisted in an accumulation of various magisterial prerogatives which, so far as his own power was concerned, deprived collegiality of its substance. Augustus held concurrently a permanent though nominally renewed tribunicia potestas, by virtue of which alone he enjoyed of right the standing of maior potestas with regard to the consuls,<sup>1</sup> an imperium proconsulare which carried with it the command of the best part of the Roman army,<sup>2</sup> and, although he was not a consul, he had the right "senatum habere, relationem facere, remittere, senatus consulta per relationem discessionemque facere".<sup>3</sup> It is therefore quite clear that the potestas held by Augustus far outstripped the limit set by normal constitutional practice. There was no potestas to match his own, nor was it intended that there should be one. And it was no comfort to constitutionalists of the strictest school, if any survived, that the

<sup>1</sup> Tacitus (*Ann.* III, 56, 2) rightly says of the tribunician power: Id summi fastigii vocabulum Augustus repperit, ne regis aut dictatoris nomen adsumeret ac tamen appellatione aliqua cetera imperia praemineret. Augustus himself declares that he performed the task of cura legum et morum by virtue of his tribunician power, see *Res Gestae*, 6. What an orthodox republican might have thought of the continuous tenure of the tribunician power may be gathered both from the fact that Ti. Gracchus was accused of aiming at a "regnum", and from Livy VI, 41, 3: Omitto Licinium Sextiumque, quorum annos in perpetua potestate tamquam regum in Capitolio numeratis; and III, 21, 2: Magistratus continuari et eosdem tribunos refici iudicare senatum contra rem publicam esse.

<sup>2</sup> Suetonius, *Div. Aug.* 47, 1; Dio Cass. LIII, 12, 2. Cf. R. Syme, *The Roman Revolution*, p. 326; and H. Stuart Jones, *C.A.H.* x, p. 128.

<sup>3</sup> S.C. de Imperio Vespasiani, Bruns, *Fontes*<sup>7</sup>, I, p. 202, ll. 3-5. From the phrase "ita uti licuit divo Augusto" can only be deduced the historical fact that Augustus was allowed to act in the manner described in the S.C.; the word licuit, however, does not by itself imply that the power to act in that manner was conferred on him by law. Cf. H. Last, *C.A.H.* XI, pp. 406 f.

powers of the Princeps were granted by the Senate and People.<sup>1</sup> Some scholars<sup>2</sup> seem to have attached undue importance to this fact. Were not, according to Roman tradition, the old kings of Rome installed as a rule “auctoribus patribus atque iussu populi”?<sup>3</sup> The conferment of power by the Senate and People did not by itself set any limit to that power, it only made the tenure of that power lawful, and marked it off from tyranny, in the sense of unconstitutional seizure of power. It must always be remembered that, in the eyes of the Romans, their political freedom began when the executive power was made annual and collegiate.<sup>4</sup> And the powers of the Princeps, though delegated, were permanent,<sup>5</sup> and, for all practical purposes, irrevocable.<sup>6</sup> By a very ingenious separation of magisterial prerogatives from the actual tenure of the corresponding magistracies, Augustus held various powers without as a rule being an annual magistrate. Thus, whatever its appearance, the potestas of the Princeps retained none of the essentials of a regular Republican magistracy: it was an accumulation of prerogatives inadmissible in normal Republican times, and in its scope dangerously similar to the power of a dictator;<sup>7</sup> it had no equal, and therefore was not amenable to administrative control; it was effectively for life, and therefore responsible to no one while the Princeps lived.<sup>8</sup>

Augustus's own description of his potestas is an understatement, to say the least. It was reserved to Tiberius to speak out the truth about the potestas of the Princeps:

<sup>1</sup> See Dio Cass. LIII, 12, 1.

<sup>2</sup> E.g. G. Ferrero, *op. cit.* IV, p. 134, who asserts that the powers of Augustus were “resembling those of the Federal President in America”. And also F. B. Marsh, *op. cit.* pp. 224 ff.

<sup>3</sup> See Livy I, 17, 9; 22, 1; 32, 2; 35, 6; 41, 7; 49, 3; Cic. *De Rep.* II, 35.

<sup>4</sup> Livy II, 1, 7; IV, 24, 4; Sallust, *Cat.* 6, 7.

<sup>5</sup> For the character of the imperium proconsulare see Mommsen, *Staatsrecht* II 3, pp. 793 f., 854; and von Premerstein, *op. cit.* pp. 234 ff.

<sup>6</sup> The principles concerning the abrogation of power from the Princeps will be found in Mommsen, *op. cit.* II 3, p. 1132.

<sup>7</sup> For a directly opposed view see V. Ehrenberg, *Klio* XIX (1925), p. 206.

<sup>8</sup> A senior Roman magistrate could not be called to account during his term of office. It is true that Augustus and Tiberius rendered an account from time to time, but there was no constitutional means whereby the Princeps could be compelled to do so, cf. Suet. *Calig.* 16, 1. Moreover, all magistrates and senators had to take an oath to preserve the acta of the Princeps. Cf. Mommsen, *op. cit.* II 3, p. 621; II 3, pp. 906 ff.

## 112 AUGUSTAN PRINCIPATE IN RELATION TO LIBERTAS

Dixi et nunc et saepe alias, patres conscripti, bonum et salutarem principem, quem vos tanta et tam libera potestate instruxistis, senatui servire debere, et universis civibus saepe, et plerumque etiam singulis.<sup>1</sup>

The manner in which the Princeps ought to exercise his power must be reserved for later notice, but as regards the nature of that power Tiberius was certainly right in saying that it was “a potestas so great and so unrestricted”.

So much for the potestas of Augustus. There remains to be seen what was the scope of his auctoritas. The words “auctoritate omnibus praestiti” have been much discussed ever since the discovery of the Monumentum Antiochenum which brought to light the true reading “auctoritate” instead of the conjectured “dignitate” of earlier days. On the strength of those words it has been assumed in recent times that the supremacy of the Princeps was in no way inconsistent with the Republican idea of freedom. For Augustus, so the argument goes, claimed nothing that was not permissible under the Republic; auctoritas derives solely from the force of personality; it is not legally enforceable, and may be freely accepted or disregarded; a pre-eminent auctoritas, therefore, does not collide with freedom.<sup>2</sup> This theory that Augustus’s primacy by virtue of his auctoritas was entirely consistent with Roman Republican ideals, if true, would be of great consequence from the point of view of libertas, and must therefore be carefully examined.

A remark by Brutus may help to elucidate the relation between auctoritas and libertas. Writing to Cicero in the year 43 B.C. he says “. . . cuius (Cicero’s) tantam auctoritatem senatus ac populus Romanus non solum esse patitur sed etiam cupit quanta maxima in libera civitate unius esse potest”.<sup>3</sup> It is obvious from this remark that in Brutus’s opinion there existed, or ought to exist, an upper limit beyond which an individual’s auctoritas cannot extend in a free State. The reason for this view is not far to seek. It derived, not from the belief that a free State could not tolerate an outstanding personality, but from the realization, or rather knowledge, that auctoritas was power, in the sense that influence and the right to

<sup>1</sup> Suet. *Tib.* 29.

<sup>2</sup> R. Heinze, *Auctoritas*, *Hermes* LX (1925), pp. 355–7.

<sup>3</sup> Cic. *Ad Brut.* I, 4a, 2.

exert it are power, none the less real and legitimate for being undefined and not peremptory.<sup>1</sup>

The position of the Republican Senate rested entirely on its *auctoritas*, and even the advocates of senatorial supremacy never asked for more. No magistrate was obliged by law to subordinate his *potestas* to the *auctoritas* of the Senate, but by custom he was expected to do so. And the fact that a S.C. *Ultimum* could for all practical purposes suspend the indefeasible and inviolable civic rights of trial and appeal to the People, as well as the note of censure present in the phrase “*contra senatus auctoritatem*”<sup>2</sup> give an idea of what weight the *auctoritas* of the Senate carried.<sup>3</sup> And what the *auctoritas* of an individual might mean is well illustrated by the incident related by Cicero:

Q. Metellus. . . cuius paucos pares haec civitas tulit. . . designatus consul, cum quidam tribunus plebis suo auxilio magistratos ludos contra senatus consultum facere iussisset, privatus fieri vetuit; atque id, quod nondum potestate poterat, obtinuit auctoritate.<sup>4</sup>

But if by virtue of *auctoritas* so decisive an influence could be exerted on public affairs, Brutus's view that an unlimited *auctoritas* of an individual is impossible in a free State is not unreasonable; and this fact alone should warn us against hasty assumptions that the pre-eminent *auctoritas* of the Princeps was consistent with the traditional idea of republican freedom at Rome.

<sup>1</sup> E. Schönbauer, *op. cit.* pp. 290 f., describes *auctoritas* as follows: “Das Wesen der *auctoritas* im staatlichen Leben ist es gerade dass sie eine Macht darstellt, die nicht mit äusseren Mitteln eine Befolgung erzwingt, sondern die einen inneren Zwang schafft, der das Gefühl erzeugt, dass die Befolgung eine selbstgewählte freiwillig übernommene Pflicht darstellt.”

<sup>2</sup> See Cic. *In Pis.* 8; *Phil.* 11, 48; *De Senect.* 11; Hirt. *Bell. Gall.* VIII, 52, 3; Sallust, *Hist.* 1, 77, 22 M.

<sup>3</sup> Mommsen, *op. cit.* III, 1033, says of the *auctoritas senatus*: “Die ebenso eminente wie unbestimmte und formell unfundirte Machtstellung des Senats wird in der späteren Republik regelmässig mit dem in entsprechender Weise verschwommenen und aller strenger Definition sich entziehenden Worte ‘*auctoritas*’ bezeichnet.” Mutatis mutandis this is also true of the *auctoritas* of individuals in public affairs. Things may have been different in purely private matters. It is to be observed that Heinze's conclusions are largely based on an inference from private to public life.

<sup>4</sup> *In Pis.* 8. See also Tac. *Dial.* 36, 8: *Hi ne privati quidem sine potestate erant, cum et populum et senatum consilio et auctoritate regerent.*

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It is of course true that there were in Republican times statesmen whose *auctoritas* was eminent and even pre-eminent; it is also true that outstanding statesmen were called, and even called themselves, *principes*,<sup>1</sup> and it was nothing unusual if one of them was at some time regarded as the *princeps*. It also may be, although it cannot be proved, that the Republican *principes* were so called on account of their *auctoritas*. Nevertheless there is all the difference between the position of the Republican *principes*, or even *princeps*, and the *Princeps*, and to overlook that difference is to miss the true nature of the Principate.

As has been seen, competition for power and *dignitas* was the mainspring of domestic politics in Republican, or at any rate Late Republican, Rome. As a result of incessant competition between individuals and unrelenting rivalry between factions the *auctoritas* of any individual statesman might grow or wane. For the *auctoritas* of an individual depended not only on one's personal qualities but also, and perhaps mainly, on one's position in public life in any particular state of affairs, as is abundantly illustrated by the vicissitudes of Cicero's *auctoritas* during the period between the First and Second Triumvirates.<sup>2</sup> There might be several statesmen of outstanding *auctoritas* at a time, and there was to some extent a free choice between various *auctores*. Things changed completely with the establishment of the Principate. The *auctoritas* of the *Princeps* was permanently pre-eminent, just as he was permanently supreme; it overshadowed and dwarfed all other *auctoritates*,<sup>3</sup> and, since it had no equal, the only course open to the Romans was to accept the *auctoritas* of the *Princeps* or defy it at their own risk. This state of affairs may have been of no appreciable consequence to those who themselves never had, nor were likely to have, an *auctoritas*, but it made all the difference in the world to those who did have, and who might have been striving for primacy were it not for the unrivalled supremacy of the *Princeps*.<sup>4</sup> “*Certare ingenio, contendere*

<sup>1</sup> See Gelzer, *Nobilität*, pp. 35 ff. and Sprey, *op. cit.* pp. 198 ff., 208 ff.

<sup>2</sup> Compare, e.g., *Ad Q. Fr.* III, 5 and 6, 4 with *Ad Brut.* I, 4a, 2.

<sup>3</sup> Tac. *Ann.* XIV, 47, 1: Memmius Regulus, *auctoritate constantia fama, in quantum praeumbrante imperatoris fastigio datur, clarus.*

<sup>4</sup> Augustus is reported as having said to L. Cinna, who plotted against his life: “*Cedo, si spes tuas (sc. ut ipse sis princeps) solus impedio, Paulusne te*

nobilitate”<sup>1</sup> was a way of life of the Republican ruling class. It may therefore be doubted whether those who believed that their freedom was the right to obtain the government of others,<sup>2</sup> those who thought that a man’s ideal was to become “princeps dignitate”,<sup>3</sup> those who considered the desire for primacy to be evidence of “magnitudo animi”,<sup>4</sup> those who could not bear Caesar’s “principatus”,<sup>5</sup> would have agreed that to live constantly under someone else’s supremacy without being able to attain supremacy for oneself was full freedom in the old Republican sense.

There is also another thing to be observed about the relation between the Principate, even if it were based on auctoritas only, and Roman republicanism. “Princeps” originally is neither an official title nor a designation of a magistracy; it is a complimentary statement of fact.<sup>6</sup> In Republican times a princeps was only “primus inter pares”, and in recent times the Princeps has often been described in the same way. But, although there is a measure of truth in it, the description as the first among equals does not apply to the Princeps in the same sense as it applies to the Republican principes. For if primacy remains always with one and the same “first one” the parity of the equals is impaired, because equality in this case exists only so long as any one of the equals may become the first among his peers. But whatever Augustus’s efforts to appear unassuming in civil life,<sup>7</sup> his very name “Augustus” signified that he was in some way above ordinary human standards,<sup>8</sup> and the way in which he used in his *Res Gestae* the phrase “me princeps”<sup>9</sup> shows that he, and doubtless everybody else, thought of his principate as an institution.<sup>10</sup> But an institutional principate is inconsistent with the Republican practice of equality, or at least pretended equality, between the nobles. In

Fabius Maximus et Cossi et Servilii ferent tantumque agmen nobilium non inania nomina praeferentium, sed eorum, qui imaginibus suis decori sint?” (Seneca, *De Clem.* 1, 9, 10). Cf. also Tac. *Ann.* 1, 13, 1–3.

<sup>1</sup> The phrase is from Lucretius II, 11 f. For the matter see above, pp. 88 f.

<sup>2</sup> See Scipio’s dictum quoted above, p. 38.

<sup>3</sup> See Cic. *Phil.* 1, 34.

<sup>4</sup> See Cic. *De Off.* 1, 13 and 64.

<sup>5</sup> See, e.g., Brutus’s letter, Cic. *Ad Brut.* 1, 16; and also Cic. *De Off.* 1, 26.

<sup>6</sup> Cf. F. E. Adcock, *C.A.H.* x, p. 588.

<sup>7</sup> See Suet. *Div. Aug.* 53–6. Cf. Seneca, *De Clem.* 1, 15, 3.

<sup>8</sup> Dio Cass. LIII, 16, 8.

<sup>9</sup> *Res Gestae*, 13; 30; 32, 3.

<sup>10</sup> The fact that “Princeps” does not appear in official titulature shows only that it was not an official title.

Republican times nobles might voluntarily defer to the auctoritas of other nobles; now they were expected always to defer to the auctoritas of the Princeps.<sup>1</sup> From the standpoint of the Republican nobility Tacitus was right in saying: "Igitur verso civitatis statu nihil usquam prisci et integri moris: omnes exuta aequalitate iussa principis aspectare."<sup>2</sup>

The practical implications of supremacy by virtue of auctoritas are far-reaching. Unlike potestas, auctoritas is not defined, and therefore, whereas potestas is confined within certain limits, there is, in theory at least, no limit to the scope of auctoritas: it can be brought to bear on any matter. This fact may explain the peculiar character of the Augustan Principate. His auctoritas enabled Augustus to perform functions for which, strictly speaking, he had no legal warrant. A notable example is the cura legum et morum. Suetonius and Dio Cassius are at variance in this matter: the former asserts that Augustus was made supervisor of morals and laws for life,<sup>3</sup> whereas the latter tells of two quinquennial terms during which Augustus held that office.<sup>4</sup> Ovid and Horace allude to the fact that Augustus supervised the laws and morals, but their allusions do not necessarily imply that he held a specific office for that purpose.<sup>5</sup> Augustus himself says that he declined the office of supreme and sole superintendent of laws and morals which the Senate and People offered him, but he performed by virtue of his tribunician power those duties which the Senate wished at that time to entrust him with.<sup>6</sup> There is no compelling reason to doubt the truth of Augustus's statement. For although superintendence of laws and morals was beyond the scope of tribunician power, Augustus's auctoritas supplemented his potestas. If the mutilated text of *Res Gestae*, 8, 5 has been restored aright, Augustus himself says that his auctoritas exerted a decisive influence upon legislation: "Legibus novis m[e] auctore

<sup>1</sup> Tac. *Ann.* III, 22, 6: adsentendi necessitas. *Ann.* I, 74, 3-6: "Quo loco censebis, Caesar? Si primus, habebis quod sequar; si post omnes, vereor ne imprudens dissentiam." *Ann.* VI, 8, 7 (a remark put into the mouth of a knight): "Tibi (Caesar): summum rerum iudicium di dedere, nobis obsequii gloria relicta est." Cf. also *Hist.* IV, 8 and *Agric.* 42, 5.

<sup>2</sup> *Ann.* I, 4, 1.

<sup>3</sup> Suet. *Div. Aug.* 27, 5.

<sup>4</sup> Dio Cass. LIV, 10, 5; 30, 1.

<sup>5</sup> Ovid, *Metam.* XV, 832 ff.; Horace, *Ep.* II, 1, 1 ff.

<sup>6</sup> *Res Gestae*, 6.

l]atis m[ulta e]xempla maiorum exolescentia iam ex nostro [saeculo] red[uxi et ipse] multarum rer[um exe]mpla imitanda pos[teris tradidi].”<sup>1</sup>

There are some examples which illustrate the above statement of Augustus. “Sciendum itaque est,” say the compilers of Justinian’s *Institutions*, “omnia fideicommissa primis temporibus infirma esse (? fuisse)... Postea primus divus Augustus semel iterumque gratia personarum motus... iussit consulibus auctoritatem suam interponere.” The result was that it gradually became established law (ideo divus Augustus ad necessitatem iuris ea detraxit).<sup>2</sup>

In view of the fact that the interpretation of law by jurists (*responsa prudentium*) was a potent factor in the administration of justice at Rome, great importance attaches to the following:

Ante tempora Augusti publice respondendi ius non a principibus dabatur, sed qui fiduciam studiorum suorum habebant consulentibus respondebant... Primus divus Augustus, ut maior iuris auctoritas haberetur, constituit, ut ex auctoritate eius responderent; et ex illo tempore peti hoc pro beneficio coepit.<sup>3</sup>

It may be that until the times of Hadrian the *responsa ex auctoritate principis* were in theory not binding on the judges,<sup>4</sup> but they carried all the weight that the *auctoritas* of the Princeps could lend them, and that was much.<sup>5</sup>

It appears from the above instances that by virtue of his *auctoritas* Augustus could intervene in matters which, if judged by strict legal rules and Republican practice, were beyond his *tribunicia potestas* and *imperium proconsulare*. But once his *auctoritas* was accepted there was no need to amplify his prerogative or grant him sweeping discretionary powers. He had in effect enjoyed all, or most of, the rights that were at a later time granted to Vespasian, and performed so many diverse functions as to amount in effect to a “*cura et tutela*”

<sup>1</sup> Cf. Ovid. *Metam.* xv, 833: *Legesque feret iustissimus auctor.*

<sup>2</sup> *Inst.* II, 23, 1 and 12. Cf. *Inst.* II, 25 pr. about the effect of Augustus’s *auctoritas* on the institution of *codicilli*.

<sup>3</sup> Pompon. *Dig.* I, 2, 2, 49.

<sup>4</sup> See *Gai Inst.* I, 7.

<sup>5</sup> The following passages from Tacitus, *Ann.* I, 77, 4, may also be relevant to the *auctoritas* of Augustus: *Valuit tamen intercessio* (against a proposal that the praetors should have the right to impose the penalty of flogging on actors) *quia divus Augustus immunis verberum histriones quondam responderat, neque fas Tiberio infringere dicta eius.*

rei publicae universa". Nevertheless, it seems unlikely that an enabling act of the kind of the S.C. de Imperio Vespasiani,<sup>1</sup> or an enactment which invested Augustus with discretionary powers as supreme guardian of the commonwealth,<sup>2</sup> was ever passed.<sup>3</sup> The fact that the S.C. de Imperio Vespasiani mentions every now and then the precedent of Augustus proves only that Augustus performed the functions mentioned in that Senatus Consultum, but it does not prove that those functions were delegated to him by special law. It was only when, with use, the Principate gradually hardened into a more rigid form of potestas, and when the auctoritas of certain Principes was not so obviously superior and their title to the Principate not so indisputable as were those of Augustus, that general enabling acts were passed.<sup>4</sup> There is no reason to doubt that Augustus's supremacy largely depended on his auctoritas. But at the same time it ought to be observed that supremacy by virtue of auctoritas may be, indeed, less offensive than supremacy by reason of extraordinary powers, but none the less real and efficacious, and perhaps not even less dangerous to freedom.

To complete the examination of the auctoritas Principis it is necessary to see in what manner it affected the auctoritas senatus and popular sovereignty.

<sup>1</sup> See Bruns, *Fontes*<sup>7</sup>, p. 202, esp. ll. 17 ff.

<sup>2</sup> Dio Cass. LIII, 12, 1: τὴν μὲν φροντίδα τὴν τε προστασίαν τῶν κοινῶν πᾶσαν ὡς καὶ ἐπιμελείας τινὸς δεομένων ὑπεδέξατο. Von Premerstein, *op. cit.* p. 117, maintains, mainly on the strength of Dio's statement, that Augustus was invested with a cura et tutela rei publicae universa, which carried with it discretionary powers. This contention, however, is inconsistent with Augustus's own account in his *Res Gestae*. And even if it were assumed that Augustus for some reason suppressed the truth, it would still be difficult to see why no Latin author seems to know anything about the delegation of the cura rei publicae to Augustus. The Greek authorities, and particularly Dio, may be very misleading in this matter. Incidentally, Dio's phrase need not necessarily mean that a definite grant of powers took place in 27 B.C. That phrase may just as well be a summary of the total effect of the Principate.

<sup>3</sup> For a similar interpretation of Augustus's powers see H. Last, *C.A.H.* XI, pp. 404 ff.; R. Syme, *op. cit.* p. 313 n. 1; D. McFayden, *op. cit.* pp. 183 ff.; E. Schönbauer, *op. cit.* pp. 288 ff., esp. 293.

<sup>4</sup> Speaking of the accession of Vitellius, Tacitus says (*Hist.* II, 55, 2): In senatu cuncta longis aliorum principatibus composita statim decernuntur. Similarly, on the accession of Vespasian (*Hist.* IV, 3, 3): Senatus cuncta principibus solita Vespasiano decernit. The latter passage is clearly an allusion to the S.C. de Imperio Vespasiani.

As has been seen, the Optimates interpreted republicanism and *libertas* as meaning government by the Senate. *Auctoritas senatus* as a political slogan under the Late Republic expressed the doctrine of senatorial supremacy, in the sense that the Executive should submit to the direction and control of the Senate even if deference to the Senate involved the self-abnegation of magisterial potestas.<sup>1</sup> Under the Principate, however, the Senate was reduced to the role of an inferior partner to the Princeps. By virtue of his tribunicia potestas Augustus could veto any resolution of the Senate he did not approve of; on the other hand, he was *de facto* allowed to take any measure he deemed right and the Senate ratified his acts in anticipation.<sup>2</sup> It seems therefore that the activity of the Senate depended on the *auctoritas* of the Princeps rather than the activity of the Princeps on the *auctoritas* of the Senate.

“*Liberum suffragium*” was a plank in the platform of the Populares,<sup>3</sup> and was regarded as a manifestation of popular sovereignty. Time was when electoral and legislative Assemblies were essential organs of the Roman constitution. But when in A.D. 14 Tiberius, acting on Augustus’s instructions, abolished popular elections,<sup>4</sup> he did away with what had become a sham. Augustus revived the elections,<sup>5</sup> but electoral freedom was severely curtailed by the *commendatio* of the Princeps<sup>6</sup> which was a virtual designation for appointment, very much in the same manner as it was under Caesar’s dictatorship.<sup>7</sup> It is true that elections at Rome never were entirely free, but, whatever the amount of electoral freedom, the People considered it part and parcel of its political *libertas*, as is shown, for example, by the struggle for secret ballots. Commendation by virtue of the *auctoritas* of the Princeps<sup>8</sup> largely reduced the elections to a mere formality, and thereby eliminated the popular element from

<sup>1</sup> See Cic. *Pro Sest.* 137. Cf. above, pp. 40 ff.

<sup>2</sup> See S.C. de Imp. Vesp. ll. 17–19 and Dio Cass. LVI, 28, 3.

<sup>3</sup> Cf. above, p. 50.

<sup>4</sup> See Vell. Pat. II, 124, 3.

<sup>5</sup> Suet. *Div. Aug.* 40, 2; 56, 1.

<sup>6</sup> Dio Cass. LIII, 21, 7. Cf. Mommsen, *Staatsrecht* II<sup>3</sup>, pp. 921 ff. On two occasions of disorderly elections Augustus appointed magistrates without a popular vote at all, see Dio Cass. LIV, 10, 2; LV, 34, 2.

<sup>7</sup> Suet. *Div. Jul.* 41, 2. Cf. Lucan v, 391 ff.

<sup>8</sup> Ovid, *Ex Ponto* IV, 9, 67 f.: *Multiplicat tamen hunc gravitas auctoris honorem Et maiestatem res data dantis habet.*

the Roman constitution. Judged by old Republican standards this was undoubtedly an encroachment upon the political freedom of the Roman People. Yet, principles apart, the change was of no great consequence. During the closing decades of the Republic electoral freedom at Rome became a kind of privilege of the urban populace in which the entire *Populus Romanus* had little cause to be interested. If Tacitus is right in saying that the abolition of popular elections called forth no other protest on the part of the People than “idle talk”,<sup>1</sup> this would suggest that the *Populus Romanus* did not consider the innovation a severe loss of rights.

It appears from what has hitherto been said that the potestas and auctoritas of the Princeps, if judged by the old standards, went far beyond the Republican practice and made the very existence of a free commonwealth, in the old Republican sense, questionable. However, how many Romans were in a mood to judge the Principate by Republican standards, and to appraise it solely on its conformity to strict republicanism? There was the intransigent jurist Antistius Labeo who would not approve of anything that did not exist of old.<sup>2</sup> But was Labeo representative of his contemporaries? There is much truth in Tacitus’s remark: “Iuniores post Actiacam victoriam, etiam senes plerique inter bella civium nati; quotus quisque reliquus, qui rem publicam vidisset?”<sup>3</sup> The second successive generation to endure civil war could hardly be disposed to regard constitutional propriety as the supreme criterion of the merits or demerits of a régime that offered peace. And once their desire for peace, security, and stability was satisfied, they may have been inclined to see freedom even where it did not exist. Nevertheless, it would not be right to assume on that account that all the talk about restoration of the *res publica* and *libertas* was merely make-believe.

<sup>1</sup> *Ann.* 1, 15, 2.

<sup>2</sup> Ateius Capito (Labeo’s contemporary and rival, see Tac. *Ann.* III, 75 and *Dig.* 1, 2, 2, 47) ap. Gell. *N.A.* XIII, 12, 2: *Agitabat hominem libertas quaedam nimia atque vecors usque eo, ut divo Augusto iam principe et rem publicam obtinente ratum tamen pensumque nihil haberet nisi quod iussum sanctumque esse in Romanis antiquitatibus legisset. Horace, Sat.* 1, 3, 81: *Labeone insanior*; and Porphyrio *ad loc. cit.*: (Labeo) *memor libertatis in qua natus erat multa contumaciter adversus Caesarem dixisse et fecisse dicitur.*

<sup>3</sup> *Ann.* 1, 3, 7. Cf. *Hist.* 1, 1, 1: *inscitia rei publicae ut alienae.* And also *Ann.* 1, 2, 1.

The Republic became an “*imago sine re*” long before the establishment of the Principate, and many must have realized that just as Cicero and Caesar had.<sup>1</sup> The contemporaries of Augustus knew the Republic as a form without much substance, and that form was largely preserved: “*Non regno...neque dictatura, sed principis nomine constitutam rem publicam.*”<sup>2</sup> The familiar magistracies were retained (“*eadem magistratum vocabula*”<sup>3</sup>), the Senate deliberated and passed resolutions, the People cast votes in the Assembly. If compared with the remote past, all this may have seemed a sham. But every sensible person knew that the “*vetus illa et antiqua rei publicae forma*” was irretrievably gone long before. If people felt inclined to compare the Augustan Principate with the past, it was with the immediate, not the remote, past that they compared it, and the Principate doubtless compared more than favourably with Caesar’s dictatorship and the arbitrary régime of the Second Triumvirate.

The Principate could also be rightly regarded as a restoration of the *res publica* in another, and perhaps more important, respect. *Res publica* signifies not only a form of government but also, and primarily, a purpose of government. The quintessence of a *res publica* is that it is not simply a State, but a State which is a “common wealth”, that is to say, it consists of the interests of all citizens and exists for all citizens.<sup>4</sup> A State in which the People have no political rights is not a *res publica* at all.<sup>5</sup> The direct opposite to a *res publica* is what the Romans called *regnum*, that is arbitrary despotism under which the State is, as it were, a private property (*res privata*) of the ruler, and the people are his rightless subjects. It seems that in order

<sup>1</sup> Cic. *De Rep.* v, 2; *De Off.* II, 29; *Ad Att.* IV, 18, 2; Suet. *Div. Jul.* 77.

<sup>2</sup> Tac. *Ann.* I, 9, 6.

<sup>3</sup> *Ib.* I, 3, 7. Cf. Vell. Pat. II, 89, 3.

<sup>4</sup> R. Stark, *Res Publica*, seems to have entirely overlooked this aspect of the Roman notion of *res publica*. The fact that the Romans continued to call their State *res publica* under the Empire does not by itself prove that *res publica* meant simply State, in the modern sense. Why the Romans applied the term *res publica* to their State under the Empire can best be seen from the following quotation: “*Et in contione et in senatu saepe dixit (Hadrianus) ita se rem publicam gesturum ut sciret populi rem esse non propriam*”, *S.H.A. Hadr.* 8, 3.

<sup>5</sup> See Cic. *De Rep.* III, 43 ff. Cf. above, pp. 80 ff.

to understand the sentiments of the Romans under Augustus, the Principate must be compared, not with the bygone *vetus res publica*, but with arbitrary despotism which the Romans detested and feared so much.<sup>1</sup> Augustus was neither a despot (*rex*)<sup>2</sup> nor a dictator who wields unlimited power; his prerogative, as distinct from his *auctoritas*, was wide, but constitutional and limited. Under his rule no Roman had reason to feel like a rightless subject. All Romans continued to be free citizens of their own *res publica* which was directed by the Princeps, not for his own advantage, but for the well-being of all.<sup>3</sup> They lived again under a system of law and order which safeguarded their rights. The manner in which the State was directed changed, but its purpose remained the same. And this meant that the essentials of *libertas* remained. *Libertas* at Rome never meant anarchic negativism; it was founded on a positive doctrine which, put in a nutshell, was that “*libertas in legibus consistit*”.<sup>4</sup> This means that the citizen holds his position in the community not in despite of the State but with the aid and by the guarantee of the State, because the State secures the rights which are the condition of his holding any position at all. Under Augustus the essential rights and liberties of Roman citizens remained untouched. It is true, the *nobiles* lost their *de facto* privilege of self-assertion in the conduct of public affairs. But, on the other hand, the formerly under-privileged classes, the potential *homines novi*, were given under the Principate a far better chance to make a public career than ever before.<sup>5</sup>

It appears therefore that there were valid reasons to consider Rome under the Augustan Principate a *res publica* (not the *Res Publica*) in which *libertas* existed. The real change was in the fundamental principle of government rather than in its form or

<sup>1</sup> See, e.g., Livy II, 15, 3.

<sup>2</sup> The Romans were conscious of the essential difference between principatus and regnum. See Ovid, *Fasti* II, 142: Tu (Romule) domini nomen, principis ille (Augustus) tenet. The same contrast is to be found, for example, in Suet. *Calig.* 22: Nec multum afit quin statim diadema sumeret speciemque principatus in regni formam converteret. See also Pliny, *Paneg.* 45, 3; 55, 6 f.

<sup>3</sup> Cf. F. E. Adcock, *C.A.H.* x, p. 587.

<sup>4</sup> Cic. *De Lege Agr.* II, 102. Cf. above, pp. 7 ff.

<sup>5</sup> Cf. especially R. Syme, *The Roman Revolution*, ch. 25–33.

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purpose; for whereas the salient feature of Republican government was distribution of power with a resultant system of checks and balances, the new régime rested on a somewhat veiled concentration of power in the hands of the Princeps. It was a profound change, but it did not immediately affect the lives of the people other than the old nobiles. Yet there were latent in it dangerous potentialities the actualization of which was bound to undermine the very foundations of libertas.