

## CHAPTER 5

### PRINCIPATUS ET LIBERTAS RES OLIM DISSOCIABILES

Freedom of man under government is to have a standing rule to live by, common to every one of that society and made by the legislative power erected in it.

LOCKE, *Two Treatises on Civil Government*, ii, 4, 22.

Liberty alone demands for its realisation the limitation of the public authority.

ACTON, 'Nationalism', in *The History of Freedom*, p. 288.

#### I. THE NATURE OF THE PROBLEM

Lucan, writing the later part of his epic in defiance of Nero's tyranny,<sup>1</sup> observed that ever since the battle of Pharsalus there had been afoot a conflict between liberty and Caesar, and Tacitus remarked that prior to Nerva the Principate and freedom were incompatible.<sup>2</sup> It is a well-known fact that the Julio-Claudian and Flavian emperors had from time to time to face an opposition varying in form and intensity. After Caligula's assassination *Libertas* was the watchword of those who attempted to abolish the Principate;<sup>3</sup> some of Nero's victims died with the name of Iuppiter Liberator on their lips;<sup>4</sup> and after Nero's downfall *Libertas Restituta* became a popular slogan.<sup>5</sup> It seems therefore that in some form or other freedom and the Principate clashed, and, in a way, Tacitus's historical writings, particularly the *Annals*, were perhaps conceived and executed as the story of that struggle.<sup>6</sup>

<sup>1</sup> See G. Boissier, *L'Opposition sous les Césars*<sup>5</sup> (1905), pp. 280 ff.

<sup>2</sup> Lucan vii, 691 ff. (ed. Housman). Housman's paraphrase of this somewhat obscure passage is: Ut Thapsi Mundae Alexandriae, sic post Pompei fugam in proelio Pharsalico non favor in eum popularis aut bellandi studium, quod utrumque iam sublatum est, in causa erit cur usque pugnaretur, sed immortale libertatis cum Caesare certamen. Tac. *Agric.* 3, 1.

<sup>3</sup> See Josephus, *Ant.* xix, 186.

<sup>4</sup> Tac. *Ann.* xv, 64, 4; xvi, 35, 2.

<sup>5</sup> See H. Mattingly and E. A. Sydenham, *op. cit.* i, pp. 210, 215, 225, 229, 230.

<sup>6</sup> Nos saeva iussa, continuas accusationes, fallaces amicitias, perniciem innocentium et easdem exitu causas coniungimus, *Ann.* iv, 33, 3. Cf. *Hist.* i, 2, 3.

But while the conflict between the Principate and *libertas* under the emperors from Tiberius to Domitian appears to have been a fact, it is by no means clear what was the nature of that conflict. The real issue is somewhat obscured, for the modern student at least, by the ambiguity of the relevant political terms, above all *libertas* itself. *Libertas* means either personal and civic rights, or republicanism, or both, and, while under each of these heads fall several cognate but distinct notions, it is not always easy to ascertain exactly what *libertas* means in each particular instance. Similarly, *principatus* may mean either what the Principate actually became, but never ought to have become, or what it ought to be, but seldom was.

Nevertheless, the nature of the conflict between freedom and the Principate as well as the scope of *libertas* under the Early Empire (both of which are in fact only different aspects of the same problem) can be ascertained, if the available evidence is placed in due perspective and against its true background. In view of the variety of meanings that attach to *libertas* it is necessary, in order to avoid confusion when dealing with the question before us, to distinguish as clearly as possible between the seeming problems and the real ones. It may therefore be easier to show what the conflict between freedom and the Principate was, if we first eliminate from the discussion what it was not.

If a distinction is drawn between opposition to an emperor, or the Principate, and risings against, or dissatisfaction with, Roman rule, it will appear that, in so far as there existed opposition to the Julio-Claudian and Flavian emperors, it was not a widespread popular movement. The opposition was largely confined to the city of Rome, and even there it came principally from senators, nobles, and intellectuals. There was much truth in the observation which Tacitus put into the mouth of Cerialis: "*Laudatorum principum usus ex aequo quamvis procul agentibus; saevi proximis ingruunt.*"<sup>1</sup>

As regards its motives, this chiefly senatorial opposition did not aim at abolishing the Principate and restoring the Republic. Tacitus says that immediately after the death of Augustus some people talked idly of the blessings of freedom.<sup>2</sup> There were rumours circulating about Drusus that he would restore the Republic if he came to power,<sup>3</sup> and the same was believed about Germanicus.<sup>4</sup>

<sup>1</sup> *Hist.* IV, 74, 2.

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

<sup>3</sup> *Ann.* I, 33, 3.

<sup>4</sup> *Ann.* II, 82, 3.

When Furius Camillus Scribonianus, the governor of Dalmatia, planned a revolt against Claudius in 42 he promised his soldiers to restore the Republic, but they would not listen to him.<sup>1</sup> The sincerity of his promise may well be doubted in view of the fact that after Caligula's death he was a potential candidate for the Principate.<sup>2</sup> All this shows that the ideas of *libertas* and *res publica* were not dead, but it shows nothing more.

The only known occasion on which the restoration of the Republic was seriously contemplated was the short interregnum between the assassination of Caligula and the accession of Claudius.<sup>3</sup> But even on that exceptional occasion the Senate did not arrive at a unanimous decision in favour of the Republic. The desire to restore the Republican form of government is easily understandable in view of the Senate's plight under Caligula's tyranny. Even so, the enthusiasm for the restoration of the Republic was not shared by all: some thought the Senate ought merely to appoint a new princeps. But whatever its opinions, the Senate soon realized that it was not the master of the situation; it had to sanction with a good grace the choice of the Praetorian Guard. It may be that the events of those two days drove home a lesson that the Senate never forgot. There were plots against the lives of nearly all the emperors from Augustus to Domitian, but the object of the conspirators was to remove the Princeps of the day, not to abolish the Principate. It is noteworthy that at the time of the Pisonian conspiracy against Nero it was believed at Rome that Piso did not admit the consul Vestinus to the secret "*ne ad libertatem oreretur, vel delecto imperatore alio sui muneris rem publicam faceret*".<sup>4</sup> Republicanism was no longer considered practical politics.

This view of the aims of the opposition is not inconsistent with the fact that there were under the Early Empire at Rome a number of distinguished persons who admired the Republic, some of whom even worshipped the memory of Cato, Brutus, and Cassius. On the face of it, this admiration of the Republic and this hero-worship seem to imply that there was a body of opinion strongly in favour of republicanism; this is, however, far from being so. It is no doubt

<sup>1</sup> Dio Cass. LX, 15, 3.

<sup>2</sup> See *C.A.H.* x, p. 667.

<sup>3</sup> See Josephus, *Ant.* XIX, 162 ff. and Suet. *Div. Claud.* 10, 3 ff.

<sup>4</sup> Tac. *Ann.* xv, 52, 4.

true that there were irreconcilable republicans under the Empire, as for example the jurist Labeo,<sup>1</sup> but admiration of the Republic and its heroes was not necessarily the concomitant of confirmed republicanism in politics.

It was part of the political genius of the Romans to see the unbroken continuity underlying all the new departures in their history. Under Augustus the form of government changed but this did not mean severing all the ties with the past. On the contrary, the Augustan Principate inspired a conscious effort to emphasize the links between past and present. The Republic was the glorious and heroic period of Roman history, and as such it could not fail to arouse the admiration of a Roman patriot. But sensible patriots knew only too well that, if Rome was to survive, the Principate had to continue,<sup>2</sup> and this is why their glorification of Rome's Republican history could be—and in many cases was—wedded to the support of the Principate.<sup>3</sup> Livy's and Virgil's Republican sympathies were in no way inconsistent with their allegiance to the Principate. Did not the Principate at its best aim at preserving Roman traditions?

Nor was the worship of Cato, Brutus, and Cassius necessarily inspired by allegiance to their lost cause. Titinius Capito, an imperial civil servant by profession and a thorough-going hero-worshipper by inclination, had his house filled with busts of Brutus, Cassius, and Catones.<sup>4</sup> The attitude of Seneca is no less revealing. Seneca combined boundless admiration for Cato with determined and outspoken support of monarchy. On reading what he has to say about Cato one can easily see that there was no inconsistency in Seneca's attitude: he admired in the Stoic Cato the courage and integrity of a man who remained true to himself in all circumstances,

<sup>1</sup> See above, p. 120 n. 2.

<sup>2</sup> See Seneca, *De Clem.* 1, 4, 3; Tac. *Hist.* 1, 1, 1; 1, 16, 1; *Ann.* 1, 9, 5; IV, 33, 2.

<sup>3</sup> "Ce serait donc une grande erreur de croire que tous ceux qui parlaient avec tant de respect des hommes et des choses de l'ancien temps regrettaient le gouvernement ancien et qu'on ne pouvait pas louer la république sans être républicain," Boissier, *op. cit.* pp. 92 f. For the attitude of Tacitus see below, pp. 160 ff.

<sup>4</sup> Pliny, *Ep.* 1, 17, 3. See J. M. C. Toynbee, *Dictators and Philosophers in the First Century A.D., Greece and Rome XIII* (1944), pp. 43 f.

and defied Fortune in his life and by his death.<sup>1</sup> Cato is the paragon of Stoic virtues, he is a model above imitation.<sup>2</sup> But with the enthusiastic admiration of Cato's fortitude mingles criticism of his politics.

Quid tibi vis, Marce Cato? Iam non agitur de libertate; olim pessumdata est. Quaeritur, utrum Caesar an Pompeius possideat rem publicam; quid tibi cum ista contentione? Nullae partes tuae sunt; dominus eligitur. Quid tua uter vincat? Potest melior vincere, non potest non peior esse qui vicerit.<sup>3</sup>

Apparently Seneca thought that his hero failed rightly to appreciate the political situation of his own times. Similarly he criticized Brutus for having failed to see that, after the decay of the old morality, nothing could restore the old constitution.<sup>4</sup>

Seneca's example supplies a warning against a generalization that admiration of Republican heroes amounted to republicanism in politics. The cult of Republican personages may be a symbolical assertion of faith in republicanism,<sup>5</sup> and it was represented by malevolent critics as savouring of revolution;<sup>6</sup> but it may just as well indicate that republicanism had spent itself as a political force, and survived only in the form of romantic devotion to bygone times and a politically harmless hero-worship. It is noteworthy that, in spite of his *Philippics* and his proscription, Cicero did not figure among the venerated heroes and martyrs of the Republic.<sup>7</sup> The reason seems to be that there was nothing in Cicero's character or his death to commend him to the admiration of posterity. Seneca knew what was Cato's title to fame: "Catoni gladium adsertorem

<sup>1</sup> Nemo mutatum Catonem totiens mutata in re publica vidit; and: Cato . . . ostendit virum fortem posse invita fortuna vivere, invita mori, *Ep.* 104, 29 ff. Cf. also *Ep.* 24, 6 ff.; 95, 69 ff.; 98, 12.

<sup>2</sup> Catonem autem certius exemplar sapientis viri nobis deos immortales dedisse quam Ulixen et Herculem prioribus saeculis, etc.; *Dial.* 11 (*De Const. Sap.*), 2, 1. Cf. *Dial.* 1 (*De Provid.*), 3, 14. See also *Ep.* 70, 22 and *Dial.* 11, 7, 1.

<sup>3</sup> *Ep.* 14, 13.

<sup>4</sup> *De Benef.* 11, 20, 2.

<sup>5</sup> Whether this was really so in the case of Thræsea Paetus and Helvidius Priscus, who are known both as admirers of Cato, Brutus, and Cassius, and as martyrs of libertas under the Early Empire, will be discussed later.

<sup>6</sup> See Tac. *Ann.* XIV, 57, 5; XVI, 22, 7 ff.

<sup>7</sup> A restrained tribute is paid to him by Quintilian, a professed admirer of Ciceronian style, see *Inst.* XII, 1, 16.

libertatis extorque, magnam partem detraxeris gloriae.”<sup>1</sup> Perhaps if republicanism mattered most, Cicero would have found an honourable place beside Cato and the Liberators. Anyhow, the worship of heroes whom death ennobled and tradition idealized does not prove adherence to their real politics.

There remains another thing to be observed. In his well-known study *L'Opposition sous les Césars*, Gaston Boissier denied to the opposition a political character. He asserted that while the opponents detested the vices of the emperors, they were not concerned to resent their power; the opposition was in principle moral, not political: it blamed in the emperor the man, not the sovereign.<sup>2</sup> Elsewhere in the same study<sup>3</sup> Boissier seems to have somewhat modified this view, perhaps unwittingly. In the main, however, his thesis is that the opposition was not political.<sup>4</sup>

It seems that Boissier denied the opposition a political character because, on the one hand, he saw quite rightly that it did not aim at restoring the Republic, and, on the other, implicitly assumed that a political conflict with the Principate could be nothing but a conflict between republicanism and monarchy.

The object of the following pages is to show that the conflict between *libertas* and *principatus* was a political issue, although not between republicanism and monarchy.

The Augustan Principate was not, and was not meant to be, an absolute monarchy in republican disguise. Augustus did not attempt or wish to do away with the Republic once for all; rather his aim was to preserve as much of it as was practically possible.<sup>5</sup> Two great political ideas survived the collapse of the Republic, and both of them were received as fundamental principles of the new régime: the one was the idea that law, the chief guarantor of all rights and liberties to which a Roman citizen was entitled, was above all power; the other, that the Roman State was the common concern of the Roman People. These clearly distinct ideas are in fact, as has been seen, only two different aspects of *libertas*. And it is precisely these two aspects of *libertas* that are uppermost in the conflict between freedom and the Principate.

<sup>1</sup> *Ep.* 13, 14.

<sup>2</sup> Boissier, *op. cit.* pp. 102–3.

<sup>3</sup> *Ib.* pp. 345 f.

<sup>4</sup> For a somewhat similar view see J. M. C. Toynbee, *op. cit.* p. 47.

<sup>5</sup> See F. E. Adcock, *C.A.H.* x, p. 587.

## 2. PRINCEPS SUPRA LEGES

Pliny, when he praised in his *Panegyric* Trajan's deference to law, declared among other things:

Quod ego nunc primum audio, nunc primum disco, non est princeps supra leges, sed leges supra principem idemque Caesari consuli quod ceteris non licet.<sup>1</sup>

One would have thought that the laws were binding on the Princeps as a matter of course; seeing, however, that Pliny went on to praise Trajan on that score, it seems that this was neither obvious nor certain. How far Pliny's statement is true with regard to Trajan will be seen later; all we need consider here is whether what his words imply, namely that before Trajan the Princeps was above the law, is exaggerated or correct.

The Princeps, as Augustus conceived of him, was undoubtedly the first citizen, but a citizen, and as such subject to the laws of Rome and to the constitutional organs. From the standpoint of the constitutional theory of the Principate it is interesting that when Claudius hesitated whether he might contract a marriage with his niece Agrippina, Vitellius asked him whether he would yield to the command of the People and the authority of the Senate, to which the emperor replied "unum se civium et consensui imparem".<sup>2</sup> Nor did the first Princeps claim to be the master of the State: Augustus considered himself a soldier at a post;<sup>3</sup> Tiberius asserted that the Princeps ought to be the servant of the State;<sup>4</sup> and both of them eschewed the appellation "dominus".<sup>5</sup>

<sup>1</sup> *Paneg.* 65, 1.

<sup>2</sup> Tac. *Ann.* xii, 5. Cf. Suet. *Div. Claud.* 26, 3. See also *Ann.* iv, 6, 7: Ac si quando cum privatis disceptaret (Tiberius)—forum et ius.

<sup>3</sup> See Gellius, *N.A.* xv, 7, 3. Cf. Seneca, *De Clem.* 1, 3, 3 (excubare). See also F. E. Adcock, *C.A.H.* x, 594. If the idea of statio principis goes at all beyond Roman military tradition, it may derive from Socrates no less than from Hellenistic kingship, see Plato, *Apology*, 28D ff. Cf. Dio Chrys. iii, 55: ὑπὸ τοῦ μεγίστου θεοῦ ταχθεῖς. For a detailed discussion see E. Köstermann, *Statio Principis*, *Philologus* lxxxvii (1932), pp. 358–68, 430–44; and J. Béranger, Pour une définition du principat, *Rev. Ét. Lat.* xxi–xxii (1943–4), pp. 144–54.

<sup>4</sup> Suet. *Tib.* 29. Cf. 24, 2; Tac. *Ann.* i, 11, 2. See also Dio Chrys. iii, 75, where kingship is represented as δουλεία.

<sup>5</sup> Suet. *Div. Aug.* 53, 1; *Tib.* 27; Dio Cass. lvii, 8, 2.

But if this was so, why was it possible for Domitian to become “dominus et deus” without having changed the constitution? Why did it occur to Pliny to say that the Princeps was above the law? Why did a conflict between the Principate and *libertas* develop at all?

“Si le pouvoir de l’empereur n’était pas tout à fait illimité,” says Boissier, “il était au moins mal limité: de là vint tout le mal.”<sup>1</sup> It is only to be regretted that, having hit the nail on the head, he went on to explain that the power of the Princeps rested on his *dignitas*,<sup>2</sup> and that “cette autorité mal définie et incertaine, rendue plus puissante par son obscurité même, paralysait tout le reste”.<sup>3</sup> This explanation is obviously inspired by Montesquieu’s theory of Separation of Powers according to which the strict division of functions is the most effective check on power.<sup>4</sup> But there was never separation of powers at Rome, and, as the Republican constitution shows, the Romans, unlike Montesquieu and his many followers, were well aware of the essential difference between delimitation of functions and limitation of power. In the eyes of the Romans, under the Republic at any rate, limitation of power consists, not in a precise circumscription of functions, but rather in effective safeguards against the abuse of power within its statutory province. What made the power of the consul limited were the provisions whereby its duration was fixed, and its abuse could be prevented by *par potestas* or *intercessio*, or, failing this, punished later. The separation of the military and administrative functions of the consul from the juridical and judicial functions of the praetor was no more than a division of labour; nor did consuls cease to be judges or praetors cease to be generals. It was because of the threefold protection against the abuse of power—*par potestas* and *intercessio*, *provocatio*, *potestas ad tempus*—that the Republican constitution could rightly be described as “*imperia legum potentiora quam hominum*”.<sup>5</sup> And so long as law was above power, freedom was secure.

<sup>1</sup> Boissier, *op. cit.* p. 63.

<sup>2</sup> This was at that time the accepted reading in the *Res Gestae*, 34, instead of the correct “*auctoritate*”.

<sup>3</sup> *Op. cit.* p. 64.

<sup>4</sup> It will be noticed that Boissier uses “mal limité” and “mal définie et incertaine” as meaning the same thing.

<sup>5</sup> Livy II, 1, 1.



What was wrong in the Principate from the point of view of *libertas* was the absence of effective safeguards against the abuse of power by the emperor. Not that the Princeps was exempted from all existing checks; in theory some checks existed as before, but in practice they could not be applied against the Princeps simply because there was no adequate force behind them. What made those checks effective under the Republic was the distribution of power (not separation of Powers). Their effectiveness continued so long as distribution of power continued; but when a concentrated and permanently overwhelming power emerged, those checks were of little, if any, use. They were not abolished, but they became shams.

The jurist Gaius asserts that “*nec umquam dubitatum est quin (constitutio principis) legis vicem optineat*”.<sup>1</sup> It is of course true that senior magistrates were always empowered to issue binding edicts, but there is a world of difference between a magisterial edict and an imperial *constitutio*: the former was legal and binding only in so far as it complied with the established law, whereas the latter supplanted the law. That is to say that, unlike the magistrate who governed in compliance with general rules, the Princeps was empowered to rule by direct command. But, even if beneficial, government by command which takes the place of law is incompatible with the fundamental idea of freedom as it was conceived of under the Republic. That idea, epitomized in Cicero’s dictum “*Legum idcirco omnes servi sumus ut liberi esse possimus*”,<sup>2</sup> postulates that the Roman People should be governed in accordance with the general rules laid down in the statutes which the People enacted and by so doing bound themselves to observe. Under such a government the Romans could feel they were their own masters, notwithstanding the fact that they were not really self-governing. The moment, however, an imperial decree, edict, or instruction<sup>3</sup>

<sup>1</sup> *Gai Inst.* 1, 5. Cf. *Dig.* 1, 4, 1 (Ulpian) = *Inst.* 1, 2, 6. Ulpian’s text in the *Digest* is obviously interpolated. F. Schulz, Bracton on Kingship, *Eng. Hist. Rev.* LX (1945), p. 154, reconstructs Ulpian’s original phrasing: *Quod principi placuit legis habet vicem, utpote cum lege quae de imperio eius lata est populus ei hanc potestatem conferat.*

<sup>2</sup> Cic. *Pro Cluent.* 146.

<sup>3</sup> *Constitutio principis* est quod imperator decreto vel edicto vel epistula constituit, *Gai Inst.* 1, 5. Cf. *Dig.* 1, 4, 1, 1 (Ulpian).

acquired the force of a *lex*, the Roman People was exposed to domination. It is true the Princeps was not yet exempted from all laws;<sup>1</sup> on the other hand, there were no effective means of coercing him to obey the laws. But a power which is *de facto* above the law is a grave menace to freedom; and the menace was all the graver for the technical legitimacy of that power. Gaius and Ulpian argue that the emperor's decrees and regulations are law because his power was conferred on him by an enactment of the People. Thus the Enabling Act becomes a legitimate title to virtual absolutism.<sup>2</sup> But legitimacy is not freedom, and "the dogma that absolute power may, by the hypothesis of a popular origin, be as legitimate as constitutional freedom, began... to darken the air".<sup>3</sup>

The Hellenistic philosophy of kingship, and especially the doctrine that the true king is Law Incarnate, νόμος ἐμψυχος,<sup>4</sup> was known in Rome and, by a kind of misinterpretation, may have stimulated absolutism under the Early Empire (the Late Empire is a different matter, but it cannot be dealt with here). In its true and original form, however, the doctrine of the king as Law Incarnate is concerned with a problem totally different from that which faced the Romans. This doctrine is not at all concerned with positive law.<sup>5</sup> The philosopher-king, by virtue of his wisdom, is capable of

<sup>1</sup> For a full discussion of the view here accepted see F. Schulz, *op. cit.* p. 158. See also S.C. de Imp. Vesp. ll. 22 ff.

<sup>2</sup> See *Gai Inst.* I, 5; Ulpian, *Dig.* I, 4, 1. Gradually the *Lex de Imperio* came to be looked upon as an exemption from law in general, see *Cod. Iust.* VI, 23, 3 (Severus Alexander, A.D. 232): *Licet enim lex imperii sollemnibus iuris imperatorem solverit, nihil tamen tam proprium imperii est ut legibus vivere. Cf. Inst.* II, 17, 8: ... *Divi quoque Severus et Antoninus saepissime rescripserunt: licet enim, inquit, legibus soluti sumus, attamen legibus vivimus.*

<sup>3</sup> Lord Acton, *History of Freedom*, p. 78.

<sup>4</sup> For a discussion of this doctrine see Erwin R. Goodenough, *The Political Philosophy of Hellenistic Kingship*, *Yale Classical Studies*, I (1928), pp. 55–102; and *The Politics of Philo Judaeus* (1938), pp. 55, 107–10. It is hard to say whether Professor Goodenough noticed that his conclusions in the earlier work, pp. 99 ff., (which are not accepted here) are at variance with those of the later one.

<sup>5</sup> See Seneca, *De Clem.* I, 1, 4 and I, 1, 2; and especially Plutarch, *Ad Principem Ineruditum*, 3 (= *Moralia*, 780c): *τίς οὖν ἄρξει τοῦ ἀρχοντος; ὁ νόμος... οὐκ ἐν βιβλίοις ἔξω γεγραμμένος οὐδὲ τισι ξύλοις, ἀλλ' ἐμψυχος ὦν ἐν αὐτῷ λόγος.*

understanding the precepts of right reason<sup>1</sup> and he enjoins them on his subjects. He is God's vicegerent on earth,<sup>2</sup> and in exercising his power has to imitate the benignity of God.<sup>3</sup> The foundation of his rule, however, is obedience to the unwritten laws of right reason, in default of which he becomes a tyrant. The king is therefore an absolute ruler, in the sense that he is not responsible to his subjects, but he is subject to those divine, or natural, laws which he embodies on earth.

The problem that faced the Romans was the relation between the Princeps, whose power rested on an Act of the Senate and People of Rome, and the positive laws of the Romans. It is quite clear that, originally, the doctrine that the king is Law Incarnate and the principle "quod principi placuit legis habet vigorem" move on different planes. The Hellenistic doctrine could of course be adapted to the sphere of positive law (a procedure greatly facilitated by the ambiguity of the term νόμος) to reinforce an already existing absolutism. But it could also be used to mitigate absolutism, and this is perhaps what Seneca attempted to do in his *De Clementia*. It seems that Seneca, because he realized that the positive laws of Rome could not be enforced on the Princeps, tried to impress on Nero the idea that it was his duty as ruler spontaneously to accept the unwritten laws of morality.

Livy recorded the truly Roman view "neminem unum tantum eminere civem debere ut legibus interrogari non possit".<sup>4</sup> He lived to see this fundamental principle of Roman freedom giving way: the emperor, his family, and their friends began to arrogate a position "supra leges": the administration of justice proved almost ineffective against a friend of Livia Augusta.<sup>5</sup> Presently Claudius banished without a hearing two innocent Romans: the one because he strongly pleaded against him in court before he became emperor; the other because as aedile he fined the tenants of Claudius's estate for the breach of a certain administrative law and flogged his bailiff

<sup>1</sup> See Musonius, ed. Hense, p. 36, 23 ff.; Plutarch, *loc. cit.*; Dio Chrys. I, 75: Νόμος, ὃ δὲ αὐτὸς καὶ Λόγος Ὁρθὸς κέκληται.

<sup>2</sup> Seneca, *De Clem.* I, 1, 2; Pliny, *Paneg.* 80, 5.

<sup>3</sup> Musonius, *loc. cit.*; Dio Chrys. I, 37 ff. Cf. Seneca, *De Clem.* I, 14, 2.

<sup>4</sup> xxxviii, 50, 8.

<sup>5</sup> Tac. *Ann.* II, 34, 3–8. Cf. IV, 21, 1 and also II, 51, 3; III, 12, 10; XII, 60, 6.

when he remonstrated.<sup>1</sup> The laws, although not invalidated, proved de facto powerless against the overwhelming power of the Princeps. And if such power, and the consciousness of such power, happened to be combined with depravity, the awareness that prohibitions were ineffective might easily inspire the belief that everything was permissible. "Remember that I am permitted to do anything to anybody" was Caligula's reply to his grandmother when she once admonished him.<sup>2</sup> And Nero, having perpetrated many crimes with complete impunity, drew the conclusion that no Princeps had ever realized what power he really possessed.<sup>3</sup> One would be tempted to dismiss these assertions as the vagaries of men drunk with power, were it not for the fact that thoughtful contemporaries realized and admitted the omnipotence of the emperor. "Caesar... cui omnia licent" and "qui omnia potest" says Seneca.<sup>4</sup> And Dio Chrysostom asks, τίνι δὲ (δεῖ) ἀκριβεστέρας δικαιοσύνης ἢ τῷ μείζονι τῶν νόμων; τίνι δὲ σωφροσύνης ἐγκρατεστέρας ἢ ὅτῳ πάντα ἔξοσι; <sup>5</sup>

This was by no means a true exposition of the constitutional theory of the Principate; it was nevertheless a fact, and to a large extent that fact found legal expression and sanction in the S.C. de Imperio Vespasiani.<sup>6</sup>

The power of the Princeps became increasingly absolute, and, being absolute, it might at any time become autocratic, despotic, tyrannical. And if from the point of view of libertas the great problem of the Late Republic was to prevent limited power from becoming absolute, the great problem of the Early Empire was to prevent absolute power from becoming despotic. This was the crux, and this was the ultimate cause of the conflict between libertas and principatus.

Before we describe in what manner the Romans sought to reconcile freedom and absolutism there is another thing to be observed. The real sufferer under despotism was the senatorial class. Other classes also suffered to some extent,<sup>7</sup> and in so far as they suffered

<sup>1</sup> Suet. *Div. Claud.* 38, 2.

<sup>2</sup> Suet. *Calig.* 29, 1. Cf. 32, 3.

<sup>3</sup> Suet. *Nero*, 37, 3. Cf. Nero's ironical remark: Sane legem Iuliam timeo, *ib.* 33, 2.

<sup>4</sup> *Ad Polyb.* 7, 2; *De Clem.* 1, 8, 5.

<sup>5</sup> *Or.* III, 10.

<sup>6</sup> *Ll.* 17 ff. Cf. above, p. 133 n. 2.

<sup>7</sup> As, for instance, from heavy taxes and predatory confiscations, see Suet. *Calig.* 38; *Nero*, 32; Tac. *Ann.* xv, 45; or from spies and informers. For Domitian's policy in this respect see M. P. Charlesworth, *C.A.H.* xi, pp. 41 f.

were discontented. But the suspicion and wrath of despots as well as their autocratic régime hit the Senate and nobility more than any one else. And this is why opposition to despotism was confined almost exclusively to the senatorial class.

### 3. LIBERTAS SENATUS

During the early decades of the Empire the Senate underwent a profound transformation. In Republican times, and especially since Sulla, it was indirectly elected by the People and therefore was to some extent representative of the People, although People and Senate as constitutional organs, or Plebs and Senate as social classes, were often opposed to each other. With the abolition of popular elections under Tiberius the Senate became a co-opting body; but, while its representative character was thereby diminished, it largely took the place of the Assembly,<sup>1</sup> and the voice of *Senatus Populusque Romanus* was henceforth heard through the mouth of the Senate alone. Thus, in so far as the *res publica* was expressed in terms of political institutions, it was now embodied in the first place by the Senate and the ordinary magistrates (as distinct from the imperial legates and procurators). But, tradition and constitutional convention apart, the Senate was not the representative of the Roman People, nor were the magistrates the People's delegates. In point of fact the Senate was a kind of co-opting corporation which provided the personnel for the administration, and acted as partner to the Princeps. And the character of this partnership determined the attitude of the Senate towards the Princeps of the day.

Had there really been, as Mommsen thought there was, a dyarchy of a sovereign Senate and the Princeps, the conflict between principatus and libertas might have never taken place. Indeed it seems that some kind of dyarchy was the ideal of certain senatorial diehards. It was the absence of dyarchy, that is to say, the fact that the Senate was not an independent authority of equal status, if not power, in relation to the Princeps, that was a serious, though not the sole, cause of discontent.

<sup>1</sup> *Gai Inst.* I, 4; Mommsen, *Staatsrecht* III, pp. 1265 f.; F. Schulz, *Prinzipien des römischen Rechts*, p. 7.

It is no doubt a fact of no small consequence that what, in the eyes of our Latin authorities, reflects credit on an emperor is in the first place his respect for the Senate and magistrates.<sup>1</sup> And *libertas*, with regard to Roman domestic politics under the Empire, often means, explicitly or implicitly, *libertas senatus*.<sup>2</sup> *Libertas senatus* means that important matters of State shall be brought before the Senate, and that senators may freely express their opinions and vote without constraint. What the Senate sought was, not to reassert its lost supremacy, but to maintain an honourable position as the emperor's partner.<sup>3</sup> Since, however, the partnership between Senate and emperor was based on a division of labour without a corresponding division of power,<sup>4</sup> it was hardly possible for the Senate to hold its own. The Principate gradually absorbed the functions and prestige of the Senate and the ordinary magistrates,<sup>5</sup> not always with ill intentions. The Senate was not equal to its duties, and, while anxious to retain its prestige, was on occasions only too glad to leave the more arduous tasks to the Princeps.<sup>6</sup> With the expansion of the imperial administration the power of the procurators increased at the expense of the magistrates.<sup>7</sup> And it was certainly galling for senators and nobles to see the influence and wealth of the freedmen in charge of the emperor's secretariate.<sup>8</sup>

The awareness of impotence and dependence does not inspire self-respect. And if Tiberius was disgusted with the Senate's docility,<sup>9</sup> one can imagine the resentment and dejection of those adherents of senatorial traditions who witnessed the humiliation

<sup>1</sup> See Tac. *Ann.* iv, 6; 15, 3; XIII, 4, 3; *Hist.* II, 91, 2; Suet. *Tib.* 30 ff.; *Calig.* 16, 2; *Div. Claud.* 12, 1–2.

<sup>2</sup> Tac. *Agric.* 2, 2; *Ann.* XIII, 49; I, 74, 6; 77, 2–3; 81, 3; II, 35; III, 60, 1–6; *Hist.* IV, 44, 1; Suet. *Tib.* 30.

<sup>3</sup> See Tac. *Ann.* II, 35, 2: *Piso... agendas censebat, ut absente principe senatum et equites posse sua munia sustinere decorum rei publicae foret.* Cf. *Hist.* IV, 9. Dio Cass. LII, 32, 1, is also very interesting.

<sup>4</sup> See F. E. Adcock, *C.A.H.* x, p. 587.

<sup>5</sup> See *Ann.* I, 2, 1; III, 60, 1; XI, 5, 1.

<sup>6</sup> See *Ann.* II, 35; III, 35, 1; *Hist.* IV, 9.

<sup>7</sup> See *Ann.* XII, 60. Cf. Suet. *Div. Claud.* 12, 1 and also 24, 1.

<sup>8</sup> *Ann.* XII, 60, 6. Cf. XI, 33, 2; 35, 1; 37–8; XII, 1–2; 25, 1; 53, 5; XV, 72, 3–4; *Hist.* I, 7, 3; Suet. *Div. Claud.* 28 and 37; *Domit.* 7, 2. Seneca wreaked a literary vengeance on Claudius: in his *Apocolocyntosis Divi Claudii*, 15, 2, Claudius is declared a slave and made a freedman's secretary.

<sup>9</sup> See Tac. *Ann.* III, 65, 3.

of the Senate under Caligula or Nero or Domitian, when flattery, servility, and self-abasement were the price of a precarious existence.<sup>1</sup>

Yet although the Senate kissed the rod, Nero threatened that he would destroy it altogether.<sup>2</sup> It may be doubted whether the degradation of the Senate mattered much to the ordinary citizens, and whether its abolition would have appreciably affected their position. But by virtue of its tradition and by the strength of convention the Senate was regarded, by senators at any rate, as the constitutional embodiment of the *res publica*. Consequently, the rights and dignity of the Senate and the magistrates who sat in it were looked upon as a manifestation of the *res publica*.<sup>3</sup> And this is why in senatorial quarters under the Empire the assertion of the Senate's rights becomes *libertas tout court*, whereas the watchword of so staunch a champion of senatorial supremacy as Cicero was always *auctoritas senatus et populi Romani libertas*.

#### 4. THRASEA PAETUS

The sorry plight of the Senate under Nero's despotism is the background against which the well-known but variously interpreted opposition of Thrasea Paetus appears in its true light.<sup>4</sup> Thrasea is usually cited as an example of what is known as the philosophic opposition under the Early Empire. But, as his recorded words and deeds show, he acted primarily as a courageous and upright Roman senator who held Stoic views, not as a Stoic philosopher who happened to be a senator at Rome. Our authorities tell enough about him to enable us to see where his motives sprang from. Thus Tacitus says:

Non referrem vulgarissimum senatus consultum quo civitati Syracusanorum egredi numerum edendis gladiatoribus finitum permittebatur, nisi

<sup>1</sup> See, e.g., Tac. *Ann.* XIV, 12; 14; 20; 61; XV, 23; XVI, 4, from among many examples of adulation and self-abasement.

<sup>2</sup> Suet. *Nero*, 37, 3. Cf. Tac. *Hist.* IV, 42, 4.

<sup>3</sup> Tac. *Ann.* XIII, 28; *Hist.* I, 84, 3: . . . Vitellius imaginem quamdam exercitus habet, senatus nobiscum est. Sic fit ut hinc respublica, inde hostes rei publicae constiterint.

<sup>4</sup> For various interpretations of Thrasea's opposition see G. Boissier, *op. cit.* pp. 99 ff.; H. Furneaux, *The Annals of Tacitus*, II (1891), pp. 80 ff.; B. W. Henderson, *The Life and Principate of the Emperor Nero* (1905), pp. 294 ff.; D. R. Dudley, *A History of Cynicism* (1937), pp. 130 ff.; J. M. C. Toynbee, *op. cit.* pp. 49 ff.

Paetus Thrasea contra dixisset praebuissetque materiem obtrectatoribus arguendae sententiae. Cur enim, si rem publicam egere libertate senatoria crederet, tam levia consecraretur? ... An solum emendatione dignum ne Syracusis spectacula largius ederentur; cetera per omnes imperii partes perinde egregia, quam si non Nero sed Thrasea regimen teneret? Quod si summa dissimulatione transmitterentur, quanto magis inanibus abstinendum? Thrasea contra, rationem poscentibus amicis, non praesentium ignarum respondebat eius modi consulta corrigere, sed patrum honori dare ut manifestum fieret magnarum rerum curam non dissimulatu-  
 1

Epigrammatic phrasing and arrangement apart, there is no reason to doubt the veracity of this account. It appears, therefore, that in Thrasea's opinion the State, in the year 58, suffered from the lack of senatorial freedom; by paying undue attention to a trivial subject he wished to show, for the sake of the Senate's honour, that the evasion of important matters was not due to negligence. It seems from the tenor of the passage that to "dissimulatu-  
 2

Whenever the Senate abased itself to flatter the emperor, Thrasea would be silent or would briefly give his assent. But when Nero's dispatch, which dealt with the execution of his own mother, was read in the Senate, and illustrious men vied with each other in moving honorific resolutions, Thrasea left the house without saying a word, for "he could not say what he would, and would not say what he could".  
 3

In the year 62 a praetor, Antistius by name, was tried in the Senate for maiestas. A death sentence was proposed, but Thrasea disagreed: "Multo cum honore Caesaris et acerrime increpito Antistio, non quidquid nocens reus pati mereretur, id egregio sub principe et nulla necessitate obstricto senatui statuendum, disseruit." There were, he continued, penalties sanctioned by law (esse poenas legibus constitutas) and they must be adhered to if the judges are not to be cruel and the times infamous.  
 4

In the same year an influential provincial from Crete was tried.  
 5

<sup>1</sup> *Ann.* XIII, 49.

<sup>2</sup> *Ann.* XIV, 12 and Dio Cass. LXI, 15, 2.

<sup>3</sup> *Ann.* XIV, 48. Cf. Dio Cass. LXII, 15, 7, 1a.

<sup>4</sup> See Tac. *Ann.* xv, 20 f.



said that it lay in his power to decide whether or not votes of thanks for the proconsular governors of Crete should be proposed. Thrasea seized upon the opportunity and moved that provincials should be prohibited from proposing votes of thanks for retiring governors. The tone of his speech, as reproduced by Tacitus, is that of a proud and narrow Italian nationalism, well in tune with Thrasea's senatorial rank and municipal extraction, but not at all with Stoic cosmopolitanism.<sup>1</sup> It is noteworthy that Thrasea's motion received Nero's sanction,<sup>2</sup> which shows that as late as 62 he was not yet out of favour with the emperor. It must also be remembered that he held the consulship in 56<sup>3</sup> and was an influential consular, as appears from the fact that his *auctoritas* prevailed in the condemnation of Capito Cossutianus—his future prosecutor—who was charged *de repetundis* in 58,<sup>4</sup> and in 62 secured a milder sentence for Antistius. It is clear therefore that Thrasea could not have been a *persona non grata* under Claudius or during the earlier part of Nero's reign.

This fact shows that Thrasea's "republican sympathies" were not necessarily political in character. He wrote a book on Cato,<sup>5</sup> and used to celebrate the birthdays of the Bruti and of Cassius.<sup>6</sup> But Cato and Brutus were not only champions of the republican form of government; they were great Romans (Cato certainly was) and model Stoics.

It appears from Tacitus that Thrasea's *libertas* was a courageous independence of opinion, not republicanism.<sup>7</sup> Far from being the leader of a movement aiming at the overthrow of the Empire, as his accuser alleged,<sup>8</sup> he discouraged some of his friends who wished to launch a vocal, ostentatious, and active opposition to Nero.<sup>9</sup> And this explains his conduct during his last years.

Some time about 63–4<sup>10</sup> Thrasea adopted a policy of out-and-out abstention from public life, especially from the Senate. Nero, in his

<sup>1</sup> *Ann.* xv. 21, 1–2.

<sup>2</sup> *Ib.* xv, 22, 1.

<sup>3</sup> H. Furneaux, *ad Ann.* xiii, 49, 1 (vol. II, p. 373 f.).

<sup>4</sup> *Ann.* xiii, 33, 3 and xvi, 21, 3.

<sup>5</sup> *Plut. Cato Min.* 37.

<sup>6</sup> *Juvenal*, v, 36–7.

<sup>7</sup> *Ann.* xiv, 12; 49; *Hist.* iv, 5, 2.

<sup>8</sup> *Ann.* xvi, 22, 7–8.

<sup>9</sup> *Ann.* xiii, 49, 2; xvi, 25, 2; 26, 6.

<sup>10</sup> "Triennio non introisse curiam", said his accuser in 66, see *Ann.* xvi, 22, 1.

message to the Senate, deliberately called it quietism and neglect of duty.<sup>1</sup> But this was not the case. It was a considered<sup>2</sup> policy of protest, all the more marked for being silent. "I miss," said Thrasea's prosecutor, "the consular in the Senate, the priest at the sacrifices, the citizen at the taking of the oath; unless by defying the established way of life and form of worship Thrasea has openly assumed the character of an enemy of his country. Let him come, he who was wont to play the senator (*senatorem agere*) and protect the slanderers of the emperor, let him come and state what he wants to be corrected or changed. *Facilius perlatores singula increpantis vocem quam nunc silentium perferrent omnia damnantis.*"<sup>3</sup> In so far as Thrasea's motives are concerned his accuser was, in the main, right: Thrasea was a discontented senator who expressed his disapproval of the régime and asserted his integrity and freedom of judgement through silence and non-participation.<sup>4</sup> Such a policy was not altogether new. L. Piso, under Tiberius, declared that he would retire to a remote village to mark his disapproval of the state of public affairs, and his protest greatly impressed Tiberius.<sup>5</sup> Cicero, under Caesar's dictatorship, adopted a similar course of silent inactivity,<sup>6</sup> and Caesar rightly regarded Cicero's self-imposed retirement from public life as a stricture on the régime, and tried to conciliate him.

Perhaps opposition is not the right word for Thrasea's attitude; it is a protest, a demonstration of disapproval, an attempt to dissociate oneself from a régime which is condemned by that very dissociation. Thrasea's abstention gained notoriety, because he was known as a man devoted to his senatorial duties, and, since the man was respected,<sup>7</sup> it must have carried weight. Abstention is the principal count in his indictment, and from it derive several of the charges brought against him. For, obviously, if for years he would not, as a matter of principle, set foot in the Senate, he could not be there when divine honours were decreed for the deceased empress (in the

<sup>1</sup> *Ann.* xvi, 27, 2 f.

<sup>2</sup> *Ib.* xvi, 26, 7-8.

<sup>3</sup> *Ann.* xvi, 28, 3 f. Cf. Dio Cass. lxii, 26, 3.

<sup>4</sup> This point is rightly stressed by D. R. Dudley, *op. cit.* p. 131.

<sup>5</sup> Tac. *Ann.* ii, 34, 1 f.

<sup>6</sup> See Cic. *Pro Marc.* 1; *Ad Fam.* iv, 9, 2; ix, 16, 3.

<sup>7</sup> Even Nero, shortly before he put him to death, praised Thrasea's justice, see Plutarch, *Moralia*, 810a.

year 65), or when an oath "in acta" was taken.<sup>1</sup> Once his abstention was interpreted as treason, the prosecution dragged in anything, relevant or irrelevant, which would help to achieve its sole aim, condemnation, a thing that was not too difficult under Nero. The prosecutor had only to harp on things particularly offensive to Nero, as for instance contempt of his histrionic mania,<sup>2</sup> or the commonplace allegation that the stern bearing of the philosopher is intended as a stricture on the emperor's dissolute life.<sup>3</sup> And, as will be seen later, the allegation that Thrasea and his friends wished to destroy the State,<sup>4</sup> was also a commonplace frequently levelled against all philosophers, especially the Stoics.

But, if their political significance was overdone in his indictment, Thrasea's Stoicism and devotion to Republican heroes found full expression in the manner of his death, and it is perhaps from this that the meaning of his admiration of Cato can be seen. If the extant account of his last hours is true, it is quite obvious that Thrasea studiously modelled his death on the examples of Socrates and Cato.<sup>5</sup> He discussed the immortality of the soul with Demetrius the Cynic, and when his veins were cut he sprinkled his blood, saying to the quaestor who brought the Senate's decree: "Libamus Iovi Liberatori."<sup>6</sup> Specta iuvenis; et omen quidem di prohibeant, ceterum in ea tempora natus es, quibus firmare animum expediat constantibus exemplis." He no doubt believed that, like Cato, he gave an example of steadfastness which would be remembered,<sup>7</sup> and inspire others just as Cato's example inspired him. "It is better to die like a freeman than abase oneself to no purpose and then perish like a slave" said Thrasea, for he realized that, even at the price of self-degradation, one could not buy security of life under a tyrant.<sup>8</sup>

<sup>1</sup> *Ann.* XVI, 21, 2; 22, 1 and 5.

<sup>2</sup> *Ib.* XVI, 21, 1; 22, 1; Dio Cass. LXI, 20, 4; LXII, 26, 3 f.

<sup>3</sup> *Ann.* XVI, 22, 3: Rigidi et tristes quo tibi lasciviam exprobrant. Cf. Seneca, *Ep.* 123, 11 f.: Istos tristes et superciliosos alienae vitae censors, suae hostes, publicos paedagogos, assis ne feceris nec dubitaveris bonam vitam quam opinionem bonam malle. Hae voces non aliter fugiendae sunt, etc. Obviously Seneca is combating a widespread opinion, which appears also in Quintil. *Inst.* XII, 3, 12.

<sup>4</sup> *Ann.* XVI, 22, 7-8.

<sup>5</sup> *Ann.* XVI, 34-5. For Cato's last hours see Seneca, *Ep.* 24, 6 ff.

<sup>6</sup> Cf. Dio Cass. LXII, 26, 4. Seneca made a similar libation, see *Ann.* XV, 64, 4.

<sup>7</sup> Dio Cass. LXI, 15, 4.

<sup>8</sup> *Id.* LXI, 15, 3.

There is nothing to prove that Thrasea wished for the overthrow of the Empire and the restoration of the Republic; but to say that he and his like resented Nero's personal character only<sup>1</sup> is an understatement which misses the vital point. It is an essential characteristic of autocratic despotism that no line of demarcation can at all be drawn between the personal character of the despot and his power, because a despot's power is what the despot makes it. And certainly those who live under a perverse despot are incapable of considering separately the psycho-pathological and the constitutional aspect of their oppression. Nero's perversity made him a charioteer, an actor, a matricide; but it was his power that enabled him to be an emperor at the same time. And this is what mattered. Nero made the Principate a tyranny; his follies, which were applauded, and his crimes, which went unpunished, only emphasized the enormity of that tyranny. Thrasea was not the embodiment of Stoic virtue outraged by vice; he was in the first place a Roman senator who tried to assert his freedom and dignity in the face of the malignant despot of Rome. And this is probably the reason why his name evoked in Tacitus (*Hist.* II, 91, 3) associations of an "exemplar verae gloriae".

##### 5. STOICISM AND LIBERTAS

Thrasea's prosecutor alleged that Stoicism was politically subversive. With regard to Thrasea this allegation may have been unfounded, but it voiced a widely-held view of Stoicism. Philosophy was frowned upon in influential quarters: it was believed that it nurtured arrogance and disobedience, and Seneca felt obliged to rebut the charge. "Errare mihi videntur," he says, "qui existimant philosophiae fideliter deditos contumaces esse ac refractarios, contemptores magistratuum aut regum eorumve, per quos publica administrantur."<sup>2</sup>

Dio Chrysostom in his younger days violently attacked philosophy in a lost speech κατὰ τῶν φιλοσόφων. He inveighed against Socrates and Zeno and declared that their followers should be driven from the face of the earth as being "the plague of cities and of

<sup>1</sup> G. Boissier, *op. cit.* pp. 102-3; J. M. C. Toynbee, *op. cit.* p. 49.

<sup>2</sup> *Ep.* 73, 1.

the constitution".<sup>1</sup> The conflict between sophistic or rhetoric and philosophy was age-old and it is not surprising that Dio the sophist, as he then was, should have assailed philosophy. But Dio's was an invective with a political sting in it, and it is possible that it was made at a time when persecution of philosophy was, in a measure, topical.<sup>2</sup>

In first-century Rome philosophy meant primarily Stoicism or Cynicism. It is noteworthy that the charge of arrogance and disobedience was levelled expressly against the Stoics.<sup>3</sup> And it is also a fact of some importance that Musonius Rufus, although at first exempted from the general expulsion of philosophers from Rome in 71, was subsequently banned and not recalled until the reign of Titus.<sup>4</sup>

Since not only philosophers but also Magi and Chaldaeans were expelled from Rome, the ban on philosophers does not by itself prove that all or most of them were politically suspect. The fact, however, that so tolerant an emperor as Vespasian banished all philosophers seems to imply that philosophy in general was considered to be worse than just a nuisance. It is no doubt true that disreputable pseudo-philosophers, especially the itinerant pseudo-Cynics, undermined the reputation of philosophy.<sup>5</sup> But it would be wrong to assume on that account that the relations between the government and genuine Stoicism were invariably happy. They were not. As has been seen, Stoicism was accused of fostering treason and anarchy; Stoics were conspicuous in the opposition; they were also conspicuous among the victims of oppression. To put it mildly, Stoicism, from the standpoint of the Roman government, was not above suspicion and reproach.

<sup>1</sup> See Synesius, *Dio*, Patol. Gr. LXVI (1864), p. 1116D f.: Βάλλοντι Σωκράτην καὶ Ζήνωνα τοῖς ἐκ Διονυσίων σκώμμασι, καὶ τοὺς ἀπ' αὐτῶν ἀξιοῦντι πάσης ἐλαύνεσθαι γῆς καὶ θαλάττης ὡς ὄντας κῆρας πόλεων τε καὶ πολιτείας (1117C). Cf. H. von Arnim, *Leben und Werke des Dio von Prusa* (1898), pp. 150 ff.

<sup>2</sup> Cf. v. Arnim, *loc. cit.* He thinks that Dio's speeches against philosophy were composed at Rome in A.D. 71. At any rate, it is quite clear from Synesius that they belong to the period when Dio was a sophist, i.e. before his exile.

<sup>3</sup> Tac. *Ann.* XIV, 57, 5: Adsumpta etiam Stoicorum adrogantia sectaque, quae turbidos et negotiorum adpetentes faciat. See also Quintil. *Inst.* XII, 3, 12, where philosophy is called "pigritia arrogantior".

<sup>4</sup> Dio Cass. LXVI, 13, 2; Musonius, ed. Hense, p. xxxv; M. P. Charlesworth, *Five Men* (1936), p. 36.

<sup>5</sup> D. R. Dudley, *op. cit.* pp. 144 ff.; M. P. Charlesworth, *C.A.H.* XI, pp. 9 ff.

Stoic political theory is often called an official philosophy of monarchy. This is to some extent true, but at the same time it is an over-simplification which obscures some of the essential features of Stoicism. It is of course true that Late Stoicism had no objection to monarchy as such; moreover, it considered monarchy the obviously preferable form of government.<sup>1</sup> But it does not follow from this that it accepted monarchy without reservation. The theme that runs through Stoic political thought is the difference between kingship and tyranny: *quid interest inter tyrannum et regem?*<sup>2</sup> The distinction is not based on the legitimacy of power or on its delimitation; what decides whether the ruler is a king or a tyrant is the manner in which he uses his power.<sup>3</sup> Stoicism described monarchy as it should be.<sup>4</sup> A king worthy of the name ought to realize this ideal monarchy, and he would be judged according as he conformed to or deviated from it.<sup>5</sup>

In so far as Stoics were prepared to acknowledge the emperor of the day as the embodiment of their lofty ideal of kingship, Stoicism might be welcome and become a kind of semi-official philosophy;<sup>6</sup> Stoics, who despaired of improvement<sup>7</sup> and acquiesced in a quietist contemplation of their ideals, may have been unwelcome, but nevertheless harmless; if, however, Stoic tenets were wedded to the Roman tradition of political activity, if they were preached in earnest as something to be implemented in action, Stoic idealism might, in the eyes of the Roman government, become dangerous. Few emperors

<sup>1</sup> Seneca, *De Benef.* II, 20; Dio Chrys. III, 50; 64 f.; and often elsewhere.

<sup>2</sup> Seneca, *De Clem.* I, II, 4. Cf. Dio Chrys. III, 25. See also Dio Chrysostom's myth about the Peak of Kingship and Peak of Tyranny, which from a distance appear as one undivided mountain, *Or.* I, 66 ff.

<sup>3</sup> Seneca, *De Clem.* I, II, 4–12, I; Dio Chrys. *loc. cit.*

<sup>4</sup> Dio Chrys. III, 25: ποιήσονται τοὺς λόγους ὑπὲρ τοῦ χρηστοῦ βασιλέως, ὁποῖον εἶναι δεῖ καὶ τίς ἡ διαφορά τοῦ προσποιουμένου μὲν ἀρχοντος εἶναι, πλείστον δὲ ἀπέχοντος ἀρχῆς καὶ βασιλείας.

<sup>5</sup> See Dio Chrys. I, 15 and 36. Note also the double meaning of the closing words of the first speech *On Kingship*: ἕως ἂν τυγχάνης βασιλεύων.

<sup>6</sup> Notable examples are Seneca's *De Clementia* and Dio Chrysostom's speeches *On Kingship*. The facts that Dio lived in exile a κυνικός βίος and that there are Cynic elements in several of his discourses do not make him a consistent Cynic. Stoicism is undoubtedly the salient feature of his philosophy of kingship.

<sup>7</sup> Seneca, *Dial.* VIII (*De Otio*), 3, 3: Si res publica corruptior est quam ut adiuvari possit, si occupata est malis, non nitetur sapiens in supervacuum.

had so clear a conscience that they could let people inveigh freely against tyranny.<sup>1</sup> The juxtaposition of tyranny and kingship, the reminders of the king's duties and the warnings against their neglect, the denunciation of the abuse of power and violation of justice, might become dangerous to a princeps who was not above criticism. For on one thing genuine Stoics were not prepared to compromise: freedom. Seneca preached a doctrine of resignation—suicide as the only escape to freedom;<sup>2</sup> Thrasea Paetus derived from Stoicism the courage to disapprove of tyranny and servility alike; others may have derived from it the courage to resist.

The political problem with which Stoicism was concerned is very much the same as the central problem of Roman politics from the standpoint of *libertas*, namely how to secure freedom under absolutism. The solution offered by Stoicism is in certain respects similar to the course the Principate followed in the second century. But, as will be seen later, the political ideas with which the development of the Principate is associated—Optimus Princeps and Adoption—derived direct from Roman concepts and from Roman political experience. To say that Stoicism, or Stoicism and Cynicism, exerted a decisive formative influence on the Principate, is to say too much. It seems to be nearer the truth that Stoic theory took the Principate as it found it and expressed it in terms of its theory of kingship. In so doing, Stoicism influenced the formulation of the theoretical aspect of the Principate, not its formation.

But if it did not remodel the Principate, Stoicism left a mark on the concept of freedom. As has been seen,<sup>3</sup> the Romans conceived *libertas* as a civic right based on positive law. Seneca expounded the idea of the rights of man based on natural law. "Nemo non, cui alia desunt, hominis nomine apud me gratiosus est" declares the good king.<sup>4</sup> "Cum in servum omnia liceant, est aliquid quod in hominem licere commune ius animantium vetet."<sup>5</sup> Man is inviolable, "homo res sacra homini".<sup>6</sup> Such ideas eventually found their way into

<sup>1</sup> Domitian put to death the sophist (?) Maternus because in a practice speech he had said something against tyranny, see Dio Cass. LXVII, 12, 5. Cf. D. R. Dudley, *op. cit.* p. 140 n. 1.

<sup>2</sup> *Ep.* 70, 14; *De Ira*, III, 15, 4 ff.

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

<sup>5</sup> *Ib.* I, 18, 2.

<sup>4</sup> *De Clem.* I, 1, 3.

<sup>6</sup> *Ep.* 95, 33.

Roman legal theory and probably contributed much to the evolution of a humaner legislation concerning slaves. But they appeared too late, or too early, to affect the constitution. The constitutional implications of the rights of man materialized only after many centuries.

## 6. HELVIDIUS PRISCUS

As has been seen, consistent Stoicism was not always favourably disposed towards the government. It must be added that by his very frame of mind a true Stoic tends towards intransigence. For since Late Stoicism was not a system of speculative metaphysics but in the first place a practical guide to life, since it taught rigid ethics and contempt of pain and death, a thoroughgoing Stoic is not likely to be an opportunist in matters that affect his ideals. And it may be that on account of their intransigent and fearless idealism, combined as it was with exhibitionist superiority towards the "unconverted", the Stoics appeared as arrogant and refractory.

An example of such an uncompromising and unruly Stoic is Helvidius Priscus, the son-in-law of Thræsea Paetus.<sup>1</sup>

Tacitus says that Helvidius followed Stoicism "*quo firmior adversus fortuita rem publicam capesseret*" and that "*e moribus soceri nihil aequè ac libertatem hausit*".<sup>2</sup> As the context shows Tacitus means "libertas" as it is realized in the conduct of a man, not in the constitution of a State. Helvidius fearlessly asserted his freedom of opinion and championed the rights and dignity of the Senate.<sup>3</sup>

It is not at all clear what was the reason of his opposition to Vespasian.<sup>4</sup> Tacitus regarded the day on which the Senate installed Vespasian as the beginning of the conflict. Most unfortunately a lacuna obscures what Helvidius said on that occasion. "Prompsit

<sup>1</sup> For a different view, namely that Helvidius "went Cynic" and that Cynics were invariably anarchists, see J. M. C. Toynbee, *op. cit.* pp. 51 ff.

<sup>2</sup> Tac. *Hist.* IV, 5. Cf. Dio Cass. LXVI, 12, 1.

<sup>3</sup> *Hist.* II, 91, 3; IV, 7; 9; 43, 2: "Imus Prisce et relinquimus tibi senatum tuum."

<sup>4</sup> M. Rostovtzeff, *A Social and Economic History of the Roman Empire*, p. 519 n. 14, assumed that Helvidius was opposed to hereditary monarchy. This assumption, although based on very slender circumstantial evidence, is in itself not altogether improbable; did not Pliny, *Paneg.* 7, strongly reject hereditary monarchy? But even if true, the theory that Helvidius was opposed to hereditary monarchy obviously falls short of fully explaining his conduct.



sententiam ut honorificam in novum (Halm; bonum Codd.) principem... falsa aberant, et studiis senatus attollebatur. Isque praecipuus illi dies magnae offensae initium et magnae gloriae fuit.”<sup>1</sup> Shortly afterwards the Senate debated the restoration of the Capitol: “Censuerat Helvidius, ut Capitolium publice restitueretur, adiuvaret Vespasianus. Eam sententiam modestissimus quisque silentio, deinde oblivio transmisit; *fuere qui* et meminissent.”<sup>2</sup> It appears from Tacitus that, whatever else may have been the causes, Helvidius’s frank speaking and insistence on the rights of the Senate was a major and perhaps the prime cause of friction. The scholiast on Juvenal, v, 36, says that Helvidius behaved as if he lived in a free State.<sup>3</sup> And Suetonius says that he refused to acknowledge Vespasian as an emperor and heckled him.<sup>4</sup> The picture of Helvidius which emerges from the Latin authorities is not unlike that of the jurist Antistius Labeo<sup>5</sup> under Augustus and Tiberius, namely of a senator who uncompromisingly adheres to the ideals of a bygone age while ignoring the present.

Dio Cassius, however, offers an entirely different view. He says that Helvidius inveighed against βασιλεία and praised δημοκρατία, was unruly and incited the mob to revolution.<sup>6</sup> This statement looks as if Helvidius was a fanatical and very stupid republican, for no man with any sense could have believed that the Roman mob would ever rise to overthrow the Principate. But perhaps Dio’s statement is not to be taken to mean all this. If indeed Helvidius made speeches about βασιλεία and δημοκρατία, it can fairly be assumed that the Latin words he used were “regnum” and “res publica”. Now opposition to “regnum” and praise of “res publica” may mean extremist republicanism of the old type, but it may as well suit something of the kind of the Augustan Principate, which was not a regnum and which was to some extent a res publica, under which the Senate enjoyed many rights. Which of the two was Helvidius’s choice is uncertain and probably will remain so. As for his

<sup>1</sup> *Hist.* iv, 4, 3.

<sup>2</sup> *Ib.* iv, 9, 2: Cf. also: Eam curam (*sc.* aerarii) consul designatus ob magnitudinem oneris et remedii difficultatem principi reservabat; Helvidius arbitrio senatus agendum censuit, iv, 9, 1.

<sup>3</sup> Non aliter quam libero civitatis statu egit.

<sup>4</sup> Suet. *Div. Vesp.* 15.

<sup>5</sup> Cf. above, p. 120 n. 2.

<sup>6</sup> Dio Cass. LXVI, 12, 2.

subversive preaching, it seems that Dio is only repeating common-places against philosophy.<sup>1</sup> It may be that such things were alleged against Helvidius, but what warrants their veracity?

If we were to assume with Dio Cassius that Helvidius was an irresponsible demagogue who preached sedition and anarchy, it would be difficult to see why Tacitus spoke of him with much respect, and why Marcus Aurelius considered it an advantage "to have acquainted oneself with Thræsea, Helvidius, Cato, Dio, Brutus, and to have conceived the idea of a State based on equality, fairness and freedom of speech, and of kingship respecting above all else the liberty of the subjects".<sup>2</sup> It is not at all certain whether Helvidius was an out-and-out republican; but if he was, he could not be an anarchist at the same time. We cannot have it both ways. We have to choose between all the Latin authorities and Marcus Aurelius on one hand, and Dio Cassius on the other; and there can be little doubt which way the choice must fall. Dio misunderstood Helvidius just as he misunderstood the Augustan Principate. For him Helvidius was a senseless trouble-maker, which in his official view meant anarchist.

All that can be said with certainty about Helvidius is that he tried to bring to book the prosecutors of his father-in-law, that he spoke his mind freely, and that he wished to enhance the prestige of the Senate. Anything else is speculation.

It seems therefore to be nearer the truth to assume—with the support of Tacitus and Marcus Aurelius—that Helvidius was not a mob agitator for anarchy after the pseudo-Cynic fashion, but a champion of freedom in the manner of the Roman Stoics.

Helvidius was not the only intransigent. It seems that the suppression of freedom drove many to ostentatious and provocative intransigence. Tacitus in his *Agricola* condemned the irreconcilables as persons who lost their lives for no other purpose than notoriety, and he preached the ideal of patience and devotion to public service embodied in *Agricola*, who did not provoke his own ruin by seeking fame in a vain ostentation of freedom:

Sciant, quibus moris est illicita mirari, posse etiam sub malis principibus magnos viros esse, obsequiumque ac modestiam, si industria ac vigor

<sup>1</sup> Compare Dio Cass. LXVI, 12, 2 with Seneca, *Ep.* 73, 1; Tac. *Ann.* XIV, 57, 5; XVI, 22, 8; Synesius, 1117C (quoted above, p. 144 n. 1).

<sup>2</sup> *Ad Semet Ipsum*, I, 14, 2.

adsint, eo laudis procedere, quo plerique per abrupta, sed in nullum rei publicae usum <enisi> ambitiosa morte inclaruerunt.<sup>1</sup>

And in his *Annals* he pointed to the example of a great and wise man who steered a middle course between self-assertive intransigence and servile submission.<sup>2</sup>

But patience, moderation, and resignation do not appeal to all. It is interesting in this respect to read the passage in which Tacitus summarizes the views of those of Thrasea's friends who advised him to speak in his own trial:

Nihil dicturum nisi quo gloriam augeret; segnes et pavidos supremis suis secretum circumdare; aspiceret populus virum morti obvium, audiret senatus voces quasi ex aliquo numine supra humanas; posse ipso miraculo etiam Neronem permoveri. sin crudelitati insisteret, distinguere certe apud posteros memoriam honesti exitus ab ignavia per silentium pereuntium.<sup>3</sup>

The consciousness of oppression bred servility in many; but it inspired some to seek desperate self-assertion in ostentatious death.

## 7. CLEMENTIA

The awareness that an overwhelmingly strong power in the hands of the Princeps was necessary for the preservation of domestic and external peace, but that by its very nature such power could be, and sometimes was, abused with impunity, lent an ever-increasing importance to the manner in which the Princeps exercised his authority. The manner in which power is employed and the character of the person who employs it always matter, but not always to the same extent. Under the Empire, when the effectiveness of the safeguards of freedom was greatly reduced and the possibility of abusing power greatly enhanced, the manner in which the emperor actually used his power made all the difference in the world: "Tyrannus a rege factis distat, non nomine."<sup>4</sup> And this is why such personal virtues

<sup>1</sup> *Agric.* 42, 4 f. Cf. Seneca, *Ep.* 113, 32: Qui virtutem suam publicari vult, non virtuti laborat, sed gloriae.

<sup>2</sup> *Ann.* IV, 20, 4 f.

<sup>3</sup> *Ann.* XVI, 25. Tacitus reminded his readers that he did not detest those who perished tamely: Neque aliam defensionem ab iis quibus ista noscentur exegerim, quam ne oderim tam segniter pereuntes, *Ann.* XVI, 16, 2. See also Furneaux, *ad loc.*

<sup>4</sup> Seneca, *De Clem.* I, 12, 1.

as clemency or moderation become political watchwords of great significance in respect of freedom.

Clementia first appeared in the political vocabulary at Rome in the aftermath of the Civil War. The Romans, impressed with Caesar's lenient treatment of his vanquished adversaries, dedicated a temple to his Clemency.<sup>1</sup> It is interesting that, while Clementia is a common legend on Imperial coins, only one pre-Imperial instance of it is known: a coin struck in 44 B.C. with the temple of Clemency and the legend CLEMENTIAE CAESARIS on the obverse.<sup>2</sup> The political significance of Caesar's clemency is well illustrated in Cicero's speeches *Pro Marcello* and *Pro Ligario*, both of which were delivered in the year 46 B.C. Cicero praised Caesar's clemency, fully aware that on it depended the life of everyone,<sup>3</sup> and on it he pinned his hopes for a better future.<sup>4</sup> At the same time it was more than a mere metaphor to speak of himself and Ligarius as "prostrate suppliants":<sup>5</sup> in fact the *Pro Ligario* was a humble entreaty for pardon, not a defence; and it was so because Cicero realized only too well that there was in fact no law to base a case on, everything depending on Caesar's will.

Cicero's *Pro Marcello* and *Pro Ligario* mark a turning-point in the history of libertas, namely the decline of the idea that the citizen's rights have one guarantee—the law. Law as a guardian of freedom lost its paramountcy. The very life of the citizen who fought on the losing side depended entirely on the clemency of the victor. A hundred years later Seneca addressed to Nero his treatise *De Clementia*. And if Cicero's *Pro Marcello* and *Pro Ligario* represent the initial decline of the idea that "libertas in legibus consistit", Seneca's *De Clementia* represents its final collapse.

Seneca defines clemency as "temperantia animi in potestate ulciscendi vel lenitas superioris adversus inferiorem in constituendis poenis".<sup>6</sup> As will presently be seen, the application of clemency is much wider than this definition suggests, but the definition itself is very significant. When law reigned at Rome inferiors demanded

<sup>1</sup> Dio Cass. XLVI, 6, 4; Appian, *Bell. Civ.* II, 106, 443. Cf. H. Dahlmann, *Clementia Caesaris*, *N. J. f. Wiss.* x (1934), pp. 17 ff.

<sup>2</sup> *BMC Rep.* I, p. 549, no. 4176.

<sup>3</sup> See especially *Pro Marc.* 22; *Pro Lig.* 15.

<sup>5</sup> *Pro Lig.* 13.

<sup>4</sup> *Pro Marc.* 2. Cf. *ib.* 18.

<sup>6</sup> *De Clem.* II, 3, 1.

of their superiors justice, which for the Roman was equivalent to lawfulness. Apart from a paterfamilias in respect of his familia and a commander in the field in respect of his troops, no authority could impose a penalty other than that prescribed by law (*esse poenas legibus constitutas*<sup>1</sup>). Justice, not clemency, was what the Romans expected from the rule of law. This, however, changed with the advent of the Principate. When Augustus said to Cinna, who plotted against his life, “*Vitam tibi, Cinna, iterum do, prius hosti, nunc insidiatori ac parricidae*”,<sup>2</sup> he acted, strictly speaking, *ultra vires*; for he had the right neither to put a citizen to death without trial, nor to pardon. But whatever his formal right, he possessed the actual power to do so, and this is the reason why *clementia* became so vital.

The basis of Seneca's reasoning in the first book of his *De Clementia* is that the tyrant and the king possess exactly the same amount of absolute power, the difference between them being only the manner in which they exercise it.<sup>3</sup> Clemency moderates the employment of power, it is a self-imposed check.<sup>4</sup> It is no doubt a significant fact that, although he argues that even a slave, who is otherwise rightless, enjoys certain natural rights of man,<sup>5</sup> Seneca does not so much as mention the civic rights of a Roman. The impression that Seneca's treatise gives is that, in the case of a conflict between a citizen and the emperor, the former is entirely dependent on the clemency of the latter. It is true that political theory was not Seneca's strong point, nor did he write as a jurist. Nevertheless, in view of the fact that he dwelt to some extent on the duties of the emperor and the nature of Imperial power, the complete absence of any mention of civic rights and positive law seems to suggest that Seneca realized that rights and law without force behind them were a broken reed. “In fact,” says M. P. Charlesworth, “*Clementia* had become too much a despotic quality; the mercy of a conqueror towards those whose life he holds in his hands, the gracious act of an absolute monarch towards his subjects.”<sup>6</sup> Cicero in his *De Re Publica*

<sup>1</sup> Tac. *Ann.* XIV, 48, 6.

<sup>2</sup> See Seneca, *De Clem.* I, 9, 1–12.

<sup>3</sup> *Ib.* I, 11, 4–12, 1.

<sup>4</sup> *Ib.* I, 5, 4 and I, 11, 2 (*hebetare aciem imperii sui*).

<sup>5</sup> *Ib.* I, 18, 2.

<sup>6</sup> M. P. Charlesworth, *The Virtues of a Roman Emperor*, *Proc. Brit. Acad.* xxiii (1937), p. 113.

based the difference between good kings and bad tyrants on justice; Seneca based it on clemency. Iustitia presupposes the existence of ius in its twofold sense, namely right and law, whereas clementia is but a kindness of heart. The difference of approach results not only from the fact that Cicero was in the first place a statesman and a lawyer, whereas Seneca was a Stoic philosopher, but from Seneca's awareness that justice alone would not suffice when the foundation of right and law was shattered. And this may be the reason why iustitia, unlike clementia, rarely figures on imperial coinage.<sup>1</sup>

#### 8. OPTIMUS PRINCEPS

The same motives which account for the prominence of a particular virtue, or a group of virtues,<sup>2</sup> prompted the use of the superlative Optimus with regard to the Princeps. There are in this respect two different usages: "Optimus Princeps" in which "optimus" is an adjective, the phrase meaning "the excellent Princeps";<sup>3</sup> and "Optimus", without the following "princeps", used substantively after the name of the emperor as a kind of cognomen, in which case it means "the Perfect".<sup>4</sup>

There is a certain similarity between the latter use of Optimus and the Platonic-Stoic ideal of kingship, but this similarity is superficial and does not prove that the idea of the Princeps as Optimus derived from Greek philosophy. Several things must be observed in this connection: first, the philosopher-king is, primarily, sapientissimus,<sup>5</sup> not optimus. Secondly, the Greeks regarded the wisdom of the philosopher-king as his innate title to power, whereas to the Romans the "goodness" of the Princeps is the moderator of the power

<sup>1</sup> M. P. Charlesworth, *loc. cit.*, observes: "Iustitia figures rarely on coinage, and the reason for that I do not know."

<sup>2</sup> As, for example, Clementia under Caesar and Nero; Moderatio under Tiberius (see Mattingly and Sydenham, *op. cit.* 1, p. 108; Tac. *Ann.* 11, 36, 2; 111, 56, 1; Suet. *Tib.* 32, 2); the shield dedicated to the virtus, clementia, iustitia, and pietas of Augustus (*Res Gestae*, 34), for which see M. P. Charlesworth, *Pietas and Victoria: the Emperor and the Citizen*, *J. R. S.* xxxiii (1943), esp. p. 3.

<sup>3</sup> Optimus Princeps appears as early as the reign of Tiberius, see *C.I.L.* vi, 902, 904; Optimus ac iustissimus princeps, vi, 93. Also *C.I.L.* x, 444 (= Dessau, *I.L.S.* 3546): Optumi principis et domini (viz. Domitian).

<sup>4</sup> Pliny, *Paneg.* 2, 7. For examples see Mattingly and Sydenham, *op. cit.* 11, pp. 534 ff.

<sup>5</sup> See Tac. *Dial.* 41.

conferred by the Senate and People of Rome.<sup>1</sup> And, finally, “Optimus”, as a compliment, is nothing but a heightened “vir bonus”. Vir bonus means that the man is possessed of those virtues which the Romans respected; Optimus with regard to the emperor means in fact little more, only that courtesy alone demands for the emperor the superlative.<sup>2</sup>

From the standpoint of libertas the perfectness of the emperor is the only guarantee that his unlimited potestas will not become an oppressive potentia. This moral safeguard is all the more important in view of the fact that high moral standards were necessary to withstand the temptations of power. Under the Early Empire the Romans saw enough and endured enough to know that “power always tends to corrupt”, to use Lord Acton’s phrase. Their own experience brought home to them the truth that “the possession of unlimited power corrodes the conscience, hardens the heart, and confounds the understanding of monarchs”.<sup>3</sup> It also did not escape them that, just as power exercised a demoralizing influence on the ruler, so the presence of a vicious ruler exercised a demoralizing influence on the whole society.<sup>4</sup> To eliminate the absolute power was impossible; the only thing that could be hoped for was its mitigation by the virtues of the Princeps. And this hope is expressed in the compliment Optimus.

## 9. ADOPTIO

If the virtues of the Princeps are the only effective safeguard against the abuse of authority, and the only counterpoise to the demoralizing influence of power, the choice of the right man, rather than the right

<sup>1</sup> Infinitae potestatis domitor ac frenator animus, Pliny, *Paneg.* 55, 9.

<sup>2</sup> That “Optimus”, as a compliment, does not mean much more than bonus can be seen from the use of “optimus quisque” in the sense of “quivis bonus”, see Cic. *De Leg.* III, 39, where “optimus quisque” and “boni” are used to denote the same thing, and compare *Pro Sest.* 96 with 137. See also *Ad Fam.* x, 31, 3; *De Senect.* 43; *De Off.* I, 154. The acclamation “Felicior Augusto, Melior Traiano” (*Eutrop.* VIII, 5) may also show that the compliment Optimus was felt to be equivalent to bonus. The usage of “optimus” is well illustrated by Tac. *Dial.* 30, 10: Ita est enim, optimi viri, ita.

<sup>3</sup> Lord Acton, *Freedom in Antiquity*, p. 11. See Tac. *Ann.* VI, 48, 4; XIV, 1, 1; *Hist.* I, 50, 3 f.; IV, 42, 5; Seneca, *Ep.* 14, 13; Suet. *Domit.* 10, 1. See also G. Boissier, *Tacitus* (English trans.), p. 154.

<sup>4</sup> See Tac. *Hist.* I, 2, 3.

delimitation of his sphere of action, becomes a matter of supreme importance. Besides, if Rome were to avoid serious crises whenever a demise of power took place, the succession to the Principate ought to be settled in a way that would remove any uncertainty and preclude the possibility of a prolonged interregnum, both of which could only afford temptations to ambitious competitors.

Dynastic succession offered stability, but it had obvious disadvantages. It meant that the successors to the Principate would be persons brought up as crown princes, a feature hardly palatable to the Roman nobility.<sup>1</sup> Even so, the quality of a dynastic successor was a matter of hazard.<sup>2</sup> Dynastic succession brought to the Principate Caligula and Nero, who, each in his turn, apart from being inexperienced youths when they came to power, proved to be pervert and cruel. In the unsettled state of affairs that followed immediately on Caligula's assassination the Praetorian Guard made their own choice and presented the Senate with a *fait accompli*; after Nero's downfall Italy was visited with civil war. It did not require a speculative mind to see that what Rome needed was a system that would ensure an unquestioned succession and yet be free from the disadvantages of a strictly dynastic monarchy. The Romans thought themselves to have found a solution of that problem in the principle of succession by adoption, as distinct from succession by birthright.

Rostovtzeff has advanced the view that the doctrine of adoption derived from Stoic-Cynic philosophy, which opposed hereditary monarchy as a matter of principle and advocated the rule of the wisest man. He also thinks that by accepting this doctrine the Principate was reconciled to the philosophy of the day.<sup>3</sup> This theory, however, does not take sufficient account of two facts:

First, the Stoic-Cynic philosopher-king is a ruler in his own right. His title is his wisdom, by virtue of which he is the vicar of God on earth. Such a theory of kingship may be opposed to hereditary monarchy in so far as the latter only means succession by the sole right of royal blood,<sup>4</sup> but it does not, of itself, lead to the

<sup>1</sup> See the critical remark about Tiberius in Tac. *Ann.* 1, 4, 4.

<sup>2</sup> Seneca, *De Clem.* 1, 1, 7: *Magnum adibat aleam populus Romanus, cum incertum esset quo se (ista tua) nobilis indoles daret.*

<sup>3</sup> See M. Rostovtzeff, *op. cit.* pp. 110–16.

<sup>4</sup> See, e.g., Dio Chrys. IV, 62; Cic. *De Rep.* II, 2, 4.



principle of adoption.<sup>1</sup> Moreover, while Stoicism conceives kingship as rulership in the light of a theory that regards law (*nomos*) solely as an expression of right reason (*orthos logos*),<sup>2</sup> thus making both conduct and direction the result of knowledge alone, it is not at all concerned with kingship as an historical institution, nor with its legitimacy.<sup>3</sup> It is not, therefore, concerned to explain precisely how the king shall be appointed. Thus it seems that the Stoic theory of kingship and the Roman practice of adoption move on different planes.

Secondly, the true basis of the truce between the Principate and philosophy was the readiness of the philosophers to identify the Princes of the day with their ideal of philosopher-king, not the acceptance by the Principate of the doctrine of adoption.

Nor does the doctrine of adoption imply elective monarchy.<sup>4</sup> It is true that, in the speech on adoption which he put into the mouth of Galba, Tacitus says “*Loco libertatis erit quod eligi coepimus*”,<sup>5</sup> but obviously “*eligere*” here means to select, not to elect in a constitutional sense. Elsewhere he described Galba as having declared “*adoptari a se Pisonem exemplo divi Augusti et more militari, quo vir virum legeret*”.<sup>6</sup> And Pliny clearly says: “*Imperaturus omnibus eligi debet ex omnibus*”,<sup>7</sup> not *ab omnibus*. From a constitutional point of view, as distinct from a social one, the doctrine of adoption means only the substitution of an heir designate for an heir apparent, but the principle of heredity is not thereby abolished, because in Roman law an adopted son and a legitimate son had the same standing in the familia.

The considerations that went to make the doctrine of adoption are clearly set out by Tacitus and Pliny the Younger. One has only to read the relevant passages, not in the light of Dio Chrysostom's speeches *On Kingship*, but against the background of the dynastic policy of the Julio-Claudian emperors.

<sup>1</sup> It is noteworthy that in Dio Chrysostom's discourses *On Kingship* adoption is never mentioned.

<sup>2</sup> See above, pp. 133 f.

<sup>3</sup> Cf. J. Kaerst, *Studien zur Entwicklung und theoretischen Begründung der Monarchie im Altertum* (1898), pp. 24 ff.

<sup>4</sup> As Reitzenstein thought, *Gött. Nachr.* (1914), p. 238, and Tacitus und sein Werk, *Neue Wege zur Antike*, IV, p. 9.

<sup>5</sup> *Hist.* I, 16, 1.

<sup>6</sup> *Ib.* I, 18, 2.

<sup>7</sup> *Paneg.* 7, 6.

Adoption as a form of designating the successor to the Principate was as old as the Principate itself: Augustus was the first to introduce it.<sup>1</sup> And, in point of fact, even he made thereby no innovation: he secured his dynastic policy by the long-established method to which Romans, and especially heads of noble families, resorted in default of male issue. As regards the Principate, adoption, combined with joint tenure of the tribunician power, ensured an undisturbed and unquestioned succession.<sup>2</sup> This was undoubtedly good and worth preserving; but Augustus based succession on a dynastic principle,<sup>3</sup> and it was there that the disadvantages came in. If kinship alone decides who is to succeed, there is a chance of an unworthy person coming to power, “nam generari et nasci a principibus fortuitum”, and Nero should serve as a warning (“sit ante oculos Nero”).<sup>4</sup> Moreover, if one dynasty continuously rules, the State becomes very much like the inheritance of one family.<sup>5</sup> But the Romans considered themselves free citizens of their *res publica*, not slaves of the master’s household.<sup>6</sup> And, finally, a dynastic monarchy which perpetuates the rule of one family deprives all the other noble families, not only of pre-eminent position and of present access to the seat of power, but even of the opportunity of ever attaining them. In a State in which equality of opportunity counted for nearly as much as freedom, this was hardly acceptable: “Imperaturus omnibus eligi debet ex omnibus.”<sup>7</sup>

It appears therefore that the doctrine of adoption as foreshadowed by Galba and accepted by Nerva was an improvement upon the example of Augustus in that it sought the successor in the State, i.e. in the senatorial class, not in one family.<sup>8</sup> This improved form of succession by adoption met the need of the Roman State for an undisturbed continuity of the imperial power, and it marked

<sup>1</sup> Tac. *Hist.* 1, 15, 1; 18, 2; *Ann.* III, 56; Vell. Pat. II, 103. Pliny’s exclamation “O novum atque inauditum ad principatum iter” (*Paneg.* 7, 1) is clearly inaccurate, and probably due to the excessive fervour of the panegyrist.

<sup>2</sup> *Ann.* 1, 3, 3; III, 56; *Hist.* 1, 29, 2.

<sup>3</sup> Augustus in domo successorem quaesivit, *Hist.* 1, 15, 2.

<sup>4</sup> *Ib.* 1, 16, 2.

<sup>5</sup> Sub Tiberio et Gaio unius familiae quasi hereditas fuimus, *Ib.* 1, 16, 1. Cf. Pliny, *Paneg.* 7, 5 f.

<sup>6</sup> Non enim servulis tuis dominum, ut possis esse contentus quasi necessario herede, sed principem civibus daturus es imperator, *Paneg.* 7, 6.

<sup>7</sup> Cf. H. Last, *C.A.H.* XI, p. 413.

<sup>8</sup> See *Hist.* 1, 15, 2.

a victory, not of Stoic philosophy, but of the new imperial nobility which asserted its right to provide candidates for the Principate just as it provided candidates for the administration. But this was not all. Tacitus represents Galba as saying that in circumstances that make monarchy indispensable the principle of adoption, as distinct from dynastic heredity, is a substitute for *libertas*.<sup>1</sup> The context clearly shows that *libertas* means *res publica*. It seems therefore that in his opinion adoption preserves as much of the *res publica* as is possible under monarchy, because it underlines the fact that the State is not the inheritance of one family but the common possession of all. *Res publica* is still *res populi*, if *populus* means the community.

Adoption as a constitutional principle was formulated by the Romans under the impact of events at Rome, not under the influence of Greek theory. It was gradually developed by statesmen who grappled with hard facts, not ideas. But, once formulated and accepted, it proved of great value to those philosophers who wished to accommodate their ideals to reality. All one had to do was to postulate—and who would dare, or care, to deny it?<sup>2</sup>—that the adoptive father was guided in his choice by the gods themselves.<sup>3</sup> On that assumption it was possible, without loss of face, to identify the adopted emperor with the ideal king, in fact with any ideal. Philosophers may have gladly accepted the doctrine of adoption, but there is nothing to prove, or even to suggest, that they invented it. It is a fact to be remembered that the only Stoic philosopher on the throne of the Caesars broke the principle of adoption to ensure the succession of his own son.

#### IO. LIBERTAS PUBLICA AND SECURITAS

Security of life and property, sanctity of hearth and home, inviolability of civic rights were the chief elements of Roman *libertas*. But for the upper classes under the Early Empire these were on occasions an ideal rather than a fact. They often lived in insecurity and in fear of their lives. “*Timetur inopia*,” says Seneca, “*timentur morbi, timentur quae per vim potentioris eveniunt. Ex his omnibus nihil nos magis concutit quam quod ex aliena potentia impendat.*”<sup>3</sup>

<sup>1</sup> *Hist.* 1, 16, 1. Cf. Pliny, *Paneg.* 8, 1.

<sup>2</sup> See *Paneg.* 8, 2.

<sup>3</sup> Seneca, *Ep.* 14, 3–4.

The *actio laesae maiestatis* hung above everyone's head as a sword of Damocles.<sup>1</sup> Anything might prove fatal: "Nobilitas, opes, omissi gestique honores pro crimine."<sup>2</sup> It was even fatal to mourn a condemned son.<sup>3</sup> Informers were everywhere and would note down ambiguous jokes, and even unguarded utterances of a drunken man.<sup>4</sup> Nero was wont to assail passers-by at night, and self-defence might cost a man his life.<sup>5</sup> Property was not safe: Nero's motto was "*hoc agamus ne quis quicquam habeat*".<sup>6</sup> It was dangerous to publish books that would not please an emperor, or to pursue one's studies in freedom.<sup>7</sup>

People who lived under oppression in danger of their lives came gradually to conceive *libertas* as meaning, primarily, order, security, and confidence. To Tacitus, after Domitian's reign, the realization of freedom appeared as "*securitas publica*" and as the happy state of affairs (*felicitas temporum*) when one could think as he pleased and say what he thought.<sup>8</sup>

It is interesting that from Galba onwards *LIBERTAS PUBLICA* becomes a very common legend on imperial coins.<sup>9</sup> *Libertas publica* means freedom as it is enjoyed by the public, that is to say absence of oppression and lawlessness;<sup>10</sup> it signifies a state of affairs, not a form of government. Under the Empire it meant order, security, and confidence. It was in fact tantamount to *securitas*. "An parva pronaque sunt ad aemulandum quod nemo incolumitatem turpitudine rependit? Salva est omnibus vita et dignitas vitae, nec iam consideratus ac sapiens qui aetatem in tenebris agit."<sup>11</sup> These words of Pliny's show what *securitas* and *libertas publica* must have meant.

<sup>1</sup> *Ann.* 1, 72 f.; II, 50; III, 38, 1 f.; Suet. *Domit.* 12, 1.

<sup>2</sup> Tac. *Hist.* 1, 2, 3.

<sup>3</sup> *Ann.* VI, 10, 1. Cf. Suet. *Tib.* 61, 2.

<sup>4</sup> Seneca, *De Benef.* III, 26, 1; *De Clem.* 1, 26, 2; Tac. *Ann.* IV, 69, 6; VI, 7, 4; 5, 2; XIV, 48, 1 f.

<sup>5</sup> Tac. *Ann.* XIII, 25.

<sup>6</sup> Suet. *Nero*, 32, 4. Cf. *Calig.* 38; *Domit.* 12.

<sup>7</sup> Tac. *Ann.* IV, 34 f.; *Agric.* 2; *Dial.* 2; Pliny, *Ep.* III, 5, 5.

<sup>8</sup> Tac. *Agric.* 3, 1 and *Hist.* 1, 1, 4.

<sup>9</sup> See Mattingly and Sydenham, *op. cit.* II, pp. 65 and 70.

<sup>10</sup> Cic. *De Dom.* 112 and 131 seem to imply that the statue of Liberty which Clodius erected in Cicero's house was dedicated *Libertati Publicae*.

<sup>11</sup> Pliny, *Paneg.* 44, 5.

## II. WHAT LIBERTAS MEANT TO TACITUS

No small importance attaches to the question how Tacitus conceived *libertas* under the Principate. Since he is one of our foremost literary authorities, it would be interesting to know the view which may have coloured his account. Besides, and this is perhaps still more important for the present purpose, his is the view of a receptive and critical contemporary whose opinions were shaped less by wisdom after the event than by personal experience. Tacitus himself lived under absolutism, at times despotic, at others enlightened. His own conception of *libertas* may therefore be to some extent indicative of what *libertas* at that time meant to his class.

Perhaps the most striking feature of Tacitus's attitude to the Principate and to liberty is the fact that his estimate of the former and his idea of the latter are not determined solely, nor even primarily, by constitutional considerations. Tacitus, needless to say, is no republican. On occasions, it is true, he uses "*libertas*" to describe the republican form of government.<sup>1</sup> But this traditional usage does not by any means prove that he desired the restoration of the Republic, or that his criticism of certain emperors was inspired by Republican sympathies. Whatever he may have thought of republicanism as such, he did not fail to see, nor did he hesitate to state, that the Late Republic was a period of corruption and lawlessness, *non mos non ius*.<sup>2</sup> His attitude is perhaps nowhere better illustrated than in his *Dialogus de Oratoribus*.<sup>3</sup> Granted that the *Dialogus* is no more historical than, for instance, Cicero's *De Re Publica*,<sup>4</sup> we may consider significant the fact that it did not strike Tacitus as unduly inconsistent to put unsparing criticism of the Republic and, at the same time, appreciative comments on the

<sup>1</sup> See, e.g., *Ann.* I, 1, 1; XIII, 50, 3; *Hist.* III, 72, 2.

<sup>2</sup> *Ann.* III, 28, 2. Cf. I, 2, 2; 9, 4.

<sup>3</sup> For a discussion of the authorship of the *Dialogus* see A. Gudeman, *Cornelii Taciti Dialogus de Oratoribus*, 2nd (German) edition, 1914, pp. 1-29; W. Peterson, *Cornelii Taciti Dialogus de Oratoribus*, Oxford, 1893, pp. ii-xxii; Fr. Leo, *G.G.A.* 1898, pp. 167 ff.

<sup>4</sup> See Gudeman, *op. cit.* pp. 81-5; K. v. Fritz, *Aufbau und Absicht des Dialogus de Oratoribus*, *Rhein. Mus.* 81 (1932), pp. 275-300; K. Barwick, *Zur Erklärung und Komposition des Rednerdialogs des Tacitus*, in *Festschrift Walther Judeich*, Weimar, 1929, pp. 90 f.

Principate into the mouth of Maternus (*Dial.* 40 f.), whom he represented as having only the day before recited in public his "Cato", the contents of which were received with displeasure in high quarters (*Ib.* 2). It would seem that Tacitus, like Maternus, admitted and appreciated what was great in the Republic but nevertheless thought that his own generation, since it could not have the advantage of Republican freedom and Imperial peace at the same time, should make the best of its own blessings, "bono saeculi sui quisque citra obtreactionem alterius utatur" (*Ib.* 41).

Nor is it true, as has sometimes been assumed, that a polemical attitude to the Principate as a form of government is the key to his historical works.<sup>1</sup> Tacitus, we are told, was in the earlier period of his literary career a convinced monarchist.<sup>2</sup> He believed the Principate was the ideal mixed form of government.<sup>3</sup> But as he gained better knowledge of imperial history disillusionment set in, followed by a renunciation of the official theory of the Principate. He realized that "the downfall of the State inevitably lies in the institution of the Principate".<sup>4</sup> Therefore in a mood of disconsolate sorrow and sullen gloom he decided to expose the Augustan Principate. Hence the *Annals*. This theory, which purports to trace and explain the development of the political views of Tacitus, assumes in the first place that the Principate was in the official view represented as a mixed form of government. It further assumes that the attitude of Tacitus to the Principate as a form of government suffered complete change. The whole theory is clearly based on these two assumptions; neither of them, however, will bear closer examination.

Speculations about its philosophic basis apart, there is no important positive evidence that the Principate was in official quarters conceived, or represented, as a mixed form of government. Aelius Aristides, it is true, in his panegyric on Rome (Εἰς Ῥώμην) described the Roman constitution as a mixture of all forms of government

<sup>1</sup> See R. Reitzenstein, *Bemerkungen zu den kleinen Schriften des Tacitus*, Gött. Nach. 1914, pp. 235-52; Id. *Tacitus und sein Werk*, *Neue Wege zur Antike*, IV, pp. 8 f.

<sup>2</sup> Gött. Nach. 1914, pp. 239 ff.; *Neue Wege zur Ant.* IV, 8.

<sup>3</sup> Gött. Nach. 1914, p. 248; *Neue Wege zur Ant.* IV, 9.

<sup>4</sup> "In der Institution des Prinzipats liegt notwendig der Untergang des Staates", *Neue Wege zur Ant.* IV, 8.

(κράσις ἀπασῶν τῶν πολιτειῶν), but the relevant passage (§ 90, Keil), if read without preconceived views, proves only that Aristides reiterated a commonplace of political theory and, above all, that he knew his Polybius well.<sup>1</sup> If the Principate were officially represented as a mixed form of government, one would have expected Pliny the Younger to expatiate on this theory in his *Panegyric*. Yet he does not so much as mention it, and Pliny's silence in this matter far outweighs all the eloquence of Aristides. Finally, it seems more probable that in his well-known utterance about the mixed form of government (*Ann.* iv, 33) Tacitus criticized Cicero's view of the Republican constitution,<sup>2</sup> and not the Principate of his own day. For he went on to describe the Republic as a period when at times the People was most influential, at others the Senate gained ascendancy, whereas Cicero described the Republican constitution as an even balance between the rights of the People, the authority of the Senate, and the power of the magistrates.

As for the other assumption, namely that his attitude changed according as Tacitus realized that the Principate was actually government by one man, two things are to be observed. First, it is of course true that Tacitus praised Nerva and Trajan in his prefaces to the *Agricola* (chap. 3) and *Histories* (I, I, 4). But praise of the reigning emperor and of his adoptive father cannot bear the weight that has been put on it as if it were an enthusiastic declaration of faith. Secondly, it is well to bear in mind that as early as the *Dialogus de Oratoribus*, which was probably written about the turn of the first century,<sup>3</sup> he declared that in Rome ruled "sapientissimus et unus" (*Dial.* 41, 7), and later in the preface to his *Histories* (I, I, 1) he said that after the Battle of Actium "omnem potentiam ad unum

<sup>1</sup> What Aristides' description of the Roman constitution of his day (second cent. A.D.) is worth can easily be seen from his assertion: ὥστε ὅταν μὲν εἰς τὴν τοῦ δήμου τις ἰσχὺν βλέψη, καὶ ὡς ἀπάντων ὧν ἂν βουλευθῇ τε καὶ αἰτήσῃ ῥαδίως τυγχάνει, δημοκρατίαν νομῇ καὶ οὐδὲν ἐνδεῖν πλὴν ὧν ἐξαμαρτάνει δῆμος. ὅταν δὲ εἰς τὴν γερουσίαν ἴδῃ τὴν βουλευομένην τε καὶ τὰς ἀρχὰς ἔχουσιν, ἀριστοκρατίαν οὐκ εἶναι ταύτης ἀκριβεστέραν νομῇ. Cf. Polyb. vi, 11, 12.

<sup>2</sup> Just as in his *Dialogus* he criticized Cicero's view of eloquence; cf. *Dial.* 40, 5 f. with Cic. *Brut.* 45.

<sup>3</sup> See A. Kappelmacher, *Zur Abfassungszeit von Tacitus' Dialogus de oratoribus*, *Wiener Studien*, I (1932), pp. 121-9. And also Fr. Leo, *G.G.A.* 1898, pp. 174 f.

conferri pacis interfuit". It was therefore nothing new if he said in the *Annals* (IV, 33, 2) "converso statu neque alia re Romana quam si unus imperitet". And far from holding that the decline of Rome was inherent in the very institution of the Principate, he repeatedly declared that the Principate brought and secured peace and order.<sup>1</sup> Thus it appears that, in so far as we can gather the views of Tacitus from his writings, his attitude to the Principate as a form of government remained in the main unchanged. And if, nevertheless, in the name of libertas he criticized the servitus that he found under the Principate, we have to look for the reasons, not to his view of the constitution, but elsewhere.

In so far as libertas consists in political institutions, Tacitus seems to have regarded the freedom of the Senate as freedom *par excellence*.<sup>2</sup> Nevertheless, to him, unlike Cicero, political institutions are not the fullest expression of political life but only the framework in which political life is set. That constitutional framework matters a great deal but it does not matter most. What matters most is how people use their institutions, not what their institutions are. Tacitus knew that at its best the Republican constitution provided genuine political freedom,<sup>3</sup> but at the same time it did not escape him that the lack of the old freedom under the Principate was the price the Romans had to pay for the immense extension of their power.<sup>4</sup> There seems indeed to be in his view of the Principate an inner conflict between the recognition that absolutism is the inevitable prerequisite of the Pax Romana, on the one hand, and the awareness that, since the possession of power tends to corrupt, absolutism is apt to become despotism, on the other. And the clearer he sees the danger to freedom the less is he inclined to rest his hopes on constitutional formulae.<sup>5</sup> For he is only too well aware that, the power of the Princeps being in fact *supra leges*, law as the supreme

<sup>1</sup> *Dial.* 38, 7; *Hist.* I, 1, 1; *Ann.* I, 9, 5; III, 28, 3.

<sup>2</sup> See above, p. 137.

<sup>3</sup> See, e.g., *Ann.* III, 60, 6; *Agric.* 2, 3.

<sup>4</sup> Si immensum imperii corpus stare ac librari sine rectore posset, dignum eam a quo res publica inciperet, *Hist.* I, 16, 1 (Galba). See also *Hist.* II, 38.

<sup>5</sup> Reitzenstein, *Gött. Nach.* 1914, p. 238 n. 4, and *Neue Wege zur Ant.* IV, 9, attaches undue importance to the phrase (*Hist.* I, 16, 1) *loco libertatis erit quod eligi coepimus*. Adoption did not render the Principate elective, cf. above, p. 156.



guardian of the citizen's rights has lost its effectiveness. Accordingly, to him *libertas* and *servitus* issue in the first place, not from the form of government as expressed in terms of constitutional law, but from the manner in which the *de facto* absolute power of the Princeps is employed, and particularly from the manner in which people behave *vis-à-vis* the Princeps. For bad though despotism is, the willingness to obey the despot's whims is still worse.

Tacitus thought the wretched state in which under the Principate the Romans repeatedly found themselves was of their own doing no less than of the emperor's. The Romans themselves "rushed into slavery" (*ruere in servitium*, *Ann.* 1, 7, 1); they abandoned their dignity and vied with each other in contemptible adulation and abject servility.<sup>1</sup> It seems that the intense gloom of the *Annals*, in so far as it is not due to the nature of the subject matter, is born of the realization that the moral degeneration of the Romans<sup>2</sup> is just as perilous as the worst despotism. Indeed, what makes despotism so dreadful is the fact that it can stimulate and release the worst potentialities of men whose moral standards are gone.<sup>3</sup> And because he is aware that autocracy renders all constitutional safeguards futile and at the same time corrodes the conscience of rulers and subjects alike, Tacitus attaches greater importance to character than to the constitution.<sup>4</sup> What is most significant of his view is that he conceives *servitus* and *libertas* not only as either external constraint or the lack of it, but above all as inner proneness to servility or, in the case of *libertas*, as courage to be free. Since the constitution can no longer effectively protect the citizen, *libertas* and *servitus* become modes of personal conduct rather than expressions of political rights or rightlessness.<sup>5</sup>

<sup>1</sup> See, e.g., *Ann.* II, 32, 2 f.; III, 57; 65; XIV, 12, 1.

<sup>2</sup> *Tam saeva et infesta virtutibus tempora*, *Agric.* 1, 4; *corruptissimum saeculum*, *Hist.* II, 37, 2; *Ceterum tempora illa adeo infecta et adulatione sordida fuere, ut non modo primores civitatis, quibus claritudo sua obsequiis protegenda erat, sed omnes consulares, magna pars eorum qui praetura functi multique etiam pedarii senatores certatim exsurgerent foedaque et nimia censerent*, *Ann.* III, 65, 2.

<sup>3</sup> See *Ann.* IV, 28, 1 and *Hist.* IV, 42, 2.

<sup>4</sup> For a similar interpretation of Tacitus see Ed. Fraenkel, *Tacitus*, *N. J. f. Wiss.* VIII (1932), p. 225.

<sup>5</sup> (*Helvidius*) *e moribus soceri nihil aequae ac libertatem hausit*, *Hist.* IV, 5, 2. See also *Ann.* XVI, 11, 2–3.

A few instances may illustrate the last point. Describing the effect of Thrasea's courageous intervention in the Senate during a trial for *maiestas*, Tacitus says: "*Libertas Thraseae servitium aliorum rupit*" (*Ann.* xiv, 49, 1). Obviously, neither *libertas* nor *servitium* here have anything to do with the constitution: *libertas* denotes Thrasea's undaunted spirit, and *servitium* the servile submissiveness of the other senators.<sup>1</sup> Similarly, Seneca is said to have declared "*nec sibi promptum in adulationes ingenium. Idque nulli magis gnarum quam Neroni, qui saepius libertatem Senecae quam servitium expertus esset*" (*Ib.* xv, 61, 3). Here, as in the previous instance, *libertas* is outspokenness, whereas *servitium* is fawning subservience.<sup>2</sup> What *libertas* means can also be gathered from the nouns with which Tacitus contrasts it: "*Sed Labeo incorrupta libertate et ob id fama celebratior, Capitonis obsequium dominantibus magis probabatur*" (*Ib.* iii, 75, 3). "*Scilicet etiam illum, qui libertatem publicam nolle, tam proiectae servientium patientiae taedebat*" (*Ib.* iii, 65, 4). "*Unde angusta et lubrica oratio sub principe, qui libertatem metuebat, adulationem oderat*" (*Ib.* ii, 87).<sup>3</sup> Needless to say, outspokenness and self-respect are not the only meanings that Tacitus attaches to *libertas*.<sup>4</sup> But in order to understand him, it is necessary to distinguish in his usage between what is traditional and what is peculiar to him. And it is undoubtedly the most characteristic and significant feature of his idea of freedom under the Principate that he conceived *libertas* less as a constitutional right than as the individual will and courage to be free.

<sup>1</sup> Speaking of the occasion on which Thrasea marked his disapproval by leaving the Senate, Tacitus says: "*Sibi causam periculi fecit, ceteris libertatis initium non praeibit*" (*Ann.* xiv, 12, 2). It is unlikely that Tacitus meant to say that Thrasea's gesture did not prove to be a turning-point in the political situation. Rather he meant that Thrascas's example did not inspire other senators to take courage to express their true sentiments in some such way as Thrasea did. And for this reason it seems unlikely that Tacitus's remark contains a censure of Thrasea, as Furneaux *ad loc.* thought.

<sup>2</sup> For *libertas* in the sense of frankness see also *Dial.* 10 *ad fin.*; 27, 4; *Hist.* i, 1, 1; 85, 3; iv, 44, 1; *Ann.* i, 74, 6.

<sup>3</sup> Cf. also *Dial.* 13, 6.

<sup>4</sup> In regard to Britons or Germans *libertas* often means independence, see, e.g., *Agric.* 30; *Ann.* ii, 15, 4; 45, 4; xii, 34, 2; xiv, 31, 4. And in regard to Rome it sometimes means republicanism, and more often the freedom of the Senate.

Yet it would be wrong to infer from his view of *libertas* and *servitus* that Tacitus regarded defiant intransigence or outspoken opposition as a short road to freedom. The irreconcilables who admired forbidden ideals and sought glory in martyrdom seemed to him useless exhibitionists. He believed ostentatious assertion of freedom, even if it brought fame to an individual, did not serve the commonwealth.<sup>1</sup> And therefore while Helvidius Priscus won from him a partial respect, the unstinted praise and admiration of Tacitus is reserved for men of a different cast of mind: M'. Lepidus, L. Piso, and above all Agricola. What he praises in them throws much light on his own conception of freedom and may for this reason be here quoted at length:

Hunc ego Lepidum temporibus illis gravem et sapientem virum fuisse comperior: nam pleraque ab saevis adulationibus aliorum in melius flexit. Neque tamen temperamenti egebat, cum aequabili auctoritate et gratia apud Tiberium vigerit. Unde dubitare cogor, fato et sorte nascendi, ut cetera, ita principum inclinatio in hos, offensio in illos, an sit aliquid in nostris consiliis liceatque inter abruptam contumaciam et deformem obsequium pergere iter ambitione ac periculis vacuum (*Ann.* IV, 20, 4–5).

Per idem tempus L. Piso pontifex, rarum in tanta claritudine, fato obiit, nullius servilis sententiae sponte auctor, et quotiens necessitas ingrueret, sapienter moderans: . . . sed praecipua ex eo gloria quod praefectus urbi recens continuam potestatem et insolentia parendi graviolem mire temperavit (*Ann.* VI, 10, 3–5).

Domitiani vero natura praeceps in iram. . . moderatione tamen prudentiaque Agricolae leniebatur, quia non contumacia neque inani iactatione libertatis famam fatumque provocabat (*Agric.* 42, 4).

It is un wisdom to be refractory and provocative. But while he bows to the inevitable the true Roman will yet be mindful of his own dignity. Thus the scope of *libertas*, in so far as it is not personal freedom expressed in terms of civil law, shrinks beyond recognition. It appears that by *libertas* Tacitus understands, not the freedom of the citizen to determine his own destiny and the destiny of his country, nor the constitutional safeguards of the citizen's rights, but merely the courage to preserve one's self-respect in the face of despotism and amidst adulation. And, narrow as it is, this *libertas* is sustained by a consciousness, not of what one is entitled to, but of what one owes to one's own dignity. Unlike Seneca who was

See *Agric.* 42, 5.

concerned about human dignity above all else, Tacitus is concerned in the first place about dignity as it is realized in the Senate and the service of the commonwealth. But, whereas to Republican nobles *libertas* was the right to assert and enhance their *dignitas*, to Tacitus *libertas* is merely the courage to keep one's *dignitas* alive.

## 12. FREEDOM UNDER TUTELAGE

*Libertas* and the Principate are said to have been reconciled towards the end of the first century A.D.,<sup>1</sup> and, in so far as there was such a reconciliation, Pliny's *Panegyric*, delivered in the year 100, is certainly its outstanding literary monument. For the purpose of this study "the doubtful light of a panegyric" is unusually illuminating in that it reveals the mind of the panegyrist. The topics that Pliny chose to speak about, as well as the manner in which he presented them, give a very clear idea of what the reconciliation between freedom and the Principate really was. It is therefore necessary to review briefly what Pliny apparently considered to be praiseworthy in Trajan's Principate.<sup>2</sup>

The emperor was not imposed by the army (9, 2), nor did he seize power in the tumult of civil war (5, 1). He was adopted by the late emperor (7, 1 f.) and the Senate and People of Rome concurred (10, 2). He was chosen from the Senate (2, 4; 7, 6). The Senate regained its dignity, it no longer deliberates about trifles (54); there is amicable concord between the Princeps and the Senate (62, 3 f.); senators can speak their mind freely (76, 2); the terror of *maiestas* and of the informers does not exist (36, 2; 42, 1). Senators have easy access to the Princeps (48, 1 f.). The magistrates regained their prestige (58, 3 f.; 63, 1 f.; 64, 1 f.; 93, 1). Nobility is no longer fatal (69, 5). The road to an honourable career is open to all (70, 8). Property is safe (50, 1 f.). The emperor's freedmen do not domineer (88, 1 f.). The Princeps is a veritable vicar of God on earth (80, 4 f.). But he is a princeps, not a despot. "Scis, ut sunt diversa natura dominatio et principatus, ita non aliis esse principem gratiorem, quam

<sup>1</sup> Tac. *Agric.* 3, 1. Dessau, *I.L.S.* 274: Libertati ab imp. Nerva Ca(es)ar(e) Aug. anno ab urbe condita DCCC XXXXIIIX. XIII (k). Oc(t). restitu(t)ae s.p.q.R. The year corresponds to A.D. 96.

<sup>2</sup> The chapters and paragraphs of the *Panegyric* (ed. Schuster, Teubner, 1933) are given in brackets.

qui dominum graventur" (45, 3). "Visuntur eadem e materia Caesaris statuæ qua Brutorum, qua Camillorum. Nec discrepat causa: illi enim reges hostemque victorem moenibus depulerunt; hic regnum ipsum, quæque alia captivitas gignit, arcet et summovet, sedemque obtinet principis, ne sit domino locus" (55, 6 f.).

It may be well to consider why the Princeps is not a despot. The answer seems to be: "Regimur quidem a te et subiecti tibi, sed quemadmodum legibus sumus" (24, 4). And similarly: "Quod ego nunc primum audio, nunc primum disco, non est princeps supra leges, sed leges supra principem, idemque Caesari consuli quod ceteris non licet" (65, 1). But was it true that the sovereignty of law was re-established? The truth was different. "In rostris...ipse te legibus subiecisti, legibus, Caesar, quas nemo principi scripsit" (65, 1). That is to say that the emperor's subjection to the law is voluntary, not compulsory, and it is of course in his power to change his mind. The power of the Princeps is unlimited; it is checked, not by law, but by his character, "infinite potestatis domitor ac frenator animus" (55, 9). And if that was the case, it is quite obvious that all the blessings that Pliny counted, even if they were true, owed their existence, not to a constitutional reform, but solely to the fact that the emperor happened to be a kind and generous master. Hence the interminable praise of the Optimus Princeps, of his moderation (54, 5), clemency (35, 1), benignity (50, 7), justice, humanity, and patience (59, 3).

Pliny speaks of restoration of freedom (*libertas reddita*, 58, 3; *libertas recuperata*, 78, 3). But what kind of freedom is it? He inadvertently admits that it is a very precarious freedom. "Iubes esse liberos, erimus; iubes quæ sentimus promere in medium, proferemus" (66, 4). And, "Tenebit ergo semper quid suaserit, scietque nos, quotiens libertatem quam dedit experiemur, sibi parere" (67, 2). How very different is this concept of freedom—if indeed it is freedom which is enjoyed at an emperor's bidding—from that which Livy had in mind when he wrote that *libertas* "suis stat viribus nec ex alieno arbitrio pendet"! This is freedom born of right, Pliny's is freedom on sufferance.

What is it that common people expect from the Princeps? "Magnum quidem est educandi incitamentum tollere liberos in spem alimentorum, in spem congiariorum; maius tamen, in spem

libertatis, in spem securitatis" (27, 1). What can a senator expect? The answer is given in one of Pliny's letters (III, 20, 12): "Sunt quidem cuncta sub unius arbitrio, qui pro utilitate communi solus omnium curas laboresque susceperit; quidam tamen salubri temperamento ad nos quoque velut rivi ex illo benignissimo fonte decurrunt." It was not a slip of the tongue nor an undue exaggeration when Pliny said in the *Panegyric* (7, 5): "An senatum populumque Romanum, exercitus, provincias, socios transmissurus uni, successorem e sinu uxoris accipias summaeque potestatis heredem tantum intra domum tuam quaeras?" For although in theory the Princeps was the delegate of the Senate and People of Rome, he was, for all practical purposes, their master.

It appears, therefore, that there was no real reconciliation between *libertas* and the Principate based on mutual concessions, but a conciliation of *libertas* to the Principate based on resignation and abdication. The power of the Princeps remained as absolute as it was before; the wilful abuse of that power disappeared, but no objective safeguards against the recurrence of such abuse were instituted. *Libertas*, however, if compared with what it had been before, underwent a complete change. The original idea, which Augustus tried to preserve to some extent, was that the Romans were ultimately their own masters. In the last resort their freedom depended on the laws which they enacted or the customs which they evolved. Now they were subjects whose welfare depended on the care of an absolute autocrat who ruled them by direct command. In the last resort their freedom depended on whether their ruler was kind and enlightened. All that remained of the idea of the *res publica* was government for the people.

It was not only the political institutions that changed. Under a régime of tutelage, even if enlightened, *libertas* lost much that was most precious in it: the independence and self-reliance of the individual, or, as Livy would have said, *suis stare viribus nec ex alieno arbitrio pendere*. All care and all responsibility now gradually devolved on the Princeps, with the inevitable result that his supervision became so close and his intervention so frequent that even in municipal affairs little was left to the initiative and responsibility of the citizens; imperial legati and procuratores, acting under precise orders and in constant consultation with the imperial headquarters,

had the last word in everything.<sup>1</sup> The people may have enjoyed a considerable amount of freedom, but freedom without responsibility and self-reliance is, at best, very much like the freedom children enjoy under the parental care of a benign father. Indeed, the emperor becomes Pater, but imperial paternalism and political liberty go ill together. What had been *libertas populi Romani Quiritium* turned out to be *libertas Augusti*,<sup>2</sup> the freedom that the emperor accords to his people or, in the phrase of Marcus Aurelius, ἐλευθερία τῶν ἀρχομένων.<sup>3</sup> *Libertas* now means respect for the person and property of the citizen, security and welfare; but under tutelage it hardly means independence, and under absolutism it is not a political right at all.

Having said all this, it would be wrong to belittle the achievement of the Roman enlightened despotism. If one looks beyond Rome to the Empire as a whole, there is truth in what Lord Acton said of the emperors: "Their power was arbitrary even when it was most wisely employed, and yet the Roman Empire rendered greater services to the cause of liberty than the Roman Republic."<sup>4</sup> During the second century, the Romans themselves were not oppressed, and from an administrative point of view gained much: they were ably and humanely governed. But from the point of view of *libertas* there is one fundamental thing to be observed: good government is no substitute for limited government. Freedom is of necessity precarious under absolutism, because an unlimited power can cause just as much harm as good. The great thing about the system of sovereignty of law and limitation of all powers was that under it a bad government could do least harm:

Ubi regium imperium, quod initio conservandae libertatis atque augendae rei publicae fuerat, in superbiam dominationemque se convertit,

<sup>1</sup> Pliny's correspondence with Trajan sheds much light on this state of affairs.

<sup>2</sup> Mattingly and Sydenham, *op. cit.* I, p. 228 and II, p. 68.

<sup>3</sup> *Ad Semet Ipsum*, I, 14, 2.

<sup>4</sup> Freedom in Antiquity, *The History of Freedom*, p. 15. See also Aelius Aristides, *Eis Ῥώμην* (ed. Keil), 31 f.; 36: μόνοι γὰρ τῶν πρόποτε ἐλευθέρων ἀρχετε; 51:...ὅτι οὕτω πρὸς ὑμῶν ἦν τὸ ἀρχεῖν εἰδέναι; 59 ff. With due allowance for the art of the panegyrist, Aristides' remarks are to some extent indicative of the attitude of an educated Greek to the Pax Romana.

inmutato more annua imperia binosque imperatores sibi fecere: eo modo minime posse putabant per licentiam inolescere animum humanum.<sup>1</sup>

It was different under absolutism: according as the autocrat was benevolent or malevolent, the same power might do most good or infinite harm.

Libertas which was reconciled with the Principate was personal freedom without constitutional safeguards, or, to be precise, with illusory constitutional safeguards. It would take more than Pliny's rhetoric to conceal the fact that his *Panegyric* marked the surrender of constitutional freedom. The defeat of the old idea of freedom was inevitable: autocracy seemed an absolute necessity, but autocracy and constitutional freedom are incompatible.

What this study has sought to trace is the nature and effectiveness of an idea in the sphere of Roman politics. Owing to the diversity of its elements and the partial vagueness of its meaning, libertas easily assumed new shapes, and while at times it inspired political movements, at others it was used for political ends, until at length it came to express political hopes rather than claims. The Romans of the Republic conceived libertas as freedom of the citizen in a free State, in which law was the guarantee of indefeasible personal rights. Those personal rights sought expression in political rights, and safeguards in political institutions. But, in the aristocratic State which the Republic never truly ceased to be, egalitarianism was not at home: the strong impulse towards the assertion of dignitas which nerved the Roman aristocracy of birth and office was incompatible with an advance towards full democracy. The Late Republic developed towards the conflicts of dignitas rather than the fortification of libertas, until the conflicts issued in the Principate. Under the Principate the ruling law which had been the basis of libertas was in fact replaced by the will of the Princeps. Within the Roman community itself, the possession of libertas became a gift rather than a right and, ceasing to be a right, lost what had been its essential quality.

<sup>1</sup> Sallust, *Cat.* 6, 7.