LIBERTAS AND THE PRACTICE
OF POLITICS IN THE LATE
ROMAN REPUBLIC

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Introduction

My main purpose in the following work is to study the conceptualisations of the idea of *libertas* and the nature of their connection with the practice of politics in the late Roman Republic.¹

In what follows I am exclusively concerned with the notion of political liberty, understood as the relation between the liberty of the citizen and the power of the commonwealth, and its conflicting applications in the political debates that took place in the last period of the Republic, that is between 70 BC, the year when the tribunes of the plebs, one of the acclaimed strongholds of Roman liberty, regained their full powers, and 52 BC, the year when Pompey was elected *consul sine collega* and officially authorised to use military force *domi* to restore order in the city.² I shall therefore inevitably focus on a very limited category of people: Roman adult male citizens, the sole group which Roman society recognised as politically active agents in the civic community. It follows that when I talk about persons/individuals or members of the civic body I implicitly refer to this very limited category of people, which, regrettably but nonetheless historically, did not include women, slaves or foreigners resident in Rome.

In this period, politicians had recourse several times to claims of *libertas* as a way of characterising as well as of justifying their courses of political action.³ However, as a careful review of the political issues debated in the period under consideration shows, not all measures proposed were argued in the name of liberty. It is a crucial point, which although not unnoticed

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¹ Despite a preference for liberty as a direct translation of *libertas*, on the whole I shall use the terms liberty and freedom interchangeably. On the differences between the two terms see Pitkin 1988.
² On the events of 70 BC, the first century’s annus metuibilis, see Wiseman 1994; on those of 52 BC, whose great significance is overshadowed by the outbreak of the civil war, Agesilaus 54 C. Dio Cass. 40.43.1. Cass. 5. Gall. 7.5.1; Cic. Mil. 67, 70 and Nippel 1993: 78–84. On a revised periodisation of the late Republic see Flower 2000: esp. 137–38.
in previous scholarship has not been sufficiently underlined, that only certain proposals were consistently opposed, and that opposition to them was articulated by constantly referring to the ideal of liberty.

The nature of the extant sources constitutes a considerable limit to this sort of investigation. Not only are we constrained by the amount of information regarding the political debate on specific policies, which may lead us to exclude from consideration measures that may well have been discussed in the name of liberty, but the nature of the sources also forces us to come to terms with the probability of historical inaccuracy of the reported debates. The first category of sources, and to an extent the most reliable for my purposes, is made up of Cicero's published speeches. His major role in many of the political events of the period under consideration guarantees us the account of a certainly partial eyewitness of, as well as protagonist in, the debates. Bearing in mind that my central aim is to reconstruct the use of the political ideas and principles adopted in debate to justify a politician's position on particular political measures, the partiality of Cicero does not impinge on such a historical reconstruction, nor does the potential discrepancy between the delivered and published version of the speech constitute a true obstacle to this kind of research. Although, as the case of the pro Milone attests, there is no doubt that such a discrepancy could in fact exist, and indeed that some orations had never been delivered (such as, for example, the five books of the actio secunda against Verres, the in Pisonem or the Second Philippic), it is important to underline that in all these cases the orator composed the speeches to fit the actual or implied circumstances of delivery. Although in these cases they may be considered a product of fiction, the speeches were still not divorced from the historical context in which they were generated. Published at most a few years after their delivery, there can be little doubt that these speeches present arguments and ideas that a contemporary readership of members of the elite, often themselves amongst the protagonists of the events, must have found plausible as having been advocated in those circumstances.

As Quintilian claims that the published version of an oration was a

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4 See, for example, Labienus' proposal regarding the election of priests in 64 BC, and Scribonius' scheme concerning road restructuring in 52 BC. For full discussion of these cases see Chapter 4.

5 On the publication of the pro Milone see, most recently, Meidinger 2001; on the actio secunda of the Verres, Findell 2004.

6 See, for example, Cic. Att. 2.1.1 for Cicero's publication of his oratorical speeches in 60 BC, just three years after their delivery. On the issue of the speeches' publication see Humbert 1953, Shore 1975, Chauvin 1986, Narducci 1997 and Powell and Petroni 2004. For a discussion on the process of writing up the delivered speech see Alexander 2005: 15-25.


8 Since Cic. Att. 3.13.5-11 and 14.1.2 with full discussion in Moesten-Marx 2004: 14-37.


Republic, these later authors refer to ideals and principles in the representation of late Republican political conflicts which they must have perceived, on the basis of sources closer to the events, as plausible and consistent with their perception of that remote time.

What these sources allow us to reconstruct is a recurrent political pattern making consistent use of the idea of libertas in relation to the following issues: in opposing the granting of extraordinary powers to an individual or a group (potestates extraordinariae), in supporting the use of the 'senatus consultum ultimum' and in opposing land distribution. Politicians who took these political stances claimed to be acting in the name of liberty, whilst their adversaries, as is fully attested in the sources on the 'senatus consultum ultimum', argued that it was their political behaviour that was the sole guarantee of Roman liberty.

The controversies over these issues were, in essence, a struggle for political legitimation: those who opposed these measures referred to the ideal of libertas when they felt the need to justify their political behaviour in response to accusations of wishing to establish their dominion over the commonwealth. In their search for legitimation, these politicians referred to liberty as a way of characterising their political action as well as justifying it. During these political debates, politicians' general awareness of two distinct discourses on libertas allowed them to frame their arguments in such a way as to demonstrate that their opponents' actions could be classified as truly detrimental to libertas based on shared assumptions, these discourses (or intellectual traditions) were sufficiently distinct to cast the issues at stake within the terms of rival conceptions of politics.

My principal concern in what follows is to understand and fully explore the nature and dynamics of the relation between the idea of libertas and associated rhetorical claims in political debates.

As the bibliography attests, the notion of Roman liberty during the Republic has already been extensively discussed, and the existing secondary literature contains some major contributions on this specific theme that have been very successful in shedding light on numerous aspects of importance, such as the nature of the ideal of political liberty and its historical development, as well as the amount of freedom that individual citizens could de facto enjoy. Building on the achievements of these previous studies, the contribution I hope to make in what follows is threefold.

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12 Millar 1964: 82.
14 For a full discussion of the arguments see Chapter 9.
16 On Dio and the theme of political ideas see Lintott 1997b: 3517 and 3520. For the passages on sovereign and tyrant see Millar 1964: 79-81.
18 On the importance of the issue of legitimacy in the ideological struggle of the late Republic see Moestein-Marx 2002. Along similar lines see Hölscher 1997: 111.
19 Pettit 1997.
First, some of the existing literature embodies a cardinal assumption with which I disagree. According to this trend of studies, since appeals to libertas were exclusively formulated in ad hoc contexts and for self-interested motives, they did not embody an abstract political idea of liberty. It follows, it is argued, that it is not possible to postulate any direct link between Greek (and Roman) political thought and the reform programmes of Roman politicians, except in those circumstances when Roman politics cannot be explained by itself. By contrast, I have tried to show how political thought itself informed the discourse on libertas, which, in the late Republic, came to be articulated in at least two intellectual traditions. Drawing on Greek philosophy, these two traditions on libertas, which I have categorised as 'optimatist' and 'populist', although they shared the same conceptualisation of political liberty as a status of non-subjection to the arbitrary will of another person or group of persons, diverged on the institutional and political arrangements to be implemented in order to achieve and preserve the liberty of the commonwealth, and on the related issue of how much liberty each section of society is entitled to. Whilst the main authors of the 'optimatist' tradition, despite their occasionally substantial differences, displayed a significant homogeneity as to the political reasons why the mixed and balanced constitution was the best form of government to achieve and preserve the liberty of the commonwealth, the 'populist' tradition saw the civic community as the ultimate owner of all goods and empowered its institutional form, the popular assembly, to arrange their fair distribution. In what follows, alongside reconstructing the 'optimatist' tradition, I excavate its rival tradition, the 'populist', from its submergence under the overwhelming weight of the competing ideology (which ultimately prevailed in the intellectual world of the Principate), through the analysis of fragments of speeches and the reported discourse of the supporters of democracy in Cicero's de republica. These attestations, however fragmentary, manifestly demonstrate a shared way of reasoning about politics which is clearly distinct from the 'optimatist' fashion of thinking. Basing its Republican framework on a significant role for the popular assembly, this intellectual tradition advocated a form of corrective justice which required the implementation of some kind of scheme designed to secure a more egalitarian distribution of property. Ultimately, therefore, the two intellectual traditions differ in their attitude to the institutional arrangements, especially with regard to the role of the popular assembly and the notion of justice, around which Roman political discourse of the late Republic was organised.

By 'intellectual traditions' I have in mind two distinct styles of political reasoning, which were not fixed conceptions of liberty, but rather clusters of ideas held together by a 'family resemblance' amongst their members. By referring to them as two distinct ideological 'families', I mean neither the ideologies of the nineteenth century nor Freedman's morphological complexes around a given core of concepts, but rather systems of thought, more or less coherent in themselves, that displayed distinct orientations on questions relating to fundamental evaluative terms such as liberty, justice and sovereignty. These two intellectual traditions should not be confused with refined philosophical systems. They formed two distinct views of which ultimately articulated two different conceptions of politics, but, although nourished by Greek philosophy, they should not be identified with any specific philosophical doctrine. Without requiring a personal and permanent commitment, these families of ideas provided Roman politicians with a language and conceptual framework to analyse political issues, frame their choices and justify their actions: in short, to articulate and explain their political behaviour. In this sense, I argue, it is possible to talk about the existence of ideologies in the intellectual world of the late Republic. By understanding them, in the words of Eagleton, as 'the medium in which men and women fight out their social and political battles at the level of signs, meanings and representations', the principles and rules of these ideologies do not derive from the values and beliefs of the political agents, but rather from the linguistic norms in which they are embedded. Following this line of argument, 'conservatives', according to Gerring's clear example, 'therefore, might be defined as those who evaluate the political world with a particular set of linguistic symbols, rather than those who believe in God, family, and country', understanding Roman Republican

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31 Bleicken 1972: 43-5 on the ad hoc uses of, and on the relation between Greek philosophy and Roman politics 17, 29; his view has been developed in an original fashion by Roller 2001: 245-33. See also Chapter 3: 79ff.
32 On the existence of other traditions see Arena 2001a.
33 I am treating the word libertas in the same way that Wittgenstein (2001: 31) treats the word 'games'.
34 For a lucid and helpful analysis of distinct intellectual families about liberty see Miller 2006: 1-20.
35 Freedman 1996. For a very interesting engagement with the notion of ideology in the study of Roman rhetoric see Connolly 2007: 35-47. See also Morstein-Marx 2004.
37 For the most recent reassessment of their centrality in the political struggle of the late Republic see Wiseman 2009.
38 Eagleton 1993.
39 Gerring 1997: 967 which contains the most lucid analysis of the issue of definition I have found. See also Elini 1973 with valuable insights applicable to the ancient world.
ideologies in these terms allows us to appreciate why Roman politicians could easily adopt two diametrically opposed stances on the same issues.

These intellectual traditions provided late Republican politicians with a weaponry of terms, ideas and values that, attached to political behaviour either favourable to the *populus* or in support of senatorial *auctoritas* and combined with a certain political strategy or method (such as, for example, recourse to or avoidance of the popular assembly), might gain them the description of *populares or optimates*. Of these opposing alignments, composed of socially homogeneous politicians, the latter designated politicians who stood up in defence of the *status quo* and thereby resisted new reforming measures, whilst the former described those who advanced demands for change. However, they did not constitute firmly established political groupings, much less entities more or less akin to modern political parties. Devoid of any organisational structure, single individuals might assume a certain stance in a given situation, a stance which gained them the label of *populares*, only to act the year after (often when no longer holding the tribunate of the plebs) in such a way as to be appropriately described as optimates. Whatever were their motives (and they are in some cases inscrutable to us), Roman politicians had at their disposal distinct conceptual systems providing them with the political language in which to frame their struggle in search of legitimacy for their course of action, without, however, requiring any permanent commitment to a given school of thought.

The second contribution that I hope to make concerns the relationship between the appeals to *libertas* that politicians invoked in rhetorical debates as a motive for their political action, and the nature of the proposals they supported in its name. Contrary to the very common claim that in political debates each side supported opposing policies by referring to its own notion of *libertas*, I have tried to show that politicians on both sides of a political debate referred to a commonly shared notion of liberty, understood as a status of non-subjection to the arbitrary will of either a foreign power or a domestic group or individual. The recourse to this agreed idea of *libertas* allowed them to show that their adversaries were people of

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41 For the reading of such a relationship as applied to the historical cases of Beulengracht versus Walpole see Skinner 1974: 22 (cf. rev 2003: 244-67).

42 See, for example, Morris-Marx 2008: 221 and the remarks in Wallace 2009: 175. A few exceptions to this general trend are Mackie 1991, Farny 1997 and Cognoli 2011: 106, who, however, does not fully explain the dynamics of the relation between such claims and the adopted practice of politics.

43 This view is symbolised by the incantatory words of Synt 1959: 39 *liberty and the laws are high-sounding words. They will often be rendered, on a cool estimate, as privilege and vested interests* and at 155.
the recourse to the principle of liberty as justification for their action guided the politicians' behaviour in ways that were compatible with those claims of liberty.

An influential reading of Roman political culture, interpreting the ideal of liberty as a mere epiphenomenon which should be bypassed if one wishes to investigate real rationale of political behaviour, the Realpolitik, has been opposed by those who have argued that Roman politicians did indeed believe that their chosen political conduct could preserve the liberty of the commonwealth.44 Reviewing twentieth-century scholarship, responsible in his opinion for the artificial creation of an 'ideological vacuum' in Roman political culture, Wiseman effectively summarises: so Gelzer gave you the norm, aristocrats exploiting connections and patronage to get their consulship, and Syme gave you the crisis, as power was usurped by 'chill and mature terrorists'. Either way, you were not to suppose that there were causes that men would die for.35 The line of argument, he observes, that a 'popularis' political attitude could further one's career and satisfy political ambitions, goes against the most patent observation that those who chose it and acted as radical tribunes, such as Tiberius and Gaius Gracchus, Saturninus, Livius Drusus, Sulpicius and Clodius, were all murdered before they could reach the pinnacle of the cursus honorum, the consulship.36

By contrast, I have tried to show that regardless of whether or not it is possible to show that libertas genuinely acted as a motive for engaging in a certain course of political action, it is necessary to refer to the principle of liberty in order fully to understand that action. If one view, historically formulated by Syme, considers that liberty seldom played a role as a genuine motive for action, and hence can be bypassed in historical research, and the contrary view, recently reinforced by Wiseman, claims that liberty indeed often served as a genuine motive for action, and hence should not be sidelined in our studies of Roman political history, my contention is that the principle of libertas played a central role each time that Roman politicians believed they needed to provide an explicit justification for their political behaviour.

1 Libertas is a vague and negative notion – freedom from the rule of a tyrant or a faction. It follows that libertas, like regnum and dominatio, is a convenient term of political fraud. Most recently, see, for example, Wallace 2000: 175.

Introduction

Finally, the third contribution I hope to make concerns the conceptual effects of the uses of libertas in the political debates of the late Republic.

Contrary to the very well-established view that no new ideas or principles were developed in the course of the contest between the optimates and the populares,37 I argue that as a result of its adoption in the debates concerning the recourse to the 'senatus consultum ultimum', the principle of libertas was subjected to a form of conceptual change. Initially applied, in virtue of its ordinary meaning, to a set of circumstances where it was not normally expected to be found (such as circumstances where the rule of law and specifically the right to provocatio were not upheld), libertas underwent first an alteration of the set of references to which it could be applied in virtue of its agreed criteria, and, in the second instance, a modification of these very criteria, which ultimately generated a form of conceptual change.38

Although the idea of libertas maintained its basic meaning unaltered, that of state of non-domination, by the 40s, the means which were regarded as being of primary importance in establishing and maintaining such a state had changed. Moving away from a juridical notion, the idea of libertas no longer implied an emphasis on the rights of Roman citizens (such as, for example, the right to provocatio and to suffragium) as the guarantors of its establishment and preservation, but rather acquired a new moral and universalistic dimension, centred round the judicium of individual men.39

After an initial state of semantic confusion, caused by what may have appeared at first to be an idiosyncratic application of libertas, politicians who supported the recourse to the 'senatus consultum ultimum' succeeded in persuading their audience (in the first instance, their direct political adversaries, but also those gathered in the Forum and in continiones, as well as the readers of speeches, understood in short as the wider language-sharing community) to accept the application of the term libertas to a new situation in which they had not previously thought it could be applied, and finally sanctioned a form of conceptual change. It follows that it was the audience, in the sense of the language-users, that acted as the ultimate authority which regulated and enforced the conceptual change undergone by the idea of liberty. By endorsing the exclusion of the objectivity of law
as an entity above anyone's judgement, an exclusion advocated by those who supported recourse to the 'senatus consultum ultimum', the people sanctioned a new social perception of a state of affairs which would before have appeared unacceptable, and, by doing so, ultimately acted as one of the engines of social change.

It follows, therefore, that in this work I am not concerned with the role of the people as more or less passive consumers of political ideology, or with the exact social identity of those who gathered in *contiones* to listen to these debates. In other words, since I focus on the rhetorical uses of the idea of *libertas* by members of the elite, my study is not meant to be a direct contribution to the very lively debate on the nature of Roman political culture. 

However, I do argue that the Roman people, understood as language-users, played a central role in Roman political culture not only as active construtors of legitimacy (given the centrality of political beliefs and values as a source of legitimacy), but also as the ultimate authority that sanctioned conceptual changes. Following the ancient theorists of language, I try to show that in the debates over recourse to the 'senatus consultum ultimum' the decisive factor leading to the prevalence of one description over another must be identified in *consuetudo*, the way language was used by the speaking community. *Consuetudo*, according to the ancient texts, derived its force from the *consensus multorum*, that is the consensus amongst all those described as able to recognise the composite nature of nouns that were immediately graspable (such as, for example, *argentifodinae* or *viocuriae*), as opposed to a restricted elite of profound knowledge.

By prompting a positive view of a state of affairs where the rule of law was not upheld, the *consuetudo* of the language-users enacted a change in social perception; by embracing the rhetorical description of those who supported recourse to the 'senatus consultum ultimum', the language-users opened a very dangerous breach in the intellectual world of the Republic, and legitimized actions that contributed to the transformation of the Roman *res publica*.

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62 For Varr see Cicero *De or. 3.170*; Quint. *Inst. 1.5.2-3*; August. *Ars or. 3.25*.

63 Varro *Ling. 3.7*, See Epilogue: 266ff.

64 For the usefulness of the notion of transformation as applied to the Roman Republic see Mostein-Mars and Resoren 2006: 629-77.
Since in Rome during the late Republic, as we shall see later, the political liberty of both the citizens and the commonwealth was conceived in terms equivalent to those of the juridical conditions of liberty and slavery, it is important to begin with the notions of libertas and slavery that were adopted in Roman legal discourse.¹

In the late Republic, all Romans shared a basic understanding of the value of liberty: they agreed that fundamentally libertas referred to the status of non-slavery.²

As Patterson and Raaffaub have shown, the conceptualisation of liberty and its rise to prominence within the socio-political discourse of ancient societies took place in conjunction with the historical development of slavery, and its subsequent modifications were directly influenced by the historical development of this institution.³ In early Rome in particular, a society consistently 'open' to the contributions of foreigners, slavery provided the fundamental social category by the means of which membership of the Roman community was circumscribed and defined. As attested by the archaic Twelve Tables, which in the first century BC were still learnt by heart by schoolboys, and whose ethos and principles permeated the upbringing of every educated Roman, a Roman citizen was conceived as the polar opposite of a slave. He could not be sold into slavery for debt within Roman territory, but should be taken trans Tiberim, that is outside Roman territory, for this transaction to take place.⁴ With Rome's territorial expansion from at least the fourth century BC onwards and its increasingly more distinct nature of slave society, especially from the third century onwards, the notion of libertas came to designate the status of non-slavery.

The definitional dichotomy between libertas and slavery was elegantly formulated in the juridical texts of the imperial era. In the Digest, the chapter de statu hominum begins by stating the fundamental division concerning the juridical status of mankind: 'the principal division in the law of persons is the following, namely that all men are either free or slave (summam itaque de iure personarum divisio habeat, quod omnes homines aut liberi sunt aut servi).⁵ It then specifies that 'men who are free are either freeborn, that is they are free by birth, or freedmen, namely those who have been manumitted from legal slavery (allii ingenui sunt alii libertini. Ingenui sunt qui liberi nati sunt, libertini, qui ex iussu servitutis manumissi sunt).² Furthermore, according to the Digest, to be free, either by birth or by legal manumission, consists in the natural ability 'to do whatever one wishes unless prevented from doing so by physical impediment or law'.⁷ This ability is possessed when one is in the status of non-slavery: when one is not under the dominium of someone else. 'Slavery,' continues Florentinus, 'is an institution of the law of nations by means of which anyone may be subjected, contrary to nature, to the control (dominium) of another (libertas est naturalis facultas eius quod cuique facere libet, nisi si quid vi ei iure prohibeat. Servitus est constitutio iuris gentium, qua qui dominio alieno contra naturam subicetur).² It follows that, according to the Digest, one is free when he is under his own dominium.²⁰

According to these juridical texts, a slave was a human res, who, in virtue of the ius gentium, lived in a condition of domination. The essence of this condition resided in the inability of the slave to conduct his life by his own

¹ Skinner 1998: 38 rightly draws attention to Roman juridical texts and their influence on later authors regarding the conceptualisation of liberty.
² Dig. 1.5.7 = Gaio. Inst. 1.9. In treating the ius personarum Gaio deals with the rules governing how a person attains and loses various positions of status in Roman society; see Buckland 1921: 86–9 and Jellinek 1957: 66–9.
³ Dig. 1.5.7 = Gaio. Inst. 1.10–1.
⁴ Dig. 1.5.4 = Florentinus Institutes xii.
⁵ Guicciardini 1994: 21–6, 64–5, 90–7. A similar view concerning the power over the slaves as part of the ius gentium, that it is to be found not in nature, but rather in the institutions of the vast majority of people, is also expressed by Ulpian in Dig. 1.57.32.
⁶ Cf. also Martianus in Dig. 1.5.7. For the substantial homogeneity on this topic between Gaio's Institutiones. Juriznian's Institutiones and the Digest see Melillo 2006: 14–16, who does however underline the small but significant variation in the title of the Digest, with de statu hominum in place of de iure personarum. See also Gardner 1993.
will, let alone by extension to control the life of other servi or personae. He was thereby completely bereft of any legal right which might have preserved him from the exercise of arbitrary interferences with his choices.

As Buckland rightly observed, the legal texts refer to the condition of slavery as that of a servus under dominium and not under a dominus, a development that should probably be dated to the end of the Republic. The distinction is important. The statement that slaves as such are subject to dominium does not imply that every slave is always owned. Chattels are the subjects of ownership: it is immaterial that a slave or other chattel is at the moment a res nullius. In the late Republican conceptualisation of the condition of slavery its defining trait, therefore, does not reside in the actual presence of an owner, but rather in the inability of the slave to be dominus of himself, that is to conduct his life according to his wishes. The rather peculiar group of the servi sine domino is a case in point. Although primarily an imperial phenomenon, of the four categories in which they can be gathered — the slaves abandoned by their owner, who could then be acquired by usucapio; the servi poenae, who, having been convicted, were strictly sine domino; the slave manumitted by one owner, whilst another also had a right in him/her; and the free man who was given in usufruct by a fraudulent vendor to an innocent buyer — only the latter seems to have been in existence in the late Republic. Although a rather uncommon phenomenon at the time — only one case is reported by Quintus Mucius, a unanimously accepted correction of the transmitted Quintus mend — its existence, together with the additional cases attested in the imperial period, represents an important facet of the conceptualisation of slavery (and, by implication, of liberty). It was not the actual presence of the owner, but rather the lack of any right against the exercise of arbitrary interferences in one’s own life that was the defining trait of the condition of slavery. None of the servi sine domino were under the specific ownership of someone. However, they were all equally unable to conduct their lives according to their own wishes.

It is important to observe that according to these juridical texts, from a purely conceptual point of view, those who had been enslaved and freed, the liberis, belonged to the same category as those free by birth. The fact that a slave of a Roman citizen, when formally manumitted, would become ipso facto a Roman citizen himself was a peculiar Roman trait, which provoked the admiration and suspicion of foreign powers as well as of Greek authors. Importantly for the present argument, as Roman citizens, freedmen were endowed with the same basic civic and political rights as civis Romanus, and, although it seems that in Rome they themselves (as opposed to their sons) were debarred by law from office-holding, none of them was deprived of the right to vote (although, for almost the whole of the late Republic, their political power was limited by their confinement with the urban plebs to the four urban tribes). Although liberis brought with themselves the mark of their condition and often conducted a life of de facto dependency on the will of their patron, from a conceptual point of view were regarded as free, provided that they had been manumitted regularly. The considerable emphasis laid on the legality of the procedures of manumission as well as the conceptualisation of the services required by their patron from the liberis show that the status of the libertus was conceptualised in terms of independence from the will of their former dominus.

As Gaius attests, a slave in whose person these three conditions are united, thirty years of age, quiritian ownership of the manumitter, liberation by a civil and statutory mode of manumission, that is by the form of vindicta, by entry on the censor’s register, by testamentary disposition, becomes a citizen of Rome: a slave who fails to satisfy any one of these conditions becomes [after Augustus] only a Latin. Although the historical development of these three forms of manumission is still the subject of scholarly debate, it is usually agreed that, by the time of the late Republic, all three forms of regular manumission granted Roman citizenship to ex-slaves.

Footnotes:
16 See Tull. 5.11-39.
17 Buckland 1908: 3.
18 Comitia Roller 2001: 120.
19 Quintus mend — its existence, together with the additional cases attested in the imperial period, represents an important facet of the conceptualisation of slavery (and, by implication, of liberty). It was not the actual presence of the owner, but rather the lack of any right against the exercise of arbitrary interferences in one’s own life that was the defining trait of the condition of slavery. None of the servi sine domino were under the specific ownership of someone. However, they were all equally unable to conduct their lives according to their own wishes.

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24 See the often cited reaction of Philip of Macedon in 214 BC in SIG 541. Dion. Hal. 4.23ff. and App. BC 2.120. On this point, Millar 1995: 5. On the effects that manumission had on Roman society and on the Roman discourse about slavery see Mouton 2001.
25 For a detailed analysis of the freedmen’s limitations in the military and political sphere in Rome as well as in municipal towns see Mouton 2001: 78-80. None of these limitations applied to the liberis’ children who enjoyed full legal parity with men who boasted an indigenous grandfather.
27 See Mouton 2001, the most recent treatment on the subject.
28 Digest. 41.4.1 = Gai. Inst. 1.17.
have intervened in the slave's favour, enacting a measure that should be understood as directed against the master, who had forfeited his right over the slave, rather than in favour of the slave whose condition of servitude was theoretically unchanged.

It follows that from a conceptual point of view the granting of liberty could not simply rest on the volunta of the dominus, whose consent was a necessary, but not sufficient, condition for freeing a slave and granting him Roman citizenship. In order to make the status of liberty a lawful acquisition, its conferral had to be removed from the arbitrariness of the master's will and assigned to the sanction of official procedures, which guaranteed its legality and provided the legitimation of the community. At least in their earliest forms, all three formal modes of manumission, which conferred libertas and civitas, were theoretically construed in such a way as to include the watchful participation of the community: the manumissio vindicata required a ratification by a magistrate (who could theoretically be a dictator, a consul, an interrex or a praetor, or even a proconsul or a propraetor), the manumissio testamento required the confirmation of the will by the comitia calata, and the manumissio censum depended upon enrolment by the censors. Of the three modes of manumission in the late Republic, however, the last, although undoubtedly still practised, must have been the least attractive, given the very erratic performance of the census in the late Republic. Meanwhile the manumissio testamento must have undergone important modifications, since the comitia calata had ceased functioning and, as far as it is possible to reconstruct from the available evidence, was the least popular of the three forms of legal manumission. Although the practice of manumission varied with time, the principle according to which the granting of liberty (and citizenship) to the freed slave should not be subjected solely to the arbitrary will of the master was ingrained in the Roman conceptual world.

32 Frg. Dov. 5. See also Gai. Inst. 3.96.
33 The lex Julia, most probably dated to 17 BC, regulated the status of these slaves irregularly manumitted, and assigned them Latin status, but not Roman citizenship, thereby putting them on an equal footing with the Latinis colonizati. On the Latinis Juniani see Buckland 1968: 453-7, De Dominiciis 1993 and Lope Barja de Quiroga 2007: 73-4 and 2007b.
35 Gai. Inst. 3.96.
36 Frg. Dov. 5. Cf. Dov 2004: 25 who translates cuius praeceptor in libertatis formam servos (Gai. Inst. 3.96) as 'to be protected in a framework of freedom by the aid of the praetor'.
37 Cic. De or. 1.183, Ulp. Reg. 1.8 and Boeth. In Cic. Top. 1.289. See Daube 1946 who also underlines how, at least theoretically, the censor could probably free a slave without his master's consent (as in the case of Bonnerius) as could also other magistrates in the case of slaves who had deserved well of the Commonwealth. Cf. Cic. Bith. 2.4.
40 Montuett 2011: 180-5.
41 See Don. Hyl. 4.4-4.8 who, in his attack against contemporary manumission practices, proposes that censors or consuls oversee the manumission process, inquiring into those who are freed and the reasons for their manumission.
Although there can be little doubt that the freedmen's experience of liberty found de facto numerous limitations of various kinds,\(^7\) in Roman juridical discourse freedmen were conceptualised in all respects as free, that is not under the domination of anybody except themselves. Even the practice of *operae*, numbered days of labour for the patron, and *obsequium*, a freedman's act of reverence (whose scholarly interpretation ranges from a legally enforced duty to the lack of transmission and even a rather vague demonstration of respect), although in practice they may have considerably curbed the liberty experienced by the freedmen, were conceptually construed as a result of a mutual agreement between the two parties, and as such not arbitrarily interfering with freedmen's lives.\(^8\) Irrespective of its legal technicalities, in the late Republic *obsequium* was not required from all freedmen, but only from those who had struck a specific agreement with their patrons.\(^9\) At the time of manumission, the patron and the *libertus* entered a *societas*, where the patron contributed the gift of freedom and the *libertus* agreed to provide him with *obsequium*.\(^10\) How many *liberti* actually stipulated this agreement, and whether its stipulation was a simple formality (which in practice simply covered up the practical dependence of the *liberti* on their patron), should not obscure the important conceptual framework within which the reality of *obsequium* was cast: the *stipulatio*, of a voluntary agreement between two parties, the fulfilment of which was protected, as in the case of any other legal transaction, by a series of legal measures and rights — for example, in the event of the freedman's failure to obey, by the acquisition of certain rights over his property on the part of the patron.

Equally, the patron's privilege of exacting *operae* from his own ex-slave sprang not from the latter's status of *libertus*, but rather from an oath he had taken at the time of manumission. In fact the obligation arose from their mutual stipulation and the *ius iurandum liberti*, a unilateral oath taken by the freedman, which confirmed the promise he had made before manumission, since at that time his promise could not be considered legally valid.\(^11\) The *operae*, each of which technically represented one day's work,\(^12\) were regulated by a series of detailed rules, dictated by the interests of both parties. The conceptual basis for *operae* was probably first formulated in the praetorian law of the Republican period, from which the basic notion of equity was derived.\(^13\)

It follows that *obsequium* and *operae*, which can be interpreted (and probably acted in real life) as legal enactments formalising the dependence of the *libertus* on his patron, were conceived in such a way as to preserve the basic notion of the *status personarum* according to which a *libertus*, legally manumitted, was a free Roman citizen.

In fact, the status of every man could be conceptually categorised according to the strict dichotomy between *libertas* and slavery.\(^14\)

As Brunt has rightly stated, there is some justification for saying that men who were not chattel slaves, but were de facto subject to different degrees of someone else's power, were in some sense free.\(^15\) The *auctores*, Roman citizens who bound themselves by contract to serve as gladiators, chose to submit themselves to the wishes of their employers.\(^16\) Although they found themselves in a condition which could in practice be equated to that of servitude, from a conceptual point of view, they were not unfree. Having agreed by contract to renounce living according to their own will, the *auctores* had not placed themselves in a condition of subjection to arbitrary interference, but had given their own assent to a condition which was defined, also in its temporary limitations, by contract. In fact, they seem likely to have retained both the right to *provocatio*, the legal protection against arbitrary punishment by magistrates, and *consuetudinem*. Moreover, if they survived the time they were bound to fight by contract, they were restored to their previous status.\(^17\) Equally, the *addicti* or debt-bondsmen (Roman citizens fallen into a temporary condition of slavery because of debt) held a very similar status to that of the *auctores*, whose rights they most probably also enjoyed. The juridical status of the *addicti*, just as that of the *auctores*, was conceptually framed in such a way as to emphasise

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\(^7\) On the various forms and degrees of limitations see Watson 1967: 226, Trenggari 1969: 81-2 and Mouritzen 2011: 56-59

\(^8\) For the first (legally enforced nature) see, for example, Lambert 1984 and more recently Watson 1987: 228ff.; for the latter (lack of transgression and act of respect) see Trenggari 1969: 70 and Mouritzen 2011: 56. On *liberti* and the issue of citizenship, *obsequium* and *operae* see more recently Levi 2012; and Masi Doris 1993.

\(^9\) Trenggari 1969: 70.

\(^10\) Trenggari 1969: 70.

\(^11\) See also *Dig. 44.54.1*: Butilian, or another praeceptor, sometime after 82 BC severely limited the actions that could be brought to secure the libertus' obedience if a *stipulatio* had been made, on the ground that it was *aenarrationi libertatis causa*. On this passage see Costello 1948-50: 120ff. and 195ff.; and Trenggari 1969: 70-1. *Dig. 38.3.16*: Labeo held these *societates* void. On this issue see Watson 1967: 226-9.

\(^12\) *Dig. 38.1*. and *Cic. Att. 7.2.8.*

\(^13\) *Dig. 38.2.1* and *38.1.24*, which provides examples of amounts of work numbering 1,000 or 100 *operae*.

\(^14\) Trenggari 1969: 70.


\(^16\) Brunt 1988: 236.


\(^18\) Brunt 1988: 287.
the absence of arbitrariness on the part of the creditor. From a theoretical point of view, the *addicti* voluntarily renounced the right to conduct their lives according to their own will and entered a pact with their creditors, which would have also provided them with the opportunity to return to their previous status by their own labour or, at least, by the payment of the pecunia that originated their condition of *addictio*.

Although the scanty sources on the topic indicate that the *addicti* experienced a condition of *de facto servitute* — Quintilian and anotherorician, the Pr.-Quintilian, describe their condition 'in servitute' until they had paid off their debts, and Columella portrays them as *in evagastula* while working on estates — the status of the *addicti* could be conceptualised as the condition of those who had given their consent to enter into a relation established by a legal agreement. It follows that those who had become *auctorati* and *addicti* had been subjected to a *captivus dominatio minima*, that is while undergoing a modification of their juridical status, they retained their citizenship and freedom.

If all this is applicable to Gaius' categorisation of men under the heading of *libertas*, according to which all men are either free (*ingenius or libertini*) or slaves, a slightly different picture is found when we turn to Gaius' classification of men under the heading of *familia*, where the servile condition is described as a condition of submission to *alieno iuri* or even *in alieno potestate*.

In his *Institutio*, Gaius adds a second division of the law of persons, according to which 'some persons are their own masters, and some are subject to the authority of others' (*sequitur de iure personarum alius divisi*. *Nam quaedam personae sui iuris sunt, quaedam alieno iuri sunt subjectae*).

'Of those persons who are subject to the authority of another,' Gaius continues, 'some are in power, others are in hand [marital subordination] and others are considered property [or in bondage] (*aratum personarum, quae alieno iuri subjectae sunt, aliae in potestate, aliae in manu, aliae in manu*).

43 Papinian in *Coll. 2.3.4*. See also Livy 23.14.3, Flacc. 45 and 46; FIRA 19, XXI-XXIII; 21, LXXI. See also Brunt 1988: 285-6 and Peppé 2000: esp. 473-82.

44 On the relation between the description of the *addictus* and that of the *nexit* of old, whose release from debt-bondage was described as a new beginning of liberty, after the expiration of the kings, see Brunt 1988: 285-6.

45 This could be the interpretation of Quintilian's reference to a *lex*, which bound the *addictus* to act as slaves until they had repaid their debts, but of which there is otherwise no trace in the juris. *Quint. Inst. 7.3.36* refers to the *addictus* *quem ius servitutis dederit servitutem*, cf. 7.31.60; Columella 1.3.32.

46 For cases of *captivus dominatio minima* in the late Republic see Cic. *Cauc. 98*, *Dom. 77* and *De or. 1.181*.

47 Gai. *Inst. 1.48*.

48 Thomas 1990.


50 Gai. *Inst. 1.49*.

51 For a subtle analysis of the relation between slaves and masters as represented in Plautus' comedies, see McCarthy 2004.
not interfere with the slave's plans, but he often helps him to achieve the desired aim (in the vast majority of cases, a woman's love). This master's slave, although he does not suffer his master's interferences, is still under his domination. He is able to enjoy de facto liberty only to the extent that his master fails to exercise his interference, either out of his kind nature or his inability to control his slave, or even his dependence on the slave to achieve his own goal. Thus, although they may enjoy a condition of non-interference, servi are always in someone else's potestate and thereby consistently suffer domination, since they are constantly in a condition which grants someone else the capacity to interfere arbitrarily in their affairs. 35

With regard to the status of familia, the filiusfamilias held a legal position not dissimilar to that of a slave: 'in like manner [i.e. like the slaves], our children whom we have begotten in lawful marriage are under our control. This right is peculiar to Roman citizens, for there are hardly any other men who have such authority over their children as we have ...' 36 Nevertheless, although prima facie adult sons in potestate were subjected to a paternal authority not dissimilar to that exercised by masters over slaves, there were some important differences. Not only was the paterfamilias' authority tempered by social code and conventions, 37 but also, and more importantly from a conceptual point of view, his power could not be equally exercised over all fields of the adult son's activity. On the one hand, the son's servile condition was manifested in relation to property. The filiusfamilias was, in fact, capable of obligations but not of rights; he would be able to accumulate debt but not act as a creditor for himself (he could do so only in his father's interests). Although he had the right to commercium and could take by mancipatio, the property he gained never belonged to him, but always to his father. Only by his father's permission could he manage a property, which was called peculium, the same name that designated the property a slave was allowed to administer by permission of his dominus. In terms of family relations, he always owed obedience, and could not exercise command, except as an expression of his father's will. He had the legal capacity to make a military testament and could act as witness; however, he could not benefit from a will as legatee or heir, since any legacy or succession was vested in his father. He also had the right to conubium – that is the right to contract civil marriage and have children, whose status would be that of Roman citizens – but the patria potestas over them and the marital power over his wife (if the marriage was cum manu) were vested not in him but in his father, still alive. 38 On the other hand, however, the filiusfamilias could act as a praetor or judge in a suit where his father was a party. As is attested by a provision of the Twelve Tables, the filiusfamilias could be emancipated and become a paterfamilias himself before the actual death of his father. To some extent, the fact that he could preside over the proceeding of his own emancipation renders the issue of the filiusfamilias' suspension of political functions while in mancipio less critical. If, in fact, in respect of his purchaser, the bondsman was assimilated to a slave, in respect to the rest of the world, he was liber and civis – although his political capacities were probably suspended for the duration of his bondage. 39

Most importantly, the filiusfamilias, although in his father's potestas, was not only fully entitled to all the rights of a Roman citizen, but, effectively, free, could also act in the public sphere: 'the right of paternal control does not apply to the duties of public office (quod ad ius publicum attinet non sequitur ius potestatis)' 40 and 'a filiusfamilias is deemed independent in his public relations, for instance, as magistrate or as guardian.' 41

Thus, the filiusfamilias, who was inescapably under the power of his father in many aspects of his private life, was his own master in relation to those functions concerning the life of the community (ius publicum), which included all the affairs of the Roman commonwealth, from sacred ceremonies to the duties of priests and magistrates as well as the formulation of lex. 42

The nature of the ius publicum, which required those who acted within its sphere to assume responsibility for the well-being of the res publica, did not allow women to participate directly in Roman political life. Women married in matr, whom thereby became subject to their husband's power, 43

34 On the difference between liberty as non-dominatio and liberty from interference, see Tert. 1904; 35
35 Cod. Inst. 1.59.
36 See Rollin 2003: 357–9, on the role of the potestas to assert the father in his judgment, and the general reluctance to exercise physical punishment on adult sons, since this would have put them on a level with slaves.
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38 Gu. Inst. 1.87 and 3.69 (on the issue of legacy) and Dig. 44.7.39 (on the issue of debt).
40 Dig. 36.1.14.
41 Dig. 1.6.9.
42 According to the influential definition by Ulpian, ius publicum concerns the affairs of the Roman state, and private law the interests of the individual (publicum ius est quod ad eum relatum est Romanum spectat, privatum quod ad singulorum utilitatem) (Dig. 1.1.1.2). Huominis for there are some things which are useful to the public, and others which are of benefit to private persons. Public law (ius publicum) has reference to sacred ceremonies, and to the duties of priests and magistrates. Private law (ius privatum) is coextensive in its nature, for it is derived either from natural precepts, from those of nations, or from those of the civil law. During the Republic, ius publicum designated the essential rules for living in common: Cicero (Dei. 52–5), in distinguishing between the ius religionis and the ius rei publicae, glosses the latter as ius publicum, which he then defines by apposition as 'the laws, the statutes used by this community of citizens'. See also Kaiser 1985, Cloud 1982 and Ardo 2006.
and those who were in bondage are described as being of a servile condition (loco servorum), and therefore grouped together under the heading of those subjecti alieno iuri. They were, in other words, under somebody else's dominium, and thereby unfree. 64 However, even when suo iuri, free Roman women born in a citizen family held neither legal power over other free citizens, nor the capacity held by their male counterparts to act or speak on behalf of others. On the one hand, they could own property, marry and divorce, and to a certain extent have recourse to the courts for justice, but on the other, they could not adopt children or administer their legal and financial dealings in a wholly independent manner due to their subjection to a guardian. Their legal inability to act in the name of the welfare of others prevented them from becoming members of a jury, since they could not pass judgment on other people, and they were also excluded from the comitia, because of their legal inability to decide on proposals regarding the welfare of the community as a whole. 65 Thus, in regards to the ius publicum, women were not able to engage directly in active political life, while the filiusfamilias, despite his status of subjection to the potestas of his father, was a liber civilis able to act politically on his own terms.

Although it has been claimed that Pettit's and Skinner's interpretation of Republican libertas as a basis for a modern emancipatory project is historically inaccurate, since, as their critics underline, at Rome filiusfamilias and often women were legally under the potestas of someone else, as far as political liberty is concerned - namely the kind of liberty at the centre of the concern of Pettit and Skinner - all those considered at Rome to be endowed with political capability, even when in posses of someone else (such as the filiusfamilias), were said to be free with regard to the ius publicum. 66

Although for the first time the ius personarum appears in systematised form in Gaius' Institutiones, dated to the second half of the second century AD, in the late Republic the detailed capacities of the individual with regard to his status were already conceptualised according to very similar legal categories. 67

64 For those in municipio see Dig. 4.5.3. Also in Gaius 'to be in municipio is equivalent to be in the position of a slave' (municipali municipatu ac servorum loco constitutum).
65 Gardner 1991: 88, extended discussion of the basis of limiting women's roles and legal capacity, 94-100. See also Connolly 2007: 33.
66 For a robust critique of Pettit and Skinner's analysis of Republican liberty along these lines see most recently Ando 2010 and 2017: 88-116. See also Coleman 2005 and Maddox 2002.
67 Describing 2008: 216-21 identifies the first evidence of the theory of alienum ius in Paul's Letter to the Romans (7:10). This is based on the notion that an aspiration to the codification of the law and its principles themselves must have been already in place well before Gaius' time.

In fact, we are told by Cicero that in the process of systematising the ius civile, Q. Mucius provided a series of definitions which, formulated according to the method of the philosophers, shows that the principles of organisation in Gaius' Institutiones and other juridical texts of the Empire were already at work in the conceptual world of the late Republic. 68 It will be sufficient to mention two important definitions in Cicero's Togata, a work composed in 44 BC; the first, previously mentioned, articulates the distinction between those who are legally freed and slave according to the exact same categories as those found in Gaius: 'if someone has not been freed by either having his name entered in the census-roll or by being touched with the rod or by a provision in a will, then he is not free. None of these applies to the individual in question. Therefore he is not free.' 69 The second shows how the distinction between free and slave was articulated in the definition of the gentiles: 'people who have the same name . . . who are offspring of freeborn citizens . . . none of whose ancestors has ever been a slave . . . who have not undergone a reduction of status (qui capite non sunt diminuti). 70 Formulating his definition of gentiles, Mucius explicitly refers to an abstract conceptualisation of the status personarum, which clearly distinguishes between the categories of free and slaves as legal entities, and, as the reference to the capitis diminution alludes, implicitly elaborates their juridical features. 71

Although it is not certain that during the Republic the legal capacities of individuals were conceived around the three statuses of libertas, civitas and familia, 72 cases of capitis diminution were discussed, for example, by Cicero in his defence of Caecina and of the woman from Arretium. 73 Referring to cases of capitis diminution media (when citizenship was forfeited but freedom retained) and capitis diminution maximae (when citizenship and freedom were forfeited at the same time), Cicero emphasises the role played by personal consent. Roman citizens who decide to enrol as citizens of Latin colonies, he claims, and those who, having been condemned by law, choose

68 According to Cicero (Brut. 153-5), the organisational task of structuring the corpus of civil law required the art of logic (dialectic) that only Servius Stipulicus, Mucius' much younger contemporary, could fully master. Behrens 1976 takes the passage in Cic. Brut. 157-90 to mean that Servius had actually written a technical textbook which displayed such an art. See also Borda 1982: 373-9 and Reinhardt 2003: 63-4. On the debate as to whether Cicero is referring to a method already widely in use amongst jurists or is suggesting that they follow Mucius' example see Wiegner 1988: 668.
69 Cic. Top. in. 3.37.
71 Dig. 4.5.11.
to go into exile in order to avoid their penalty, opt by their own will to abandon Roman citizenship, but retain their status of liberty. They are, in other words, subjected to a *capitis deminutio media*, which allows them to preserve their *libertas*, while voluntarily abdicating Roman citizenship.

Equal emphasis on personal choice is placed by Cicero in discussing cases of *capitis deminutio maxima*: "The commonwealth, by selling a man who has evaded military service, does not take away his freedom but decrees that one who has refused to face danger for his freedom's sake is not a free man. By selling a man who has evaded the census, the commonwealth decrees that, whereas those who have been slaves in the normal way gain their freedom by being included in the census, one who has refused to be included in it although free, has of his own accord repudiated his freedom."

These attestations show that late Republican politicians, who in many cases were also juridical experts, not only were well aware of these forms of juridical categorisations, but also that they could conceive of liberty as a status distinct from that of citizenship — those who went into voluntary exile, Latin colonists, and also the Augustan *Latinis Juniani*, and *liberti dediticii* all being cases in point.

However, liberty was the precondition of citizenship, citizenship was its guarantee. As Cicero claims in his defence of Caecina, "we have inherited the same tradition with regard to both [liberty and citizenship], and if once it is possible to take away citizenship it is impossible to preserve liberty. For how can a man be free by the right of the Quirites if he is not among the number of Roman citizens (neam et eodem modo de uitaque re tradidum nobis est et si semel civitas admi potest, retinere libertas non potest. Qui enim potest iure Quiritium liber esse est qui in numero Quiritiam non est)?" In other words, *libertas* according to the *ius Quiritium* is the liberty of the citizens, that is liberty in respect of public and private law alike, whereas the liberty of non-Romans, which the Romans do not doubt, was from their perspective only applicable to private law. As Brunt has rightly stated, it was political liberty that in Rome was equated to *civitas*. Ultimately, therefore, Wirszubski was right in claiming that only a Roman citizen enjoyed all the rights, personal and political, that constitute *libertas*.

Therefore, as far as political liberty is concerned, namely the liberty of the citizen in relation to the commonwealth, it is possible to conclude from Roman juridical texts that *libertas* at Rome described a status of non-domination, which allowed the individual to conduct his life according to his own wishes, at the mercy of nobody else except himself. Contrary to modern conceptions of liberty, therefore, *libertas* was defined in Rome in terms of the individual's status and not in terms of actual available choices. As it does not refer to the absence of interference or of actual constraints, this definition of liberty does not deal with the availability of choice at the individual's disposal, but rather refers to the status of the individual agent. However, the word *status*, which denotes the legal position of the individual characterised by a system of juridical relations, the existence of which guarantees the individual's security, is never applied in legal texts to designate the condition of slaves, who were deprived of all rights. Slaves were regarded as nothing, non-existent (*pro nullis habentur*), and this notion was articulated in expressions which denied the slaves the possession of any persona, *caput* or *status*. Their standing is consistently described as *condicio servilis*. *Condicio* usually indicates an unstable or transitory condition, characterised by the absence of those juridical guarantees of free men, exposing the slave to the arbitrary interference of his master, who was thereby in a position to act as he wished and with impunity. This condition did not necessarily imply an interference detrimental to the interest of the slave (and ultimately manumission was a potential consequence of this interference), but denoted the slave's absolute dependence on his master's will.

In Petrus's now-well-known definition, *libertas* in Rome was understood as a status of non-domination, that is a status where one was free *qua* living in a condition devoid of actual interference, but rather of the possibility of interference. The individual could never be free when in a state of domination, however kind his master might be, and however inclined to please all his subject's wishes: it would always be the master's prerogative to
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revoke unilaterally any concession that he might have granted, leaving the individual unable to conduct his life as he wished, and always inevitably at the mercy of somebody else.

This shared understanding of libertas in the Roman Republic found its clearest symbolic expression in two emblems: first, in the public building, the Atrium Libertatis, where the most important operations defining the condition of Roman citizenship were performed, and second, in the almost ubiquitous pilleus, the hat worn by newly freed slaves.

Within the visual context of the late Roman Republic, the triumphal pictorial art of the temple of Libertas, the image of its cult statue, the depiction of this deity on coins and the grand Atrium Libertatis in a very prominent location in the city all symbolically expressed and manifested the meaning of libertas as a widely held social value. In the first instance, these all embodied the notion of the status of libertas as opposed to that of slavery.

Scholars of the semantic system of late Republican art have sometimes interpreted these buildings and symbols as the autonomous expression of plebeian, or more precisely, anti-elite politics and culture. However, it is misleading to assign a plebeian value or anti-elite meaning to any monument or literary evidence which makes an explicit reference to libertas. As we shall see, these phenomena are more plausibly seen as manifestations of a shared understanding of the importance of libertas. This is not to say that through its control over the erection of these buildings and the choice of figurative symbols the ruling elite gave expression to a shared ideology, as Gramsci might have put it. It is rather to claim that, by controlling these means of communication, the Roman nobility constructed a meaningful symbolic framework, which even if motivated by a desire for domination gave rise to a common language setting out the central terms in which different groups in the late Republic interacted both socially and politically. Plebeian, anti-elite, culture was not necessarily always a repository of authentic and egalitarian traditional values, just as the Roman nobilitas was not necessarily a machine that consistently attempted to manufacture consent. Regardless of its intentions, the ruling elite did not always succeed in establishing consent; however, it prescribed the linguistic forms in which both acceptance and discontent could be expressed. What it did establish, that is, was a common discursive framework, a common language or way of talking about social and political relationships, within which sentiments adverse to the governing nobility were manifested and expressed, as well as shaped and constrained.

According to this reading, the different conceptions of libertas in Rome in the first century BC were all elaborated within a common discursive framework, which, although developed by the nobility, gave rise to a shared meaning of liberty, and found its expression in these symbolic objectifications. Contrary to a view frequently held, it is therefore misleading to assign a plebeian (in the sense of 'anti-establishment' or 'anti-elite') value to any monument or literary evidence which makes an explicit reference to libertas.

However, in their symbolic elaboration of this common discursive framework, whether by buildings or coins, the ruling elite did not simply give expression to a pre-given meaning of libertas held within society. They erected monuments in senso lato which propagated and reinforced this meaning, whilst allowing for the transformation or reshaping of certain aspects of the socio-political relationships that they symbolised. As Holliday puts it, these cultural creations, alongside their function as active ingredients of the social matrix, 'expressed and constituted ideology'. Such manifestations of the idea of libertas, which punctuated the space of the city of Rome and the physical dimension of its citizens' lives, expressed a common code of behaviour and articulated a system of normative values which defined what was acceptable within society and bound the community together.

The most powerful and almost ubiquitous symbol of liberty was the pilleus, which, functioning in a way that was equivalent to literary topoi, shaped and conditioned the notion of libertas as a status opposed to that of slavery, and potentially enabled its reinterpretation. The hat worn by the freed slaves, the pilleus in its primary meaning served as a sign of emancipation and release from dependency, whilst still acting as a visible

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83 For a traditional interpretation of Roman art as an expression of plebeian and anti-plebeian sentiments see Bianchi Bandinelli 1970: 71–79.
84 On this issue see Rockey 1994: Holliday 2000: 15 emphasis that these representations served, in the first place, the need of the governing elite by commencing their achievements.
85 Such a view of plebeian as well as popular culture is the limitation of Wiseman's otherwise splendid work Remembering the Roman People (Wiseman 2009). The success of the pre-Gracchan ruling elite in creating and propagating consensus is emphasised by Fölkesjö 2010.
what especially attracted attention was the throng of colonists of Cremona and Placentia, following his car with caps of liberty upon their heads (pilleatorum current sequentium). It is striking that, within the spectacle of an important triumph, where even the Carthaginian general Hamilcar may have been paraded as a trophy, what particularly attracted public attention was the multitude of the colonists of Placentia and Cremona wearing the pilleus. The message that it launched was the most powerful. The colonists wished to express their gratitude to the consul C. Cornelius Cethegus for having been freed by him from the peril of siege, and, for many of them, for having been rescued from their condition of slavery as prisoners in the hands of the enemy (plerique etiam, cum capti apud hostes essent, servitate exempti). The important metaphorical meaning of the ex-slave's cap was immediately intelligible within the set of social conventions and collective attitudes of Roman society. In defining the dichotomy between liberty and slavery, the pilleus designated those who wore it as non-slaves, and described their status as both devoid of someone else's dominium, in this case of the Gauls, and as recognized members of the Roman community. Often exhibited to show gratitude to those who had spared them from the condition of slavery, the pilleus also acted as a symbol of belonging.

In 167 BC, when King Prusias II of Bithynia wished to congratulate the Romans for their victory over the kings Perseus and Gentius, he received Roman envoys wearing a pilleus. As Polybius attests, 'In the first place—when some Roman legates had come to his court, he went to meet them with his head shorn, and wearing a white hat and a toga and shoes, exactly the costume worn at Rome by slaves recently manumitted or liberti as the Romans call them. 'In me,' he said, 'you see your liberti who wishes to endear himself and imitate everything Roman'; a phrase.' Polybius comments with utter contempt, 'as humiliating as one can conceive.' In the eyes of Polybius, the king's behaviour was unacceptable. He wore the toga and the calcei, the formal dress of a Roman citizen, shaved his head and wore the pilleus as customary signs of a recently acquired freedom. By these means, Prusias wished to emphasise his recently acquired status. His main point was to present himself not as a slave to Rome, but rather as a member of Roman society.

9 Mart., 16.6.4 and 14.1.2 portrays the pilleus as the cap that the slaves wore at the moment of liberation. The pilleus also played a prominent part during the Saturnalia, the festival where slaves could act as free. See Kienzle-von Sachsenhofer, RH 29:111-202, pilleus, 1536-38, Boniforte 1979: 68-9 and Volkmann 1992: 378-84. I still found useful: Dzialowski and Saggio 1877-1881: 150 pilleus. See most recently, Mouritsen 2002: 147.

90 For a discussion of the coins see below 49-51.

91 Stewart 1993: 69; Holliday 2002: 204.

92 Val. Max. 5.2.3.

93 Holliday 2001: 204 and 66.
of its community. By redescribing his role in these terms, he made himself able to present Rome with his requests, such as the renewal of Roman alliance and the assignation of King Antiochus' land, now occupied by the Galatians, to him. "The senate," reports Livy, 'granted him all his requests, with the exception of the Galatian land, and voted that the victims and other requisites for sacrifice should be furnished at public expense to the king, just as to Roman magistrates, whether he wished to sacrifice at Rome or Praenestae." The pilleus, therefore, visualising the dichotomy between slavery and liberty, could be used not only to emphasise the absence of a condition of slavery, but also the membership of the community of the free.98

The pilleus, so commonly present in daily life, also featured prominently in the imagery of the temple of Libertas. By representing the notion of liberty, it reinforced and propagated the shared understanding of the status of liberty, and its opposition to that of slavery, amongst contemporary viewers. Built in 246 BC on the Aventine, ex multis titia pecunia — with money levied from fines — the temple of Libertas was dedicated by the plebeian aedile Tiberius Sempronius Gracchus on 13th April, possibly to celebrate a triumph over the Carthaginians.100 The fact that this temple was erected on the same dies natalis as the temple of Jupiter Victor, which had been built by the consul Q. Fabius Maximus Rullianus in celebration of the famous victory of the battle of Sentinum in 293 BC, supports the idea that the temple on the Aventine was, in fact, dedicated to Jupiter Libertas, rather than solely to the deity Libertas.101

The construction of the temple is often interpreted as a symbolic affirmation of plebeian self-awareness, and as a public statement of plebeian antagonism against the domination of the ruling elite. Certain points have been made to support this view: the temple was built on the Aventine, traditionally the plebeian hill; it was dedicated to a divine quality which gave expression to the political value often associated with citizens' rights, and it had been erected with funding levied from fines.102 This last point is often associated with the fact that Tiberius Sempronius Gracchus and his colleague Gaius Fundanius Fundulus levied on the patrician Claudius, the sister of the consul of 249 BC. According to Livy, finding herself jostled by the crowd, Claudia exclaimed: 'O that my brother were alive to command another fleet!' Since her brother had been heavily defeated in a naval engagement with the Carthaginians, she was fined for this remark.103

However, all this (i.e. the fine imposed on a patrician woman for a depreciatory comment towards the Roman multitude, the historically plebeian location of the Aventine and the association of the temple of liberty with basic civic rights) does not demonstrate that the temple, or by extension the value of liberty to which it was dedicated, had a strictly plebeian or anti-elite significance. As Wiseman points out, Livy's derogatory episode regarding Claudia may derive from the historiographical tradition adverse to the patrician Claudii, as attributed for example to the deeply anti-Claudian Valerius Antias. Equally, the association of the temple of Libertas with the Aventine does not necessarily imply antagonism against the ruling elite, especially when one considers the absence of references to the temple of Libertas in accounts of the defeat of the Carthago, the closing stages of which took place on the Aventine.104 In addition, there is no hint in our sources of any reason why Tiberius Sempronius Gracchus should have gone out of his way to make a public statement against the governing nobility by dedicating a temple in support of plebeian interests and in clear opposition to the ruling elite.

However, regardless of Tiberius' intentions in dedicating the temple and the significance it might have assumed for viewers in the third century BC, to the visitor of the last century of the Republic, living in post-Sullan Rome, the most prominent image inside the temple was that of a pilleus. Indeed, the cult-statue of Libertas itself may well have been adorned with a pilleus. Although the statue is now lost, this is suggested by the denarius issued by C. Egnatius Maxsumus around 75 BC, which presents a bust of

98 Livy 45.44.5-6. Although Reischl 1809 identifies Appian's source on the Milvian Bridge as Livy, most recent scholarship has underlined the numerous discrepancies between the two authors. On the issue of the sources see Mastrocinque 1999 (esp. 44 and 61) and Kalten Marx 1995. Reischl himself (1899: 144) claims that in the chapter on Bruttia Appian adopted Polybius (46.68) as his source. The point of view displayed by both authors is very Graeco-centric.
99 López Rojo de Quiroga 2007: 42-51 especially over the nature of the pilleus as embodiment of liberty. It is to be noted that, perhaps for pragmatic reasons, the pilleus was also used to indicate a slave for whom the seller did not offer any guarantee. Cf. De Roda 1994.
100 See Zoliowski 1992: 85-7. It is hard to imagine how in 246 BC, five years before its actual completion, the Romans could have envisaged a successful conclusion of the war against the Carthaginians.
101 This idea is supported by the denarius issued by C. Egnatius Maxsumus around 75 BC (Crawford 1974: 391/2) with a depiction of a double temple with Jupiter and Libertas inside. Other scholars have advanced the hypothesis that there may have been two temples on the Aventine dedicated to Libertas, one to Jupiter Libertas (which would find its parallel in the Greek Zeus' Deisumpo) and the other to Libertas. See also Clark 2007: 22 and 58-9.
102 Broughton 1951: 216-19. The explicit connection between the erection of the temple of Libertas and the specific fines on Claudia can be found nowhere in the sources.
103 Livy 24.16.15; Gall. NA 10.6 and Aelius Capito ap. Suet. Tib. 2.3 reports that Claudia was subjected to a indignitas senatorum popularem, the last to try a woman however Val. Max. 8.1.51 seems to imply that Claudia was actually tried for another charge, but ruined by her remarks.
104 Wiseman 1979: 92 and n. 115 comes to the conclusion that a temple dedicated to Libertas on the Aventine never existed.
Cupid (with a bow and a quiver over his shoulder) and the legend MAXSUMUS on the obverse, and a distyle temple with two figures, one of which holds a staff in his right hand, on the reverse. Above the temple’s architrave and in clear correspondence with the two figures are pictured a thunderbolt and a pillemus, which act as direct attributes of the two divinities in the temple and contribute to their identification as Jupiter and Libertas.  

Although we cannot be completely sure that the image on the coin represents the cult-statue as it stood in the temple of Libertas, in the absence of any other evidence it is plausible to assume that the pillemus appeared prominently on the cult-statue of Libertas in her temple (Figure 1).

This suggestive hypothesis aside, it remains true that the pillemus was the first symbolic representation of liberty which a visitor encountered when entering the temple; from the end of the second century bc, its walls were adorned by a fresco, most probably still visible in the late Republic, which represented a rather curious subject-matter in which the pillemus featured prominently. Painted in 214 bc to celebrate the victory over the Carthaginians in the battle of Beneventum, the fresco pictured the joyful feast celebrated at Beneventum upon the soldiers’ return. Livy, who may have seen the painting himself, reports its peculiar subject matter: wearing a pillemus or a white woollen headband the volones [slaves enrolled to fight in the Roman army] feasted, some reclining, and some standing served and ate at the same time. This seemed to deserve the order Gracchus gave on his return to Rome for a representation of that day of festivity to be painted in the Temple of Liberty which his father with money yielded by fines, caused to be built on the Aventine and dedicated.

As Livy tells us, in contravention of Roman customs and laws, Tiberius Gracchus had defeated the Carthaginian Hannibal with a Roman army composed largely of slaves. Although for the sake of appearances it was the norm to free recruited slaves upon enrolment, Tiberius secured from the senate the possibility to do whatever he thought to be for the good of the state. He promised, on the one hand, liberty to those who brought back an enemy’s head, on the other, severe punishment to those who retreated from their post. According to Livy, the vast majority of the volones displayed a remarkable courage, with the exception of 4,000 who, being less brave, had not dashed into the enemy’s camp and now feared punishment for their lack of courage. At the soldiers’ assembly Gracchus claimed that ‘As far as the volones were concerned, he preferred to have all of them, the worthy and the unworthy, praised by himself, rather than to have anyone of them punished that day; that, with the prayer that it might be good and happy and fortunate for the state and for the men themselves, he ordered them all to be free.’ According to Livy’s report, it was necessary: he said, ‘to make them all equals by the right of freedom (omnes ture libertatis aequae sunt), that is to render them all Roman citizens.’ This act is very important for the significance of the fresco. Once they were all on an equal footing, they were to be treated as Roman soldiers, and as such exposed to the rewards and punishment reserved to Roman soldiers. As part of the prerogatives of military discipline, which also suspended...
the applicability of the civic right of protection against flogging (the right to provocatio)," soldiers could be subjected to punishment of a servile nature. As in the case of the Bruttii, whom the Romans refused to treat as allies because of their defection to the Carthaginians, but who were commanded to serve Roman magistrates and perform the duties of slaves, Gracchus could command newly enfranchised citizens to adopt servile postures, such as eating while standing, and serving during the celebratory feast. In order 'to prevent the loss of every distinction between valour and cowardice', Gracchus, in his role as general in command and according to his consular prerogatives, punished his soldiers, while they served in the military, those who had acted with cowardice would cat standing up. In other words, for the entire duration of their military service (but no longer than that) they would be forbidden to dine at the triclinium, a prerogative only of free citizens.

The curious visual representation of the victory festivities at Beneventum provided its spectators with a depiction of what Roman liberty entailed. As was common practice in painting from the third century BC onwards, this fresco celebrated a Roman general's individual achievement. It provided him with an effective means of powerful narrative force, whose immediate clarity allowed him to control the way he and his actions were perceived in a much more precise form than generic claims to authority advanced through other means. However, within this context, the peculiar scene of newly freed and enfranchised soldiers, who, wearing the pilum or the wooden headbands, feasted either standing or on couches, gave also immediate expression to the duties which accompanied the acquisition of Roman freedom (and citizenship). Here the image of the pilum, built on the notion of liberty as a status opposed to the condition of slavery, represented in the eyes of everyday visitors the requirement that the conduct of the Roman citizen must be in accordance with virtus. As Koortbojian has suggested, the depiction of Gracchus' distinction between citizens who fought with valour and those who had deserted Rome functioned as a moral exemplum upon which future generations should model their conduct: 'As such an exemplum, the banquet scene offered a quotidian vehicle for the representation of Roman values, as this particular historical event was employed to give both form and substance to a general sense of what the Romans understood as virtus.' On the basis of a common code in the context of an interpretative interaction between signifier and signified, the viewer of the first century BC read the image of the pilum and the different feasting postures of the soldiers as explicative of the notion of libertas, understood as a status opposed to the condition of slavery, which required an appropriate virtuous behaviour.

These symbolic images did not require the viewers' full understanding of what Morstein-Marx terms second-order allusions, that is references to individual acts or to the intentions that motivated the nobility in putting them up. Even the contemporary viewers of the fresco may not have been able to appreciate fully the historical references to the glorious victory of the general Tiberius Gracchus. However, by sharing in the same discursive framework, they would have understood the set of symbols, which, extrapolated from the dedicatory's intentional context, had acquired a forcible meaning in the Roman society of the late Republic.

The ideal of libertas as a condition opposed to slavery was also constructed and perpetuated prominently through the medium of coinage. Since coins were often worn, especially at the edges, and in the Republic did not carry a dating reference to their issue, those who handled them in everyday life may have often been unable to grasp the ideological message conferred upon them by the members of the nobility. Nevertheless, on the basis of the common assumption shared within society, the distinctive image of the pilum was readily recognisable, and, pictured in the left hand of the goddess Libertas, framed its semantic range.

224 Polyb. 5.37 with Walbank 1958—59, 1 ad loc; Cic. Fr. Verr. 5.155 On provocatio see Chapter 2: 26ff.
225 Gelb. NA 10.3.18.
226 Livy 24.15.21.
227 Polyb. 6.11.7 on the consul's prerogative to punish his troops. See Livy 1.28 on Tullus Hostilius' punishment of deserters, with Federn 1938: 155-63. Livy 5.9.10: they are encouraged and beheld. See also Cic. Ad. 49, Gelb. 15.4.5. Cn. Cal. 99 and Plut. 1998. Cf. Koortbojian's (2002: 51) different interpretation according to which Gracchus' condition for their new liberty 'forced the soldiers to comport themselves as if their freedom had never been granted'.
228 Dumbahin 1996, 1996 and 1998. This is also attested in Apul. Met. 4.8, when the robbers draw lots at their banquet to decide who should sit at the table, and who should eat reclining. See Rolfe 2006, esp. 145.
230 This is the sole attestation of this lana alba seen in the extant lana col. 99. For the woolly pilum (Kroll). The view held by Welhel (1988: 50), according to whom the colonists of Beneventum rather than the soldiers wore the pilum as a sign of their release from captivity, does not find confirmation in Livy's text and does not offer any explanation for the different behaviours of Gracchus' soldiers at the public banquet.

226 For a different interpretation see Koortbojian 2002.
228 For the triadic system of signifier, signified and interpretant, and the essential role assigned to the latter see Mead 1926 and Jones 1954.
231 See Crawford 2001: 133.
232 For an understanding of coins as monuments see Meadows and William 1997. For their design as 'meters', see Holchier 1994: 144 and Hollday 2002: 308-10. Crawford 1972: II 595-603 and 737-38 deals with the issue of the monetary magistrates and the choice of images, which seems to have rested with the statera monetales and those other magistrates occasionally responsible for minting.
If coins certainly acted as celebratory monuments, functioning as commemorative objects in which the nobility could make claims about itself, it was only within the context of an interpretative interaction between the signifier and the signified that these signs gained meaning, and by association with other symbols framed the semantic range of the values they represented. The nobility’s choice of signs was constrained by the society’s shared understanding of basic values; moreover, those signs were themselves open to reinterpretation on the part of the viewer within the boundaries of community’s moral framework.

The first attested coins on which Libertas features prominently are the denarius of C. Cassius, issued in 126 BC, and that of M. Porcius Laeca in 125 BC. In the first, the goddess Libertas is represented in a quadriga, holding the reins and vindicta in her left hand, and a pilleus in her right hand, with the legend ‘C. CASSI’ beneath. Corresponding to this image, on the obverse, are representations of the helmeted head of Rome and a voting urn (Figure 2). This latter image alluded to the lex Cassia tabellaria introduced by L. Cassius Longinus Ravilla in 137 BC, which instituted the secret ballot at public trials for non-capital sentences. The year after, in

125 BC, the moneyer M. Porcius Laeca issued a denarius which pictured, on the obverse, the helmeted head of Roma and the legend LAECA, and on the reverse, the goddess Libertas in a quadriga, crowned by flying Victoria, holding the reins and vindicta in her left hand and a pilleus in her right hand; a legend below read ‘M. PORC’ (Figure 3). The legend, through the moneyer’s name, referred to the leges Porciae de provocacione of the early second century, which forbade the flogging of a Roman citizen and provided those citizens living outside Rome’s boundaries with legal protection against execution without proper trial. By associating the image of Libertas with the pilleus, both coin issues provided the idea of libertas with a more refined semantic range. To the basic idea of libertas as a status of non-slavery symbolised by the pilleus, the Cassian coin adds the notion of the secret ballot, symbolised by the voting urn; by referring to the proponent of the leges Porciae (whose name in the literary sources identified the law universally hailed as the ‘stronghold of Roman liberty’), the Porcian issue adds the idea of legal protection against physical abuses. Regardless of the moneyer’s original intentions,
these associations redefine the semantic range of liberty and of its visual symbol of the pilibus, formulating the idea of libertas as a status of non-slavery, guaranteed at the political and civic level by the right to vote and the right to provocatio.

A further redefinition of the semantic range of liberty is marked in 43/2 BC by the famous coin issued by Brutus in celebration of Caesar’s death.132 On the reverse, at the centre of the coin-field the pilibus features prominently between two daggers, whilst, below, the legend EID MAR renders explicit the reference to Caesar’s murder (Figure 4). The prominent role of the pilibus, which takes centre stage in the representation, associated paralectronically to the legend, operates a metaphorical shift not of the intrinsic meaning of liberty, which is still conceived as a status of non-slavery, but rather of the domain of which libertas (or lack of it) is described.133

This alteration is effected by the juxtaposition of the legend and the daggers: hence the status of non-slavery guaranteed by the slaying of the tyrant, as Brutus successfully styled Caesar here, was the liberty of the commonwealth, rather than the liberty of individual citizens. Just as in the coins of 126 and 125 BC, the liberty of the individual was a status of non-slavery guaranteed, at a political and civic level, by the right to suffragium and the right to provocatio, so in the coin issued by Brutus, the liberty of the commonwealth was a status of non-slavery, which required the elimination of a single individual, who could dominate (act as a dominus over) the whole community.

This notion of libertas as a condition opposed to slavery, which also, in political terms, entailed a series of political and civic rights, was reiterated and reinforced in the citizens’ daily life by the prominent place occupied within the Roman political landscape by the Atrium Libertatis.134 This building, situated at the north-west of the Forum in the saddle between the Capitolium and the Quirinal,135 was of very conspicuous dimensions, including, by imperial times, two libraries, a tabularium and perhaps a basilica.136 It was inaugurated as a templum and dedicated, according to Ovid, on 13th April, interestingly the same day as the temple of (Jupiter) Libertas. Although scholars tend to cast some doubts over the reliability of Ovid’s testimony, the coincidence of the dedication date between two major buildings in Rome both consecrated to Libertas suggests that, at least by the very end of the first century BC, the notion of libertas as expressed in the two buildings could have been perceived on a basic level as ideologically homogeneous.137

Just as the prominence of the pilibus in the imagery associated with libertas indicated and reinforced a conceptual dichotomy between liberty of the members of the community (either freed or free by birth) and slavery, so the Atrium Libertatis, the headquarters of the censors, demaricated a line between the Roman citizen and ‘the others’, slaves and foreigners.138 Although in practice the two groups were subjected to an almost consistent assimilation, from an ideological point of view they were conceptualised as two very distinct categories, and the passage from one to the other had to

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133 For a slightly different interpretation of the semantic range of the coin see Clark 2007: 141-7. For illuminating remarks on this coin see Roller 2001: 247. See also Chapter 3: 76.
135 Costambe 1993: s.v. Atrium Libertatis. See also Castagnoli 1946. Parcell 1993 identifies it with the building conventionally known as Tabularium. See also Amati 1996.
137 Zickowski 1991: 87 n.5; and Parcell 1993: 141 n.65.
138 It is interesting to observe that the etymology of liber, although rather obscure even to the ancients themselves (Varro Ling. 6.2; Festus 1211.), seems to designate the members of an ethnic group. Dividing from the same Indo-European root, “libi-tho”, which means ‘to grow, develop’, liber and its Greek equivalent δίκαιος encapsulate the idea of the end result of a growth process, and as collective nouns come to designate ethnic groups, conceived as the sum of those who were born and grew up together. It was a comprehensible shift, and plausible step from the collective noun “tribus” to the adjective “(sub)tribus”, which initially described those who belonged to the same group and were thereby endowed with the same qualities. See Benveniste 1956: 55-8 and 173: 206-7; Ermont-Müller 1991: s.v. liber and Wilde 1958: s.v. liber. Van 2008: s.v. liber associates the reading with diphthongs -oi- found in Faliscam. See also Mazzini 1975: 241-30, who offers a complex analysis of the Latin word pair liber and pars, their respective meanings and social significance.
be closely regulated and controlled. Thus, the *Atrium Libertatis* was not only the place where slaves, bereft of the civic right to *provocatio*, could be tortured, and foreigners kept in custody, often as hostages, but also the building where the access of non-Romans and ex-slaves to Roman citizenship was administered and controlled. As such, it was the location where *manumissio census* took place, and in 167 BC the appropriate place for posting the lists which assigned former slaves (that is, new Roman citizens) to their voting tribes. In 168 BC, it was the scene for the controversial drawing of the lot deciding the tribe to which the newly freed slaves should be assigned.

We also know that the *Atrium Libertatis* housed a tabularium, as attested by its closure in 169 BC when the censors were accused of *perduellio*, which in all likelihood contained the *tabulae publicae* recording the status of the citizens, as well as the cadastral records of *ager publicus*. Finally, at least by the time of Catu the Elder, in accordance with its archival function, the *Atrium Libertatis* also displayed Rome’s first public collection of literary texts: the laws, the ultimate guarantors of Roman liberty. In the complex monumental landscape of Rome, the *Atrium Libertatis* stood in all its grandeur as an attestation and reminder of the basic shared notion of liberty, which, in opposition to slavery, defined the identity of Roman citizens.

The next chapter investigates those rights which created, protected and guaranteed this status, which ultimately coincided with the rights of Roman citizens.

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130 On the notaries moved out to slaves in the *Atrium* see Cic. Mil. 9. The most commonly used location to accommodate foreigners was the *Villa Publica*: Livy 30.21.12 and 30.24.5; Josephus BJ 7.3.4. On the *Atrium* as residence of hostages see Livy 25.7.42.

131 Cic. Arch. 11. See Purcell 1995: 124–4 for the other functions of the building.

132 Livy 45.12.23–24; Cic. Arch. 8. See also Crawford 1996: 3.4.144–5; *Tabulae Herennianae*. On the cadastral record see Livy 41.26.12–13; G. G. U. C. Atius 25.16; Cimini on the *feriae agrorum* of the centuriae of the *Ager Comunius* in 165 BC. By virtue of its grandeur and secure location in the heart of the city, the *Atrium* also functioned as a meeting-place of the senate, at least in 80 BC during the construction of the *Curia Cornelia*. See Bonnemains 1979; On the *Atrium Libertatis* as residence of archives see Niccol 1995: 20.

133 Statius 5771; Cic. Fr. 3.30 (Makovski 195: 89) which alludes to the destruction of a law on the chastity of the Vestals in a fire, along with many other laws. On laws and liberty see Chapter 2: 61ff. C. Asinius Pollio is recorded to have first built a *bibliotheca ex manibus* and dedicated it as a public monument, although, as Purcell rightly underlines (1995: 124), not necessarily the first at Rome or in the *Atrium Libertatis*. See Min. NH 7.115 on the special place of honour reserved for M. Terentius Varro, the only living man among those celebrated. See also Surt. Inf. 44 and Sid. Eynas 6.3.6–7, which itself derives from Suetonius.

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1 See Chapter 1: 19–20. For the most recent formulation of this Republican theme see Skinner 2010.

2 The negative nature of the definition of ancient liberty and the identification of slavery as its antonym are emphasised by the most recent works on the topic. See, for example, Roller 2004, whose study is focused on the early empire, and Roman 2009 on the transition between Roman and Byzantine periods. The description of libertin as someone who is not a slave goes back at least to Manilus 1897–8: 160–62.

3 See, for example, on slaves as *in potestate* of their masters Livy 8.45.8, 8.60.8 and 34.16.65; on prisoners of war as *in potestate* of somebody else, and hence in a condition of actual servitude: Livy 8.24.5, 22.39.3, 22.65.3, 22.68.8, 24.16.3, 27.22.10, 31.18.8 and 37.34.4. Sall. Juv. 122.3 or Cic. Leg. Man. 5.
However, these authors also adopt legal vocabulary to describe the status of political liberty. In describing the loss of political liberty they adopt the same negative terms as those adopted in describing the loss of juridical liberty, so that the meaning of possessing or losing one's own political liberty was analysed in terms of what it meant to fall into a condition of enslavement or servitude. Thus, Livy could state that Roman citizens should exercise their vote according to their own choice, acting as free men rather than under compulsion — that is, not in the manner of slaves; he could also claim that the conferral of a command by sole senatorial decision would have enslaved the *suffragium* of the people to the power of the few and reduced it in *potestatem paucorum*.

Thus these authors recurrently use a conceptual metaphor, whereby the source domain (in the parlance of Lakoff and Johnson) is the actual experience of slavery, and the target domain is the citizens' political experience, in order to conceptualise what it means for an individual to possess or lose his political liberty. The adoption by these authors of the metaphors of 'falling into slavery' and 'loss of liberty' in the juridical aspects of slavery is not only a linguistic or rhetorical phenomenon but also, as Roller claims, a cognitive and heuristic strategy: since the whole concept and structure of the master–slave relationship is projected *en bloc* into the derived political domain, then not only are a large number of individual terms and images made available for use in the political domain, but these terms and images also retain their connotations and the relations that obtain among them. Thus, if in the parent domain (or source domain, that is the domain where language is used in a literal, non-metaphorical, sense) freedom is the condition of not having a master, so too in the derived domain (or target domain, in which a different social experience is expressed and structured according to the same categories of the source domain). However, this metaphorical structuring of liberty does not imply that, as Roller suggests,

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5 Livy 6.41.1–2 and 10.24.17. See also Livy 23.34.1. On *suffragium* as one of the strongholds of liberty see below n.47. Cf. also Livy 35.32.11 concerning the political liberty of Greek states: *libertas eius stat privata, non ex alieno arbitrio pendent*. See also Cooper 1986: 144–51, on the fact that not all metaphorical expressions are manifestations of systemic conceptual metaphor. See also Sjöblad 2009.
6 The seminal text is Lakoff and Johnson 1980. Kövecses 2002 is a recent synthesis of the research paradigm. See Cooper 1986: 144–51 on the fact that not all metaphorical expressions are manifestations of systemic conceptual metaphor. See also Sjöblad 2009.
7 Roller 2001: 219. It seems that Roller works on the assumption of a kind of ontological precedence between domains to which the same term can appropriately be ascribed, so that the derivative domain remains a secondary one, benefit of a life of its own. Rather than the derivative domain, it would be more profitable to refer to the notion of political slavery as the target domain, and to that of juridical slavery as the source domain. See Kennedy 1995: 46–63 for a deconstructive work on the use of metaphor in ancient texts, specifically elegy.

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8 The idea of *libertas* never had a political meaning in Rome. Structured by the categories of the social experience of slavery and expressed in the same terms as its juridical notion, this negative idea of liberty could be metaphorically configured in a variety of ways, giving rise in turn to an equal variety of meanings, all referable to the same source domain.

This metaphorical structuring relationship, where a mapping (in Lakoff's terminology) is elaborated between the source domain of the actual experience of slavery and the target domain of the political dimension of power, inevitably gives rise to a political notion of liberty, which articulates the relationship between the individual citizen and the power of the commonwealth according to the shared conceptualization of slavery.

Since, in Roman juridical discourse, slavery was the status of dependence on the arbitrary will of another person or groups of persons, it follows that the Romans, conceiving political liberty by means of the metaphor of slavery, conceptualised it as a status of non-subjection to the arbitrary will of another person or group of persons, and analysed its loss in terms of falling into a condition of slavery.

The ability to avoid this fall, and to preserve the status of political *libertas*, was dependent on two very important conditions: (a) the civic status of the individual Roman citizen, and (b) the constitutional arrangements of the commonwealth in which he lived and where varying levels of liberty corresponded to different sections of society. What follows is an investigation of the notion of a person's civic status, which was considered necessary but not sufficient for the establishment and preservation of political liberty.

In Rome during the Republic a person possessed political liberty in the first place by virtue of his being a *civis*. The status of political liberty was achieved by a matrix of rights (*iura*) that protected the individual citizen's range of choices against the imposition of an alien will, thereby allowing him to conduct his life at his own volition. As Brutus has noted, the 'Romans
often associated their right or rights (ius or iura) with their libertas, or used the terms interchangeably.\footnote{Borm 1980: 206. See also Petri 1997.}

These rights constituted the institutional means by which the liberty of citizens was preserved from the domination of the ruling class, rather than from their interference. The suspension of these rights, which would have exposed Roman citizens (even at the risk of their lives) to the whim of those in power, would not necessarily have narrowed down the range of options available to them; it would, however, have put them in a condition of domination by the ruling class. In the formulation of Petri and Skinner, domination can be defined as being subject to the arbitrary will of another person or group of persons, 'thereby leaving yourself open to the danger of being forcibly or coercively deprived by your government of your life, liberty or estates'.\footnote{Skinner 1998: 69-70. See also Petri 1997.} Citizens' rights represented the legal bulwark that protected the status of liberty and allowed citizens to pursue their chosen ends. They functioned as the means through which Romans succeeded in conducting their lives unobstructed by magistrates or groups wielding political power, in the pursuit of their freely chosen goals.

By protecting the action of the individual from the exercise of arbitrary power, these iura allowed the individual to perform an action as a matter of right rather than grace. They guaranteed the citizens' ability to conduct their life at their own will without being subjected to others' whims or preferences; that is, they ultimately guaranteed the citizens' status of liberty.

In our sources, the rights to *suffragium*, *provocatio*, all the powers of the tribunes of the plebs (*auctoritas*, *intercessio* and the *ins agendi cum plebe*), and the rule of law generally, are presented as the true foundations of Roman liberty. To be precise, they were the institutional means through which the status of political liberty was established and maintained, rather than the incarnation of liberty itself, as is often claimed.\footnote{On their relation see Cic. ii. Ver. 1.2.2, 1.16, 5.43, Ruh. Perd. s.v. and Stat. 10. Lib. 3.46-8.601 on the protection of the citizen's person see Cic. ii. Ver. 5.56, Cat. 4.46, Afr. 15.66; 17. Cis. Corn. 1.47-50 Cic. = Aes. 76-8C. Nolli in Fam. 10.313. Liv. 1.17.3, 24.10.1. Cis. Sall. Hist. 1.28.4. On *suffragium* see Cic. Leg. agr. 1.29 (as electoral rights); Livy 37.52-3 (participation in comital trials for political offenders); Salius Cran. 37.9 (eligibility for office). On the fact that liberty rested on laws see Cic. Cael. 146-51 and on the more general association of law and liberty see Cic. Phil. 177, Phil. 11.38, Off. 2.1, 183; Sall. Hist. 1.48.4 Me. 1.67.21 Me. Livy 2.4.425.3-425.6, 34-36.7, 38-39.7, 41-41.4-5, 5.5. Caesar S. 221 (Makowski 1997: 9-70) "iusque iura libertates, primum communem, tunc aequitatem, Glorie etque honorum, quoniam nihil ipse truxerat" (cf. Cic. Phil. 1.35). The *suffragium* was a bastion of Roman liberty, not only concerning the freedom of ordinary citizens from arbitrary oppression (Sall. Hist. 3.34.126 Me. Cic. Leg. agr. 3.9, 3.15-25, Diod. Hal. Rom. Quaest. 6.39.1; Livy 2.23.2, 2.28.7, 2.33.3, 3.9.3-4.10.43-44), but also their right to share in the control of the state: Cic. Leg. agr. 3.3.5, Ruh. 1970: 88, and 186.}

Although the gradual introduction of these rights from (according to tradition) the very early years of Rome was perceived as the result of partisan political manoeuvring, by the first century BC they had become universally accepted as the essential means of protecting citizens from arbitrary coercion or interference. Since they provided the citizens with the necessary basis to enjoy a full life, these rights can be described as the basic Roman liberties that protected the range of choices that were deemed necessary within Roman society to guarantee its citizens the enjoyment of a free life.\footnote{Perit. 1980: 206-24; Petri 1997: 48.} In this conceptual framework, laws functioned as the highest protection of political liberty, since, as expression of the will of the citizen body, they provided these rights with a binding force that was equally applicable to all.

In the late Republic, while the rights to *provocatio* and *suffragium* and the legal prerogatives of the tribune of the plebs were regarded as basic Roman liberties, a notable exception was the right to ownership. Although there is no doubt that the ownership of property was essential to an independent life (that is, a life not at the mercy of someone else),\footnote{See Koesel 1991: 42-4; Wisniewski 1994: 44-5 and Brinton 1988: 546-9 on liberty and economic independence.} nowhere in our sources does the notion of the right to property appear explicitly cited in direct connection with the value of liberty as a definitional element of Roman citizenship.\footnote{On the Roman conceptualization of the right to property see Garnsey 2007.} Certainly, during the Republic, the rights held under the *ins civilis* by Roman citizens qua citizens included the right to own property. However, although it was part of the bundle of the positive legal rights held by the individual citizen, it did not define Roman citizenship.\footnote{Note that the centuriae system allowed for those who possessed nothing to be enrolled in the class of *proscripti*, as well as the reference to Phillipson's speech about those Roman citizens who owned nothing (Cic. Off. 2.75). These accusing the fact that one could own nothing and still be a Roman citizen, but do not tell us much either way about the existence of the concept of a right to property as a definitional element of citizenship. Even Cicero's de officiis, which presents the aim of commonwealth as the preservation of private property, does not present the right to property as one of the basic rights establishing the citizens' status of liberty.} Rather than being defined by the right to property, citizenship was a precondition for the existence of that right.\footnote{Garnsey 2007: 92 and 186.} Basic Roman liberties provided the ability to enjoy the life of a free citizen by protecting certain choices from external domination. In the history of the Republic, their specification was frequently the result of the struggle for power by...
marginalised groups, but in the first century BC they had become established as a set of basic rights which identified free Roman citizens.  

One of these was the citizens' right to provocatio. This protected the life and the person of a citizen against the coercive powers of Roman magistrates. The citizens in trouble made a cry for help to the people, "provoco ad populum", which, although in archaic Rome it may have functioned as a more generic measure employed to rally support round a threatened individual, in the later Republic came to be regarded as a guarantee against execution without trial and, after the lex Porcia, against flogging.

The initial phases of this right's historical development are rather confused, but the first undisputed evidence of this principle's legal sanction is the lex Valerii of 300 BC, followed by the lex Porcia of the second century BC. These laws established the right to appeal to the people from sentences of execution, flogging and heavy fines, increased the sanctions against the violation of provocatio, and also expanded its sphere of validity outside the city of Rome. However, in the late Republic the lex Sempronia, enacted in 123 BC, came to be perceived as the true embodiment of the right to provocatio. Often mentioned in the same breath as the lex Porcia as the true defender of Roman liberty, this law prohibited the capital punishment of a Roman citizen for any charge without authorisation from the people (ius soli populi) in the form either of assembly or of a court established by law.

The right of provocatio as enshrined in these laws was accordingly presented as the guardian and bulwark of Roman libertas. As the plebeians Duillium asserted, all magistracies had to be subject to the right of provocatio; the death penalty was reserved for those who attempted to set up any

79 On the rights of free citizens see Sherwin-White 1973 and Gaisser 1993. It follows that the Romans did not identify the set of basic liberties with those rights that nowadays we consider inalienable, such as the right to worship, the right to movement, et imum. See Schulte 1956, Moenchlin 1951 and 1971, Brunt 1988, Klotz and Rosen 1984 and Arena 1985.


81 Cato Fr. 157 (Macewski 1935-48); Cic. Cat. Por. 12; Sall. Cat. 5.21. See Kunkel 1963 and Brunt 1988: 211-7.


83 Cic. Rep. 1.54. Ror. Pol. 12: Cor. 1.50 Cc. = Asch. 71.1C; Livy 10.9.4ff. For a historiographical overview see Lintott 2009.

84 Cic. II. Ver. 1.15ff. 5.165. 5.177ff.

85 Cic. II. Ver. 15.8ss. See also Sall. Cat. 31.47, Po. Sall. In Qos and Crawford 1977-80: p. 200 (see 100-8) and 270 (82-80 BC) of the Torci Latio with commentary.

86 Cic. Cat. 4.10, Sext. 66; Dio 57.44.5; Dig. 1.2.2. See also Cic. Rep. 2.53, Leg. 3.51; Livy 5.5.10.4. 4.13.11.

87 Cic. Dom. 33.45. 47.77. Leg. 4.41.42; Asch. 41.51ff.; Livy 3.12.4, 3.49.4, 3.51.4. 3.67.5-6, 3.76.20-51; cf. 3.37.4-6; Cic. De or. 2.190, Rep. 3.44.

magistracy that would be exempted from this right, since such an action was tantamount to the establishment of tyranny. With Verres' infringement of this right, Cicero claims, it was liberty itself that had been violated. The Romans' 'rights, interests, protection, and indeed entire liberty' therefore depended on his condemnation.

Our extant sources for the late Republic do not report the existence of an authentic instance of trial on appeal by the people, with the exception of the archaic proceeding resurrected in the case against Rabirius. This fact, which is rather peculiar given the emphasis on the central role of the ins provocatorius in the sources, has led scholars to postulate that this right was regularly infringed. However, the function of the right was to guarantee citizens the possibility of conducting their lives free from the arbitrary exercise of magistrates' coercive powers, but in a manner nevertheless in full accordance with the laws. In other words, the right to provocatio was not applied in cases where a citizen was subjected to a fair trial or was in the wrong, because its purpose was to deter those in power from arbitrarily punishing Roman citizens.

However, the right to provocatio was not in itself sufficient to guarantee a status of non-dependence on the arbitrary power of magistrates. Citizens who thought themselves to have been wronged could also avail themselves of the right of appellatio to a tribune. The tribune, protected by his sacrosanctity, which allowed him to interpose his own person to obstruct the actions of magistrates, was entitled to succour any citizen who appealed to him. By virtue of this right, citizens could not be denied access to the tribunes, who were stationed in easy reach by the Basilica Porcia (near the comitium and the curia), were prescribed by legislation not to be absent from Rome for a whole day, and were not even allowed to shut the door of their house in day- or night-time for the entire duration of their office. Ultimately, however, this right rested on the tribunes' decision whether to intercede in support of the appellant, so as to benefit the latter by exercise of their auxilium. A tribune could deem it inappropriate to intervene in the citizen's favour. As Witzelbock rightly underlines, auxilium was an institution of which the citizen could avail himself, but it was by no means his indefeasible right as was provocatio. The citizen's right was appellatio, whereas auxilium was the tribune's right.
However, given the overall conception of the tribunes of the plebs as champions of the people, the *ius auxilii*, with its closely connected *appellatio*, was perceived as providing an effective guarantee of the citizen's civic rights against the abuses, or alleged abuses, of those who held *imperium*. The tribunes' *auctoritas*, which was an expression of their power of *intercessio* against other office-holders of *par maior potestas*, meant that the tribunes were the *magistrates* most suited to acting in defence of citizens against offences by other officials. Indeed, since their office was according to tradition created for the purpose of *auxilium*, the tribunes of the plebs enjoyed the standing of *maior potestas* in relation to all other magistrates including the *consuls* (but excepting a dictator).36

This function of protecting against the arbitrary will of those in a position of power is at the root of the Roman understanding of *auxilium* as the guardian and bastion of liberty. Since these rights were an essential part of the matrix which constituted the citizens' status of *libertas*, it is not surprising that even members of the elite appealed to them when they felt isolated and in danger. As an essential part of the conceptual and juridical notion of *libertas*, these rights were not even abolished by Sulla in his radical institutional reforms of the commonwealth. Despite drastically curtailing the tribunes' powers and depriving them of numerous rights, he did not remove the *ius auxilii* from their remit. Any political reform that deprived the people of the right to appeal against perceived abuses would have legally consigned Roman citizens to domination by those in power. By formally establishing an oligarchy, this would have enacted what could have been legitimately described as Roman citizens' reduction into a state of servitude – which was certainly never part of Sulla's political project.37

As the repository of the *ius auxilii* and *intercessio*, the tribunate of the plebs, almost by metonymy, was regarded and described as *praeidium libertatis*, the true defender of Roman liberty.38 The tribunes not only preserved the lives of the citizens and their person from unlawful imprisonment, beating or whipping; perceived by Romans as one of the institutional means which guaranteed the liberty of citizens, they were described as *vindices omnium iuris* and the bastion of Roman liberty.39 The tribunes of the plebs fulfilled this function in two ways: first, by holding the *ius auxilii* and the power of *intercessio*, they secured the protection of the life and person of Roman citizens; second, by holding the right to initiate legislation, which was conceived as the expression of the people's wishes, they functioned to guarantee Roman citizens the actual enjoyment of their liberty, providing the institutional means by which they could conduct their lives on their own terms.40 As reported by Polybius, in exercising their veto against the political motions of all other magistrates (albeit with the exception of the dictator), and even against the decrees of the senate, the tribunes were expected to 'aim at doing what the people wished'.41

The *ius agendi cum plebe* was perceived as an important constitutive trait of the magistracy's role. Writing in the second half of the first century BC, Sallust makes Licinius Macer dismiss the idea that personal rights, such as the *ius auxilii*, were sufficient on their own to guarantee the people's freedom. According to Licinius Macer, the tribunate that he held, being bereft of the right to initiate legislation, was an 'empty shell of magistracy'.42 In order to repel the domination of the nobility and establish a state of *libertas*, it was essential for the tribunes to regain the powers of unrestricted *intercessio* and *ius agendi* of which Sulla had deprived them. Along similar lines, Aemilius Lepidus, in Sallust's account, is made to fight for the restoration of tribunician powers in order to overthrow *servitutem*.43 In fact, the *ius agendi cum plebe* of the tribunate of the plebs was perceived to be such an important constitutive trait of this magistracy that even Cicero — certainly not a subversive politician — regarded it as necessary to the proper functioning of the *res publica*. In Cicero's opinion, the tribunate

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36 See Polyb. 5.16.4.
37 See Cic. Leg. 3.9 and Livy 3.5.2 on the connection between the tribunate and the right of *auxilium* at the origin of the magistracy. On the overlapping power of the tribunes see Cic. Rep. 2.18, Leg. 1.66 App B Cap. 2.11. Cf. Livy 3.5.4; 3.45.5; 4.26.10.
38 Livy 3.45.8: *dum aures libertatis metuerat*. Cf. Livy 3.5.4-6; Licost. 9903:20a. If the ideological and juridical structure I am building is not erroneous, there is no need to see the recourse to *auxilium* on the part of members of the elite as a sign of perversion of the whole system, as Licostus seems to suggest, but actually as an essential juridical guarantee of the liberty of the individual. On Sulla and the *ius auxilii* see Brutus 1088; 1332, who underscores that Sulla may have, however, depredated the tribunes of the right to bring charges before the people in assembly. On the aims of Sulla's reforming programme see most recently Flower 2010:117-35.
39 Cic. Leg. 3.9, 3.15-25; Sall. Hist. 3.34.25M; Dion. Hal. Rom. Quaesit. 6.87; 3 Livy 2.13.2, 2.28.1, 2.33.1, 5.9.2-4, 6.10.13-16.
40 Sall. Hist. 3.34.21-22, 31.166f.: Liberty is guaranteed by the exercise of the right to vote on the legislative proposals put forward by the tribunes. See also Sall. Hist. 14.7.4M; Cic. Leg. 3.9-22; (Ros. 3.1.1. Cf. Cic. Rep. 3.19. On the power of the tribunes to protect legislation as expression of liberty see Murray 1982: 757, contra Wünschel 1970: 103-111 and Roller 2001: 229. See below Chapter 3: 140-1.
42 Sall. Hist. 3.34.25M. cf. Vell. Pat. 1.30.4: 'tribunate as `shadow without substance'. Cf. Livy 6.17.4: the omission of *imperium* from the tribunes' powers seriously hindered, in the tribunes' opinion, their ability to act as magistrates.
43 Sall. Hist. 1.48.1M.
had to be accepted and praised, despite its dangerous potential, because it provided the citizens with the measure of freedom necessary to the proper working of the res publica. From a pragmatic point of view, he claims, the tribunate could act as a constraint upon disruptive popular forces; and from a theoretical point of view would provide the people with the necessary measure of true liberty. However, the senate retained the means to curtail the force of the tribunate, whilst the latter enabled the exercise of those rights in which the citizens' liberty resided. As stated in the de republica, the tribunate was necessary in principle for the liberty of the citizens and for the stability of the mixed and balanced constitution. Even if there were alternative and competing views about the nature and extension of the tribunate's power, the importance and the very existence of the magistracy were not in question.

As Brunt summarises, 'The legal rights that Romans most explicitly and commonly subsumed under the title of freedom are of two types: immunity from arbitrary coercion and punishment by magistrates, and some degree of participation in political power.' The degree to which popular participation in political power could be exercised was subject to debate and, at times, fierce struggle; but no one ever denied that some share in political power, however limited, should be maintained as an essential means to guarantee the citizens' libertas.

Just as the tribunes of the plebs, endowed with the ins agendi cum plebe, were theoretically conceived as presenting those measures which mirrored the people's wishes, so the citizens had the right to suffragium, which provided them with the opportunity to enact or reject those proposals. Taken together, they constitute the Roman version of the conceptual notion of a self-regulating community.

It comes as no surprise that the citizens' insuffragii, exercised in electoral and legislative assemblies as well as in comital trials, was praised as a guarantor of liberty or even as its equivalent.

Projecting late Republican political conceptions on to the distant past, both Livy and Dionysius of Halicarnassus describe the right to vote, both in legislative and electoral settings, as the popular bastion of Roman liberty. According to Dionysius, for example, by depriving the people of the power to enact legislation, Tarquin Superbus was responsible for the destruction of their liberty. With the establishment of the res publica by the vote of the assembly, Dionysius continues, liberty was fully restored, and with it the right to legislate, according to the words he assigns to a patrician, the right of a true free man. Similarly, Livy refers to the people's right to legislate as a bastion of liberty. In his account, the second decemvirate represented an infringement of Roman liberty in their actions as well as in their juridical position. Not only did the decemvirate implement oppressive legislation and adopt tyrannical behaviour, it also retained power in office without election. However, in order to be conducive to libertas, laws should be the result of a vote which itself had to meet two important conditions: it should be free, and should be equal for all. The exclusion of some members of the community from the voting procedure, as well as the subjection of individuals to arbitrary interference in the decision-making process, would inevitably have established a condition of servitude.

These conditions were essential to the establishment of the state of libertas and so were recognised by all Romans. They all agreed that, in order to establish liberty, it was necessary that all members of the community were entitled to vote, so that no one was left with the possibility of claiming to be forced to conduct his life according to someone else's wishes. In describing the historical development of Roman institutions, Livy, Dionysius of Halicarnassus and Cicero all emphasise the essential importance held by the universal distribution of the right to vote amongst all members of the community. Although, in describing the Servian system, these authors' primary interest lies in praising the political and military pre-eminence of the well-off, they also underline how crucial was the establishment of a voting system which all members of the community were entitled to take part. Describing Servius' reform, Cicero states that 'He made this division in such a way that the votes were in control, not of the majority, but of the rich, and made sure - something which ought always to be adhered to in a commonwealth - that the greatest number did not have the greatest power (ins disparitas, us suffragii non in vultusdiniis, sed in locupletum postestas esse, curavitque, quod semper in re publica tenendum est, ne plurimum valeant plurimi). In a system so devised, 'the remaining 96 centuries, which contain a large majority of citizens, would neither be deprived of the suffrage, for that would be tyrannical, nor be given too

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45 Brunt 1988: 397.
46 On this point see the sources cited at p. 48 n. 43. On the structure of the comitia centuriae see below, 101, 192–12.
47 Dion. Hal. Ant. Rom. 4.8.4.1 on the voting of the assembly, on the establishment of the Republic and the restoration of liberty see 4.75.4, 5.2.2 ff. and 7.56.3 and of the right to legislate as the right of free men see 9.44.6.
much power, for that would be dangerous (neque excluderetur suffragius, ne superbum esset, nec vulum rimos, ne esset periculum:… Thus, while no one was deprived of the suffrage, the majority of votes was in the hands of those who had the greatest interest in maintaining the Commonwealth in the best possible condition. 51 Similarly, Livy and Dionysius emphasised that, within the strictly democratic system of power distribution, no one should be deprived of the right to vote. 52 However, in order to be free, not only did all members of the community have to be equally entitled to the right to vote, but they also had to be guaranteed the possibility to do so as they pleased, that is they had to be endowed with *liberum sufragium*. 53

Although all shared this basic assumption, there was disagreement on how to achieve it. 54 As far as it is possible to reconstruct from the available sources, in the first century BC there were two competing views on the means deemed necessary to achieve *liberum sufragium*: one identified secrecy of vote, the other the individual exercise of civic virtue (dissimilar in the different sections of society) as necessary elements to liberate the voices of the citizens from arbitrary interference. 55

Although the *leges tabellariae* had been introduced in the second half of the second century, there was still a heated debate about their role and the importance of secrecy in the voting process in the first century BC. In 139 BC the tribunitian *lex Gabinius* introduced the secret ballot for elections, in 137 BC the *lex Cassia* extended it to judicial decisions, in 131 BC the *lex Papiria* applied it to voting on legislation, and finally in 106 BC the *lex Coelia* applied it to trials for treason (*perduellio*). 56 All these laws are presented in our sources as a great achievement of the people and its supporters, and are always portrayed as a great bastion of liberty. 57

It is hard to judge from the surviving evidence whether, at the time of their passage, the *leges tabellariae* had met with any degree of hostility. 58 However, it seems clear that in the first century BC the issue of secrecy in the voting procedure was still considered a conceptually very important issue.

The 60s and 50s saw a burgeoning number of coins alluding to the *lex Cassia tabellaria* of the previous century. In 63 BC L. Cassius Longinus issued a coin which featured on the reverse the letter V standing for *VTI ROGAS*. 59 The name of the moneyer in conjunction with the legend suggests a link with the *lex Cassia tabellaria*. 60 In 55 BC Q. Cassius Longinus issued other two coins which pictured on the reverse a voting urn and a tablet inscribed [A][BSOLVO] [C][ONDEMNO]. The association of the moneyer's name with the semantic visual reference to the voting urn and the letter A or C seems again to make an allusion to the *lex Cassia tabellaria*. 61 However, these moneyers' choices gain particular significance if one considers that, by the first century BC, the *judicia populi* to which the *lex Cassia* of 137 BC referred (with the exception of those for *perduellio*) had been superseded by the advent of the *quaestiones perpetueae*. 62 Although often coins were struck off-centre (with part of the legend and type missing as a result), and people could rarely have been aware when it had been introduced, the choice of a coin-type remains revealing of the intention of the moneyer as well as of the public discourse in society at that given time. 63 Cassius' choice acquires full significance only if we postulate that secrecy in the voting procedure was still considered an important political advance, and one on which Cassius could reasonably hope to capitalise for his future political career.

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51 Cic. Rep. 2.40. For *superbus* as a characteristic of a tyrant see Sall. 2008 and Chapter 5: 244-5.
53 Cic. Leg. agr. 2.34 claims that all people should be free to vote as they please and not be deprived of the right to vote. This practice should be regarded as a violation of liberty. Livy 4.37: *liberum sufragium* consists of 'itaque voluit [populare Romanum] cum darem, mandavit'. On this issue see Seager 1978: 42ff. See also Livy 2.54-3, 4.41-12, 6.27-6.58, 40.7 and 41.2, where the people's right to propose or refuse and within the context of the *omnia tributa* is expressed in terms of *aqua libera*. For a full discussion of these passages see Salerno 1999: 80-14. Cf. Sall. Hist. 3.44-60, which refers to the people's conquest of no longer requiring teniens auscultio. It's legislation.
54 For a very interesting analysis on the issue in modern society see Beerman and Peritz 1990.
55 Tuc. Ep. Cas. Sen. 11.5: 'There are then, in my judgment, two ways by which the senate may be given greater strength; by an increase in its numbers and by permission to vote by ballot. The ballot will serve as a screen giving courage to act with more independence, while the increase in numbers will furnish greater protection and an opportunity for larger usefulness.' See also Cic. Sen. 103, Leg. 3.14 and 36, Leg. agr. 2.48, Paris. 15; Corn. 1.50 Cr. = Ass. 70.16.
56 On these laws see most recently Landgreen 2003 with previous bibliography and Peig 2008 who very ingeniously argues that secret voting was in place only in *judicia populi*.
57 Marshall 1907 on the existence of a pre-Gracchan movement which stood for a free expression of popular will in opposition to aristocratic control. Cf. Cic. Sert. 109. Numerous coins refer to those who supported the introduction of the written ballot, dated between 126 BC and 41 BC, refer to *libertatis* RRC 226/1, 386, and 418/2. Cf. RRC 479/1 and RRC 479/4. See also Taylor 1866: 31-57 and Belloni 1997. All coins commemorate Cassius' voting bill. See also the discussion in Salerno 1999: 131-4.
58 On the hostility attested against the passage of the *lex Cassia* see Cic. Brut. 97. Cf. also 106.
59 RRC 413.
60 RRC 413 considers the design (obverse: head of Virtus) as alluding to the law of 155 BC which set up a commission to try three Vestal Virgins, poisoned over by L. Cassius Longinus Barilla.
61 This is certainly the case for RRC 428/50. RRC 428/50 could again, by virtue of the obverse, be interpreted as referring to the presidency of the special commission of 113 BC.
That this topic was still a subject of contention in the first century BC is also attested by the lengthy discussion dedicated to it by Cicero in the de legibus. In this work, Cicero portrays a discussion between his friend Atticus, his brother Quinctus and himself on the role that the leges tabelliarum should play within society. The subject, he says, is a difficult one, which has frequently been investigated. The problem is this: in electing magistrates, judging criminal cases, and voting on proposed laws, is it better for votes to be recorded openly or secretly? Ultimately, the discussion turns out to be a ‘pseudo-debate with no serious disagreement’, as Marcus Cicero says to his brother Quinctus, ‘My opinion is the one I know you have always held, namely, that no method of voting could be better than that of open declaration’. They all agree that the introduction of the secret vote provided the Roman people with a hiding-place where they could shy away from any sense of shame and responsibility, accepting bribery and yet secretly acting as they wished.

There is no doubt that, under the oral voting system, intimidation and bribery were adopted by the nobility to exercise pressure on the voters. This was recognised as a problem needing remedy. The laws de ambitio passed in 181 and in 159 were the first in a long series, and were implemented less than fifty years before the introduction of the secret ballot as an attempt to curb the widespread practice of bribery in the Roman political system. As Quintus himself is portrayed as arguing in the de legibus, the law on the secret voting ‘was never desired by the people when they were free (populus liber), but was demanded only when they were tyrannised by the powerful men in the state (idem opressus dominatus atque potentiæ principum flagitatavit).’ He goes on to argue that ‘means should have been found to deprive powerful leaders of the people’s undue eagerness to support them with their votes even in the case of a bad measure’. In the opinion of Quintus and Cicero, however, it was a mistake that the means devised were ‘the laws which ensure the secrecy of the ballot in every possible way, providing as they do that no one shall look at a ballot, and that no one shall question or accost a voter’.

None of the participants in the dialogue recognises the secret ballot as an effective agent against bribery and intimidation, but sees it rather as a device that provided the people with a ‘hiding-place, where they could conceal a mischievous vote by means of the ballot, and keep the aristocracy in ignorance of their real opinions’. Liberty, the status characterised by the absence of any arbitrary interference, could be achieved, they argue, only through the open vote. This voting system would deprive the people of such a hiding-place, and would force them to act according to civic virtue. Only by doing so would they be able to establish a state of freedom. Quintus and Marcus claim that with the introduction of the secret ballot the people became idle and, satisfied with the possession of the right per se, no longer exercised it with the same rigour as before. Quintus observes that we have records of severer condemnations of powerful men under the oral methods of voting than when the ballot was used and Cicero remarks that this was ‘because the people are satisfied with possessing power’. Thus, recognising that bribery and intimidation were certainly evils which should be eradicated, Cicero put forward a different and praemunire rather bizarre proposal which, in principle, was not so dissimilar from the position advocated by Quintus and Atticus, and, in practice, attempted to find a compromise with the current political reality. In his opinion, the people should ‘have their ballots as a safeguard of their liberty (quasi vindicam libertatis), but with the provision that these ballots are to be shown and voluntarily exhibited to any of our best and most eminent citizens (optimo ciusque et gravissimo civit), so that the people may enjoy liberty also in this very privilege of honourably winning the favour of the aristocracy (in quo populo potestas honeste bonis gratificandis datur)’.

After its introduction, the voting ballot was universally conceived of as a bastion of Roman liberty, and even Cicero had recourse to it as a persuasive argument when addressing the court in defence of Plancius, and the people in the comito against Rullus’ land distribution. Once secret voting had been introduced, the tabella became so deeply ingrained in Roman political culture that it would have been impossible to remove it.

However, in Cicero’s opinion, the tabella could provide people only with a species libertatis, an appearance of liberty, which although regarded as a means of protection against arbitrary interference was not truly effective.

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64 See Dyck 2004: 535 who suggests that the rather lengthy discussion mirrors the contemporary relevance of this debate. See also Plut. Ep. 3.20.1 and Cic. Leg. 1.33.1. 65 Cic. Leg. 3.33. 66 Dyck 2004: 534. 67 Cic. Leg. 3.31. 68 On the relation of the introduction of the secret ballot and an actual increase of the practice of bribery see Yokobson 1995: 427–8. 69 Cic. Leg. 3.34. 70 Cic. Leg. 3.33–4. 71 Cic. Leg. 3.39. 72 Cic. Leg. 3.34. 73 Cic. Leg. 3.39. 74 Cic. Leg. 3.30. 75 Cic. Leg. 3.32–3. 76 Cic. Leg. 3.39. Cf. Nicolet 1970a, according to whom the preservation of the tabella in Cicero’s proposal finds its roots in Plato’s Laws 775c–d, which describes the complicated voting procedure for the guardians of the law.
to this end. If anything, the introduction of the voting ballot had, in his view, corrupted the people, who no longer exercised their right to vote with a full sense of responsibility. True liberty was acquired by the exercise of civic virtue, which should act as a bastion of liberty against intimidation and bribery and, as implied by Cicero's reference to the lack of moral vigour in condemning people, against interferences of the self.

Therefore, in Cicero's opinion, the people could achieve libertas by exercising their civic virtue. In their case, this coincided with the willingness to entrust the administration of power and their interests to the elite, thereby gratifying them by honest means without recourse to bribery. In Cicero's political conception, the people should be fully conscious of their place in society and exercise those specific virtues that well fitted their group. As clearly stated in the pro Sexto and elaborated in the de republica,77 the people should act according to the virtus of those who belonged to the higher sections of society; recognising the auctoritas of the leading members of the elite, to whom they willingly and contentedly entrusted the management of the res publica, the people should accept their own place in society and reject any part in revolutionary activities. It was the recognition of the elite's auctoritas, one of the central tenets of the political virtues that Cicero required from the people, that the secret ballot had taken away. You saw how much mischief has been caused already in the matter of the ballot, first by the Gabinian law, and two years later by the Cassian law. I seem now to see the people extranged from the senate and the weightiest affairs of the state determined by the caprice of the mob. For more people will learn how to start a revolution than how to withstand it.78

Fulfilling the need of the people to feel protected against arbitrary interference, the written ballot, in Cicero's proposal, provided the people with an appearance of liberty; that is, with a tool that they regarded as essential to the establishment of liberty, but that was only able to provide an appearance of it. In Cicero's opinion, true liberty was achieved by the people's responsible act of voluntarily showing their vote to the members of the elite and acknowledging the auctoritas of the nobility.

This debate on the adoption of the tabella as the most appropriate means to achieve libertas suffragium was based on the shared assumption that libertas was a status established in virtue of the free exercise to vote, that is a vote not subjected to any form of intimidation and bribery, and open to all members of the community.

Despite the very significant inbuilt limitations in the Roman voting system, which obstructed or considerably reduced the actual exercise of the people's power, the principle universally shared was that Roman citizens could express their wishes by exercising their right to suffragium, both in electing their magistrates and in enacting the legislation under which they led their lives.

At elections, the people exercised their political right to choose, as they pleased, the person to whom they wished to entrust the administration of the res publica. It follows that the exercise of this right contributed to the establishment of their status of non-domination.

In Rome, holding an office was regarded as a beneficium that the Roman people had granted to a suitable individual.79 Distinguished from the investiture by the lex curiata de imperio, by which the people approved the magistrate's authority and agreed to submit to his imperium, the actual election to a magistracy was perceived as a 'gift' from the people, whose choice was ultimately sovereign.80 Cicero could claim in his speech against the land distribution proposed by Rullus that the whole people, and the whole people alone, was entitled to confer any kind of magisterial power, and any derogation from this fundamental political right would ultimately have constituted a diminution of liberty.81

Refining this position, in his ideal code of laws Cicero postulated that the senate should be exclusively composed of ex-magistrates, that is, of men who had been elected by the people, and that the censors should be divested of the powers to alter the people's choice.82

Although in the period between 70 and 28 BC the census was never completed, it seems that the censors' activities came to be perceived with a growing sense of unease, as if the existence of their extensive powers, held for eighteen months and bereft of any limitations (with the exception of the two institutional restrictions of par potestas and potestas ad tempus), could constitute a danger to the preservation of the citizens' liberty.83 Cicero's measure in the theoretical de legibus aimed to preserve the people's right to

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77 See, for example, Cic. Sen. 104 and Rg. 2.69. Cf. Chapter 3: 94, 102ff.
78 Cic. Amic. 41. Cf. Cic. Leg. 3.54: 'Everyone knows,' says Quintus in attacking secret voting, 'that the laws which provided the secret ballot have deprived the auctoritas of all its influence (omnia sanciuntur opinationes tabellarii legem abhibuisse) and Antius' point at Leg. 3.37 as well as the summary of Cicero's rationale at Leg. 3.39.
79 See, for example, Cic. Planc. 61. See also Halsgouw 1963: 163–9.
80 The best review of the debate on the lex curiata in the late Republic is to be found in Oakley 1985: 177–82 (with further bibliography). See Limon 1999: 38–9 and 44 on the contentious issue of the function fulfilled by the lex curiata de imperio in the late Republic. See also Magielin 1988.
81 Cic. Leg. agr. 3.14. 82 Cic. Leg. 3.57.
83 On the functions fulfilled by the census in the Roman Republic: Astin 1988.
choose their magistrates as they pleased without any arbitrary intrusions and alterations by the censors. The latter could at the stroke of the pen (as it were) modify the people's choice. In the incandescent political climate of 38 BC, Clodius, a tribune of the plebs and fierce opponent of Cicero, proposed a measure which introduced a system to curtail the indiscriminate and ultimately arbitrary exercise of the censors' powers. According to this law, the censors were prevented from striking any men off the roll at their will and from imposing any fine unless a hearing had been held in the presence of both. Although at first sight Clodius' measure seems designed to impact on those subjected to censorial judgment, as a matter of fact it could be interpreted as a strong symbolic challenge to the censors' arbitrary power. In fact our sources attest only two cases of censored citizens who did not belong to the two ordinaries, a centurion and a scribe. In a community which numbered at least one million citizens in Rome alone, the two censors could have passed their judgment only on those who were reported to them and ultimately focused their activities on senatorial cases. It follows that Clodius' measure could be interpreted as mainly concerned with curbing the perceived powers of the censors rather than with an attempt to intervene in their actual operations in defence of those against whom their judgment was passed. In a not dissimilar way to Cicero's proposal, Clodius' measure could be interpreted as a manifestation of a sense of unease towards the ability of the censors to interfere arbitrarily with the citizens' electoral choice.

However, the people's right of suffragium acted as a bastion of people's liberty not only in the electoral contests, but also in legislative assemblies.

Laws were often associated, if not equated with, Roman libertas in two ways. First, laws guaranteed the application of those rights which established the status of liberty for all Roman citizens on the same basis. Second, at least in principle, laws embodied the direct expression of the people's will, thereby functioning as the means which allowed the citizens to conduct their lives according to their own wishes.

62 Libertas and the Practice of Politics

With the lex Hortensia in c. 287 BC, which recognised plebiscita as binding on the whole community, the laws came to be conceived as orders that the populus Romanus as a whole imparted equally to all members of the community. These laws, expression of the people's right to vote, guaranteed the state of libertas by allowing the citizens to be governed according to their own will without being subject to any form of dependency. As a consequence of the plebeian struggle for political recognition, the concept of lex as iussum populi underlined the role that in the process of legal enactment the people played in passing the laws. As the adoption of the formula 'volent inbetis Quirites...' shows, by late Republic, in the conceptual development concerning legal enactments, the emphasis was very much on the people who imparted its command rather than on the magistrate who put forward a legislative proposal. As such, the nature of the source of law was not conceived as residing in the action of a magistrate in search of the people's approval, but rather in that of the people as stipulators of final decisions.

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90 Note that Livy presents the lex Valeria Hannia as promoting the cause of liberty by providing the tribunes with the power to propose legislation. Livy 3.45 and 8.12; Persio, cit. Dion. Hal. Ant. Rom. 11.45. On the importance of the lex Hortensia in the Roman constitutional notion of law see Magielean 1978: 7 and more in general: Lamont 1999: 77-8 and 131.

91 Witzel 1950: 7 it is not entirely accurate in claiming that libertas at Rome was 'a sum of civic rights granted by the laws of Rome; it consequently rests on those positive laws which determine its scope'. Nicolo 1980: 317-344 regards the connection between lex and libertas as a manifestation of liberty through the existence and effectuality of legal protections and benefits for citizens against the coercive power of magistrates. For a very similar view see Roll 2001: 230-2. However, the choice that the people made through the enactment of their legislation was concerned not only with procuring citizens' personal security against the arbitrary coercion of a magistrate, but also with a wide number of issues of an extremely diverse nature, from land distribution to legal recognition of people's choices, which cannot easily be traced back to a search for legal protection against the magistrates' abuses. The political significance of the assembly's legislative activity is most forcefully emphasised in recent scholarship by Millar 1998.

92 The prescription attributed to the Twelve Tables, according to which 'whenever the people last enacted was binding in law' (Livy 7.17.12, 9.3.9, 9.5.46 and 9.8.7) was a deliberate late Republican archaism.

93 For the magistrates' adoption of the formula 'volent inbetis Quirites...' see Cic. Dom. 8.8; Livy 22.10.3, 50.18.3, 31.5.4 and 38.5.4. The only complete example of the form is in Gell. 5.19.9. When the activity of the senate (or of the patres) is mentioned alongside that of the populus it is described as decree, censurs, venatus consortium, auroraria, while usually the acts of the people are termed a iubere and iussum. See Livy 6.22.4, 7.10.10, 14.6.17, 37.5.34, 38.5.41 and 48.9. See Magielean 1978: 77 and Serrao 1978: (1981): 438.

94 Magielean 1978: 76 identifies in the third century a moment of clear shift in the conceptualisation of the process of legal enactment: 'the element of the equation are identified, but the centre of gravity is moved from one [the magistrates] to the other [the people]. On the source of law see Jollowitcz 1972: 86-7 and Watson 1971: 5-13. D'Orr 1985: 144 suggested that the verb iubere may have a feeble sense of ’authorising’ rather than expressing command; however this reading does not find support in the text.
In the context of late Republican domestic politics, these laws, engineered by magisterial initiative and subject to comitial approval, regulated citizens' lives at all levels.

A considerable ambiguity was built into the conceptual structure which informed the procedure for approval of these laws: on the one hand, the author of a rogatio was a magistrate who alone had the right to initiate a legislative proposal, to which the people were solely assigned the role of responding either 'uti rogas' (as you ask) or 'antiqus' (I oppose what you propose).95 On the other hand, in presenting his measure, the magistrate addressed the people by the formula 'velitis inbeatis Quirites... and concluded by declaring 'populus legem inuet'.96

Despite the preservation of this ambiguity in the formula legem accipere which denotes the role of the people as granting ratification to the magistrate's rogatio (legem acciperet),97 by the very end of the second century the conception of lex as iussus populi was universally shared and had become a principle fully ingrained in the common understanding of the time.98

Cicero often referred to leges as iussa populi or even scita populi, and the author of the Rhetorica ad Herennium explicitly stated that 'a statute law is what is sanctioned by the order of the people (lege ins et id, quod populi iussu sanctum est)'.99 This notion, also attested in Sallust, Caecar and Livy, finds its most renowned formulation in the juridical writings of Ateius Capito, the jurist, consul in AD 5, according to whom a law is 'a command with general application by the people or plebs formally proposed by a magistrate (lex est generale populi aut plebis, rogator magistratu).100

This conception was not undermined by the potential of a praetor's modifications to Roman statutes, since the praetor, who from a theoretical point of view had received his office as a beneficium by the people, enacted edicts which not only could have been subjected to veto, but also, if unpopular, would with all probability have been dropped by the subsequent magistrate.101 The ultimate power of the people, which reaffirmed the ideological centrality of the notion of laws as iussa populi, was their power to enact new legislation which would have automatically annulled previous objectionable laws.102

This idea of law was so rooted in the conceptual world of the Romans that, at a time when the vast majority of laws were enacted by the emperor or the senate without even a formal recourse to the people, a Roman lawyer could still define law as 'what the people [or plebs] commands and establishes',103 and Salvius Iulianus could assert that 'the laws are binding on us only because they have been accepted by the judgment of the people'.104

Ultimately, as Brunt puts it, 'No Roman actually said, as Swift did, that "freedom consists in a people's being governed by laws made with their own consent", but this principle is implicit in the Roman system.'105

Laws were also equated with liberty in another way: the rights that the people praised as guarantees of their liberty were enshrined in and guaranteed by laws. By virtue of their enactment the Roman people had managed to secure for themselves protection against the arbitrary coercion of magistrates (see, for example, the leges de provocacione) or the abolition of a status of servitude because of debt (as in the case of the lex Poetelis Papiria).106 However, by having their rights enshrined in laws, the Roman people managed to achieve not only libertas, but aequa libertas, that is equality with regard to the laws. In the late Republic, referring to the origin of the res publica, Livy could claim that the commands of the laws

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95 Cic. Lgil. 26.3.134 as possible attestation of the people's ability to elaborate a resolution of their own. Montem. 1067-1068: in 104.6.3.
96 Cic. Leg. 3.6.5; Lgil. 4.1.5; 6.40.7; 5.34.7, 10.8.12. See Montem. 1067-1068: in 110.30.2. Daub 1954; 74 and 74.9; Magdal. 1978: 74.
98 Office-holders were required to take an oath of obedience to the laws within five days of any appointment, in public, and during daylight. See, for example, Crawford 1990: 13 (lex repudiarum); 13 (Lativa Tabularis Bantians); 8.9 (Taurarium Fragmentum); 112 (lex de provinciae pravitis); 112 (Lex Galbaea Calpurniana); 115 (Ephesia Fragmentum); 136 (lex Pontica).
99 Cic. Rhet. Hor. 2.13.9. For leges as iussa populi see Cic. Leg. 1.1.17, 1.6.4.12, 1.5.5, 1.3.9, 1.3.9, 3.9.9, 9.9.4, Philos. 1.7.7, Var. 5.8, Plu. 2.43, Basil. 17.36, for iussa populi see Cic. Leg. 2.4.8 and 3.9.4. Lex and plebiscita could be used interchangeably: Cic. Deo. 49.127
100 Cael. 10.1.7. On Sallust see, for example, Ing. 3.3.1, 3.5.7 and 8.1, Cor. 23.3 and 2.221. Cael. De bel. civ. 1.21, 21 on Livy, see just to mention a few, 4 30.16, 6.21.4, 52.4, 7.12.10, 10.1.3, 11.17.5, 24.15, 27.15.6, 30.43.3, 32.15.8, 38.4.5, 57.14 and 54.1. Aelian Gallus could reveally state that a lex coincided with the use of the rogatio. Aelian Gallus ap. Festus 526a: rogatio est genus legis... (regagog) non potest esse lex, si modo tueatur constiter rogatis et
101 Cic. Leg. 1.5.17, 31 Verr. 1.1099. On the praetor's edict as a source of law see Schiavone 2003: 132-134 and Ehrigby 2003: 33-46. Although the Tetrarch Herennius (Crawford 1990: 1.24) shows that by the late Republic senatus consulet were regarded as source of law, the exact chronology of this phenomenon and its conceptualization are not known. See also Chapter 3: 98.
102 Livy 7.5.12 and 9.3.46. Cic. Balb. 33 and Att. 3.15 on the people's power to enact new legislation, which would have automatically annulled the previous laws. See Brunt 1981: 197; Contra Richardson, 1798
104 Dig. 1.1.32. See Brunt 1988: 319. Magdal. 1978: 76. n.100 emphasizes Gallus' understanding of law as the result of the magistrate's authority of putting forward the rogatio.
106 Livy 9.39; Dion. 16.75; Cic. Rep. 2.86 and Lett. 1.235. Varro Ling. 7.205; 2.120; 125. However, after the passage of this law, praetors and other magistrates continued to have powers to grant a creditor adiectio. Sall. Cat. 33. Quint. Inst. 3.10.60. See Brunt 1988: 82-96. See Chapter 1: 21-2.
were more potent than those of men, and both *libertas* and *ins aequum* (equality of rights) had been attained, whilst the codification of the Twelve Tables by the decemvirs could be described as an attempt at equalising 'freedom' or legal rights.  

As Cicero repeated on different occasions, the defining trait of a free people was the enjoyment of equal rights under the law, without which they could hardly live for any considerable length of time.  

In the *pro Plancio*, in an ecstatic form he rhetorically wonders where the equity of law and the liberty of old times have disappeared,  

while in the *pro Cluentio* he identifies law as the foundation of liberty and source of *aequitas*; 'law is the bond that ensures those privileges we enjoy in the Commonwealth, the foundation of liberty, the source of justice (*hoc enim vinculum et huius dignitatis qua fruimus in re publica, hoc fundamentum libertatis, hie fons aequitatis*)'.  

Ultimately the laws, in enshrining Roman civic rights equally for all citizens, succeeded in establishing *aequa libertas*, equality in legal rights.  

However, laws ensured *aequa libertas* not only by guaranteeing all members of society the same rights, but also by observing the same on the same basis; they guaranteed, that is, that protection did not vary across the citizen body depending on personal condition or socio-economic status, but was equal for all. No one, therefore, could consider himself immune from legal sanctions, since the law was applied to all equally. In 187 BC, according to Valerius Antias, the accuser of Scipio Africanus maintained that 'No citizen should be so eminent that he could not be questioned by the laws, and that nothing served so much to promote equal freedom as the liability of the greatest men to stand trial.'  

Despite the dubious historicity of the episode, the values appealed to here show how by at least the first century BC the idea of *aequa libertas* was embodied in the notion of equality before the law.  

After all, as Cicero could claim in his ideal code, the very essence of law (*lex*) was that it bound all alike, allowing the individual 'to live with his fellow citizens in accordance with a fair and equal system of law (*aequo et pari iure*), not in grovelling submission to others nor lifting himself above them'. He also formulated beautifully this notion in his account of the rise and fall of Roman monarchy in the *de officiis*: 'among our ancestors once upon a time men of good character were established as kings in order that justice might be enjoyed. For when the needy were being oppressed by those who had greater wealth, they fled together to some one man who excelled in virtue. When he protected the weaker from injustice, fairness was established and he held the highest and the lowest under an equality of justice. The establishment of laws and the institution of kings had the same cause. For a system of justice that is fair is that which has always been sought: otherwise it would not be justice. As long as they secured this from a single just and good man, with that they were content. When it ceased to be so, laws were invented, which always spoke to everyone with one and the same voice (*leges sunt inventae, quae cum omnibus semper una atque eadem voce loquentur*)'.  

Laws, therefore, guaranteed equal liberty to all Roman citizens on the same basis. They provided all with the same set of civic and political rights (at a minimal level), including the right to vote, although not, it should be noted, the right to govern.  

As Cato the Elder's famous fragment states: 'it is proper that we enjoy the same rights, law, liberty, and commonwealth: glory and honour only in so far as anyone had procured them for himself (*saeque, lege, libertate, re publica communiter uti aperit; gloria atque honor, quomodo sibi quisque struit*)', and Cicero reports the orator M. Antonius to have wished 'to be equal with others in liberty, the first in honour (*libertate esse parum ceteris, principem dignitati*)'.  

To establish and maintain the citizens' liberty, it was important that all members of the political community shared the same rights and did so on the same basis. *Gloria, dignitas* and *honor*, on the other hand, were dependent on personal circumstances and merit, and could allow for individual differentiation amongst the citizen body.  

If laws assured the application to all Roman citizens on the same basis of those rights in which the Romans discerned their liberty, and gave institutionalised expression to the people's will, it follows that in Rome citizens' subjection to laws was not regarded as a condition of servitude, with laws perceived as exercising arbitrary interference over the citizens' life, but rather as a means enabling the citizens to be free.
In a public trial, in his attempt to persuade the jury of the innocence of Cluentius, Cicero stated that the strict terms of the law under which his client was prosecuted should be respected, regardless of whether they appeared inequitable. In order to convince his audience, Cicero famously proclaimed that all Roman citizens were in a state of servitude to the laws, since in them resided one of the institutional guarantees of freedom: 'We are all slaves of the laws in order that we may be free.' Giving voice to an opinion which must have been shared by his audience, if he entertained any serious hope of winning the case, Cicero argues that 'it is by the laws that we obtain all our blessings, rights, liberty, and our very survival.'

As in the case of Ulysses, who asked his sailors to chain him in order to avoid being enticed by the voices of the Sirens, so the citizens could protect themselves as a body against the threat of personal and factional interests by enacting legislation. Just as the restraining actions of the sailors were the means by which Ulysses protected himself from falling into the Sirens' trap, so the interference of the laws would protect the citizens from personal and factional interests. Since, however, this form of interference was ultimately determined by its subjects, that is, since it was not arbitrary, it would not function as an imposition of alien will but rather as a form of self-control. It follows that this sort of interference (that is non-arbitrary interference) would not reduce the people's freedom in the way that the exercise of arbitrary interference would.

In practice, laws certainly imposed limitations on the way citizens chose to conduct their lives, and exercised an element of coercion on citizens in threatening punishment for disobedience and imposing penalties on those who contravened them. Both Livy's portrayal of the women's fight for the repeal of the lex Oppia in 195 BC, and, more widely, Roman Republican discourse on the opposition to sumptuary legislation, attest a sense of uneasiness towards the excessive intrusion of the laws into citizens' lives.

However, since from a theoretical point of view legislation was enacted by the concourse of the whole citizen body, laws were perceived (or should have been perceived, as the supporters of sumptuary legislation claimed) as an expression of the general will of the community. The active contribution of each member of civic society to the formulation of laws would guarantee that no one in possession of the juridical rights of free citizens could justifiably complain that their will had been neglected. The laws allowed

the members of the community to live according to their own will, and not at the mercy of somebody else's.

Thus, for example, Livy represents Cato the Elder as claiming that it would be very shameful for the consuls to find themselves in the position of having to accept laws imposed on them by a secession of women, as formerly they had to tolerate laws imposed by a secession of plebeians. Laws should be voted on by the whole citizen body, he claims, so that particular interests would not be allowed to prevail and a section of society would not be forced to live according to someone else's will. According to him, the only issue that should concern the voters was 'whether the proposal which is laid before you [citizens] is in the public interest or not.' Participation in the voting process, without undue pressure, by all Roman male citizens assures that only laws that promote public good will be enacted. 'No law,' argues Cato in Livy's narrative, 'is entirely convenient for everyone; this alone is asked, whether it is good for the majority and on the whole. If every law which harms anyone in his private affairs is to be repealed and discarded, what good will it do for all the citizens to pass laws which those to whom they are aimed will at once annul?'

Thus, laws enacted by the whole citizenry and expressing the common good were a means to create a status of liberty for Roman citizens and for the Roman commonwealth. It follows that the rule of law should always be upheld if the status of liberty was to be maintained. If this was not the case, the citizens would be exposed to the discretionary powers of those in command, and thereby placed effectively in a condition of servitude.

As Sallust has Caesar argue in the de Casilinae conturbatione, this is what happened in Athens under the so-called Thirty Tyrants and in Rome under the Sultan regime. In Athens, he says, 'these men [the so-called Thirty appointed to maintain the Spartan hold upon Athens] began at first by putting to death without a trial the most wicked and generally hated citizens, at which the people rejoiced greatly and declared that it was well done. But afterwards their licence increased (paullum licentia crevit), and the tyrants slew good and bad alike at pleasure and intimidated the rest. Thus, the country was reduced to slavery and had to pay a heavy penalty for its foolish rejoicing (ita ciuitas servitute oppressa stultae laetitiae gravis poenas dedit). In Caesar's opinion (as represented by Sallust) the city of Athens, abandoned to the discretionary powers of its rulers, was reduced

120 Cic. Cluent. 146. Brunt 1988: 357 interprets this passage as a reference to the rights of the higher orders, rights which were protected by law.
121 Petit 2009: 47.
122 See Actea 2017 with also discussion of the sources.

123 Livy 34.2.7.
124 Livy 34.2.6.
125 Livy 34.1.5.
126 On reconstructing late Republican political debates by recourse to the speeches in Sallust see Introduction: 58.
127 Sall. Cat. 91.29–33.
to a condition of slavery, and its citizens, living under the domination of their rulers, even lost their lives at the rulers' caprice.

The same point is also illustrated by an example that Sallust makes Caesar draw from recent Roman history. With Sulla's accession to power in the 80s, people like Damasippus and others of his kind who had become prominent at the expense of the state were executed... All declared that those criminals, who had vexed the country with their civil strife, deserved their fate. But that was the beginning of great bloodshed. Whenever anyone coveted a man's house in town or country or even his goods or garment, he contrived to have him enrolled among the proscribed. Thus, those who rejoiced at Damasippus' death were before too long hurried off to execution, and this did not end until Sulla provided them with all the riches they wished.

Caesar's concern, as formulated by Sallust, is that this state of affairs could occur again in Rome, if the Catilinarian conspirators are sentenced to death without trial in violation of the leges de provocatione. While under Cicero's leadership, he is made to claim, Rome does not incur any risk of this sort, but 'when the control of the government falls into the hands of men who are incompetent or bad, your new precedent is transferred from those who well deserve and merit such a punishment to the undeserving and blameless'. Thus, when a breach is made in the rule of law, liberty will depend on the virtus, the moral qualities, of the leaders, and individual citizens will find themselves subject to the discretionary powers of their rulers. Against the oppression of blameless citizens by prevailing factions, Roman ancestors devised the laws of provocatio, which, according to Caesar, guaranteed the citizens' liberty from the coercive behaviour of a magistrate, and, by preventing any one faction from prevailing, preserved the liberty of the commonwealth from the subjection to the will of only one section of the community.

To preserve a state of liberty laws should be upheld. However, in order to do so, it was essential that laws were also known to everyone or, at least that knowledge of them was potentially available to everyone who wished to have it. Their application should not exclusively be left to those in power, from whose discretion the power of interpretation and manipulation had to be removed. In Dionysius of Halicarnassus' account of the early years of the Republic, since the consuls had retained the kings' discretion in interpreting the laws, not yet published nor fully known to the citizens in general, the popular spokesmen fought for equality under the laws as a security of freedom.

As is often repeated, these texts, written at the very end of the first century BC, reflect issues and values proper to the late Republic. Their preoccupations must have been current at that time, since in 62 BC the lex Junia Licinia was passed to enforce more strictly the provision of the lex Caecilia Didia, which required that laws should be promulgated three times before they were proposed to the comitia, and further enacted that, in order to prevent forgery, a copy of every proposed statute should be deposited before witnesses in the aerarium. This proposal once again reinforced the idea that a proper knowledge of the laws, alongside the possibility of them being altered at the discretion of whoever might have access to the text, was crucial to the establishment and preservation of liberty.

Conceptually elaborated as the antonym of the metaphor of slavery, Roman political liberty corresponded to the status of the citizen sui iuris. This status, characterised by the absence of the possibility of being arbitrarily interfered with in the exercise of one's own choice, was commonly understood as the basic meaning of liberty, established by the possession of civil and political rights, and guaranteed by the rule of law. The juridical matrix composed by the right to provocatio, the right to suffragium and the legal prerogatives of the tribune of the plebs, expressed in the laws, allowed Roman citizens to conduct their lives according to their own wishes and without experiencing subjection to the whims or preferences of others.

By the late Republic no one claimed that the right of provocatio should be dispensed with, or that the tribunate of the plebs, despite all the troubles for which it might have been considered responsible in the commonwealth, should be abolished tuius curi. Both legal and institutional bastions of Roman liberty were even preserved in Cicero's ideal code which, by his own admission, was conceived as the legal and institutional framework of the best res publica.

111 Cic. Ver. 33, Phil. 3.8, Sert. 335, Att. 3.9.3 and 4.18.5; Suet. Carol. 28.
112 Where does 1950: 7 refer, in context, to, of course, whom he conceives that Liberum at Rome and with regard to Romans is not an innate faculty or right of man, but the sum of civic rights granted by the laws of Rome; it consequently rests on those positive laws which determine its scope, since this formulation does not take into full account the role of laws as expression of popular will, and thereby as a means necessary to the establishment of liberty.
These institutions were so ingrained in the Roman political culture of the Republic that, by the first century BC, they were perceived as essential to the preservation of citizens' liberty. Therefore, the disputes about their role, when they occurred, were ultimately concerned with the limitations that should be applied to these rights and institutions, but not with their very existence.

In practice, however, this legal and institutional matrix was not sufficient on its own to protect the citizen's liberty, since, in the reality of the dynamics of power relations, the actual protection of an individual's liberty would require more than simply the establishment of a magistracy or the enactment of laws, however powerful and well thought-out they might be.

In order to protect fully the citizen's liberty, alongside certain institutional arrangements, it was necessary, for example, to implement an actual distribution of political power, that empowered the weakest sections of society, limited the elite's supremacy, widened access to knowledge and fostered the free exercise of public opinion.

However, although in the so-called 'struggle of the orders' the plebeians are also represented as fighting for these forms of protection, they are not presented as part of those basic rights essential to the establishment of the citizens' status of libertas. In the Roman society of the late Republic, the actual redistribution of power, the creation of an informed public opinion or the diffusion of knowledge were conceived of as important means of strengthening and preserving the citizens' status of liberty, but, however essential, were not counted amongst Roman basic liberties.

In the late Republic, the Romans agreed that, in order to be free, two important conditions should be met: first, all citizens should be equally endowed on the same basis with the same basic liberties, and second, that the constitutional arrangements of the commonwealth in which they lived should be of such a nature as to enable the commonwealth to be in the position neither to exercise any form of domination over its citizens, nor to be itself dominated by any external power. The next chapter will investigate the notion of a free commonwealth as held by the Romans of the late Republic.

For the Romans of the late Republic, an individual could act as a free citizen (that is he was in possession of those rights that allowed him to enjoy the life of a free citizen) only when living in a free commonwealth.

The Romans conceived the freedom of the commonwealth in the same terms as the freedom of the individual citizen. As the loss of political liberty of the individual Roman citizen was analysed in terms analogous to those of falling into a condition of enslavement or servitude, so too the loss of liberty of a commonwealth was conceptualised and expressed in these same terms. According to late Republican writers, to describe a civil association as free was to say that this association was not in a condition of dependence upon the will of another, but on that of its citizen-body as a whole.

Building on the metaphor of the body politic as human body, and conceiving the absence of liberty of the commonwealth as a condition of domination, they maintained that the status of liberty could be lost under two distinct circumstances. First, they claimed that the liberty of the commonwealth could be lost when a civic community falls into a condition of dependence on another community, usually as a result of conquest. Second, and more importantly in the late Republic, they maintained that a civic community loses its liberty when it falls under the power or control of an agent distinct from the sovereign body of the citizens, be it either a monarch or a group of people. In both cases, the language adopted to describe the commonwealth's condition of enslavement or servitude was the same as that adopted to describe the person's loss of liberty.

In describing the loss of liberty of a whole community as a result of conquest, the Romans expressed the concept of domination by an

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54 For an interesting reading of the notion of libertas in Livy's account of the struggle of the orders as a felt concept see Hammer 1988: 105ff.
external power by reference to the condition of slavery, whilst describing the sovereign independence of a people as being a community in sua potestate or under suae leges. Livy, for example, describes the people of Collatia, under the kingship of Tarquinius Priscus, as renouncing the holding of their own potestas, when they surrendered themselves, the city, the lands, water, boundary marks, shrines, utensils, all appurtenances divine and human into a condition of servitude to the king and the Roman people (omnia in meam [the king's] populi Romani diciron), just as in 396 BC the people of Veii or in 167 BC Macedonia and Lyricum had come in potestate populi Romani.5

The community that loses its liberty is reduced to living in a condition of dependence on the goodwill of those into whose power it has fallen and who are thereby able to exercise their alien will over them. Thus, the dominated community is not in control of its own affairs and lives at the mercy of the dominating peoples, who may exercise compassion towards them or even follow the wishes of those conquered, but who still retain the power to modify their behaviour at its whim. Thus, in 210 BC Scipio, out of his goodwill, decided to send home the prisoners who had fallen in potestate populi Romani, sparing their lives and restoring them to a status of liberty; whilst in 195 BC Cato decided to sell at auction the citizens of the Spanish communities which had been reduced to the subjection of the Roman people (in potestate populi Romani).6

Thus, a community was in a condition of servitude when in someone else's potestas, that is under the power or the dominion of anyone but its own citizen-body. This latter predicate was described as being subject to suae leges, which corresponded to the Greek ὁμοια μορφή, and which was qualified by Livy in the words of a Greek spokesman as the possession of libertas, 'which stands upright by means of its own strength without depending on the will of anyone else'.7

The second circumstance in which a commonwealth could lose its liberty was when an agent, a group or an individual, arrogated to himself or themselves the power to make laws binding on the whole community.8 When discussing Carthage's political affairs at the very beginning of the second century BC, Livy describes the order of the judges acting as dominii (judicium ordo Carthaginis ex tempestate dominabatur) over the Carthaginian citizens, who, left in the potestas of the latter, had their property,

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1 Livy 2.8.2. See also, for example, Livy 8.2.11, 8.25.5, 9.65.10, 9.24.3, 24.31.12, 24.32.4, 24.39.12. On Veii see Livy 5.20.3 and 45.16.7.
2 Livy 26.49.8 and 34.16.9-10.
3 Livy 35.32.11. See also 37.44.46 and 35.32.5. 4 Wisniewski 1970: 3.

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reputation and lives under the judges' control (res fana vitae omnium in illorum potestate erat). In this commonwealth, which Livy describes as a regnum, by virtue of their superbia and opes, the judges behaved as above magistrates and laws ('ordinem judicium, praedaeque superbia atque opibus nec leges quiescunt esse nec magistratus'). In Livy's opinion, the Carthaginian commonwealth had been reduced to such a condition of slavery by the institutional and legal arrangements which protected the judges' position within the commonwealth. Their power was for life and was strengthened by two main factors, a corporate attitude which was so powerful that if 'a man offended one of the judges he made enemies of them all', and the absence of a system of accountability, since no one could be found 'to bring accusations before the hostile judges'.9

In the picture drawn by Sallust in de Catilinae coniuratione, a similar destiny to that of Carthage had befallen Rome. In words ascribed to Catiline, the res publica has fallen into a state of subjection to the pauci potentes, and requires the loyalty and the support of Catiline's followers in order to be freed from servitude (in dicionem) to their dominium. 'My resolution,' says Sallust's Catiline, 'is fired more every day, when I consider under what conditions we shall live if we do not take steps to emancipate ourselves (nisi nosmet ipsi vindicamus in libertatem). For ever since the commonwealth fell under the jurisdiction and sway of a few powerful men (postquam res publica in paucorum potestate erat attque dicionem concessit), it is always to them that kings and potentates are tributary and peoples and nations pay taxes. All the rest of us, energetic, able, nobles and commons, have made up the mob, without influence, without weight, and subservient to those to whom in a free commonwealth we should be an object of fear.'10 The same language as Sallust's, which describes the act of restoring the commonwealth's liberty in the same terms as those adopted to describe the procedure of slave manumission (vindicare in libertatem), is also found in the Res Gestae. There Augustus famously claims to have liberated the res publica from the domination of the pauci (rem publicam a dominatione factiis oppressam in libertatem vindicavit), once again equating the commonwealth's condition of oppression at the hands of a group to the condition of subjection to arbitrary interference experienced by slaves.11

A similar description to this, of oppression, that is, by a group of people, is also given by Roman authors when they portray the commonwealth's fall into a condition of servitude at the hands of a single individual, often

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7 Livy 33.45.1ff. 8 Sall. Cat. 20.6-7. 9 RG 1.2. See Roller 2001: 214 and 252.
therefore represented as a tyrant. Cicero refers several times to the condition of servitude into which the commonwealth had fallen as a result of Caesar's and, later, Antony's pre-eminence. When the res publica fell under Caesar's control, Cicero claims, it lost its capacity to act according to its own will and thereby fell into a condition of slavery. Although other eminent members of the community might perceive Caesar's decisions as appropriate, no sense of true satisfaction could arise from these resolutions, since the commonwealth was in a state of servitude. These resolutions, in fact, had been taken not by the whole community, but by a single individual, at whose mercy the res publica lived. Caesar carried out these enactments as a dominus and the commonwealth was in sua potestate: what was in his power to concede was also in his power to revoke (ab hoc ipso quale dantur ut a domino, rursus in eisdem sunt potestate). As the coin issued by Brutus in 49/2 BC shows (Figure 4, in Chapter 1), Caesar could be depicted as a tyrant, who imposed his will over the whole community and reduced it to a condition of slavery, a condition which was conceived and expressed in the same terms as that of individual slavery, as the visual language of the pilus indicates. Caesar's assassination could therefore be qualified as tyrannicide, the enactment of which restored the liberty of the commonwealth as a status of non-arbitrary interference.

In a letter to Cicero, Asinius Pollio widens the focus of the discussion from the specification of Caesar's role in the commonwealth to that of any individual who arrogates to himself the power to impose his will on the rest of the community. Describing the commonwealth's loss of liberty as a falling under another's potestas, it is the existence of the dominus personae, regardless of his identity, that deprives the res publica of its liberty: 'If events are so developed as to put all power again in this hands of one man, whosoever that man is, I declare myself his foe; and in defence of liberty there is no danger from which I should either hold back or seek to excuse myself (rursus in potestate omnis unius sit, ... pro libertate).'

Although on the whole Roman independence was not a paramount concern to contemporaries, it was clear that for late Republican Romans the preservation of liberty required the maintenance of the community's undominated status, and hence was strictly linked to the notion of power on which it rested. Roman dominion over the empire guaranteed the res publica the absence of arbitrary interference from external powers.

On coins Libertas was represented either wearing the diadem of victory, or accompanied by Victoria crowning her, or even on the obverse of coins with Victoria crowning Rome on the reverse (Figure 5). This conceptual link between the ideal of libertas and the notion of Victoria, also hinted at by the concomitant date of the dies natalis of the temple to Jupiter Libertas and the temple to Jupiter Victor, was an expression of Rome's privileged position as world power, which assured her liberty from the domination of external powers. As Cicero states, 'Rome far excels other states in the prerogative of freedom'; as she 'alone is and has always been in the highest degree free', while 'other nations can bear servitude, but liberty is proper to the Roman people', since by divine will Rome rules over all other races.

However, if, on the one hand, the awareness of Rome's position as a world power made the analysis of the loss of liberty as a result of conquest less prominent in the political discourse of the late Republic, on the other hand, Sulla's dictatorship, Pompey's extraordinary powers, the establishment of the so-called first triumvirate, Pompey's sole consulship and Caesar's dictatorship (just to mention some of the most remarkable political events of the first century BC) could have been, and indeed were, described as destroying the liberty of the commonwealth.

12 See, for example, Cic. Phil. 3.8-9, 3.35-6; Div. 2.6; Fam. 6.5.3, 7.28.3; see Anna 2001a.
13 Cic. Att. II.22.4. 14 See Chapter II.42.
16 See Chapter II.42.
17 See below 142-3.
The rise to power of individuals or groups, who could impose their will on the commonwealth and ultimately its citizens, was described as a predicament where the community had fallen into a condition of slavery, whose body politic was thereby divested of its capacity to act according to its own will.

All Romans agreed that, in order for the commonwealth to be free from domination of an external power as well as from domination of an internal agent, be it an individual or a group, the civic community had to be self-governing; the citizens' sovereign body had to be in control of the decision-making process. Only in such a community could the liberty of the individual citizens be upheld. As a result, an essential condition for the liberty of the commonwealth was that the people had to be the source of law, the actual expression of the citizens' will, and geared towards the common good. In addition, the rule of law ought to be always upheld. This belief was deeply shared by all Romans, whatever their political persuasion or contingent political stance, since the laws were the essential means whereby the liberty of individual citizens, as they all understood and conceived it, could be protected.

According to the Romans, for the citizens to be free, it was not sufficient merely that they acquired the rights which protected basic Roman liberties. Although, according to ancient tradition, some of the rights conceived as guarantors of liberty, such as the right to provocatio and the right to suffragium, had already come into existence under the monarchy, under those circumstances Roman citizens were not considered able to enjoy a free life for two fundamental reasons. First, they were not able to act as free men, because not all the basic rights ensuring they could live as free men had been established. Second, even if they could have enjoyed all those basic rights which protected their liberty, they would not have been able to conduct a free life in a commonwealth governed by a monarch or a faction and thus itself unfree, since it rested upon the goodwill of those in power.

However, although all Romans of the late Republic shared these principles, they disagreed on the legal and constitutional arrangements to be implemented in order to establish and preserve the commonwealth which could best protect the citizens' liberty. What they disagreed on were the conditions and means by which libertas could be sustained or lost, and the related issue of how much liberty each social and political group should be allowed to have and exercise.

The kernel of the disagreement lay in the institutions and laws which should be implemented in order for the commonwealth to be a self-governing community. The different formulations that popular sovereignty could take and the institutional specifications that it should embody constituted a conceptual divide within the intellectual world of the late Republic.

Diverging on the institutional and political means to achieve and preserve liberty, these two distinct styles of political reasoning can be described as two separate ideological 'families' present in the wider Republican tradition of thought. Formulated in late Medieval Europe, Republicanism was a notion (as well as a term) unknown to late Republican thinkers and politicians. Adopted by modern historians, from reflection on ancient Roman texts, as a heuristic term of taxonomy to give a retrospective shape to the past, it poses as the centre of attention the unifying feature of the 'Republic' as the key constituent unit of political life, fostered by a nostalgic view of the collapse of the Roman res publica.

Within this wider tradition, it is possible to identify two different, but in themselves more or less homogeneous, families of thought, drawn from Greek philosophical texts, which in the intellectual world of the late Republic displayed two distinct orientations on questions relating to fundamental evaluative terms such as liberty, justice and sovereignty. Thus, contrary to the persuasive claim that Roman public debates were dominated by an ideological monotony, it is possible to identify two distinct intellectual traditions of 'Republicanism', two styles of political reasoning, which yielded two different sets of referents for those essential values such as justice or liberty.

These two intellectual traditions, which I have called 'optimates' and 'populare', should not be confused with reified philosophical systems. They formed two distinct views which ultimately articulated two different conceptions of politics, nourished by Greek philosophy but without identifying themselves with any specific philosophical doctrine. These two intellectual traditions came to be deployed in the political struggle of the late Republic and assumed a life of their own, finding a new set of associations and references in Roman political discourse.

21 Note Cicero's arguments against the repeal of the lex Opius as reported by Livy 14.3.1-4.39: the law is for the common good, but women are unable to recognize it as such. See also 65, 66-9.
22 See, for example, Cic. Rer. 2-43.
26 Moretti-Mac 2004: 204-40 with specific reference to senatorial debates.
27 For the issue of ideology and the distinction between populare and optimates see Introduction: 7-8.
As Griffin has most convincingly argued, Greek philosophy provided politicians at Rome with the language and conceptual framework in which choices could be made and justifications articulated. As he very effectively puts it, 'to write or speak in philosophical terms, even insincerely, is to think in those terms' (Griffin and Barnes, 1989: 56). These intellectual traditions did not require the politicians' personal and permanent commitment to the doctrine of a specific school, nor to the style of reasoning proper to one or the other of these traditions. Rather, they provided them with political ideas and values against which to examine the issues at stake and positions adopted.

Confronting these two intellectual traditions, the so-called 'optimate' and 'populare', it is possible to detect two basic positions on the nature of institutional arrangements, especially in regard to the role of the popular assembly and the notion of justice, which organised Roman political discourse of the late Republic.

The main authors of 'optimate' tradition displayed a significant homogeneity as to the political reasons why one should prefer the mixed constitution as the best form of government. Despite considerable differences, these authors shared on a basic level certain orientations on justice and the means to achieve liberty. Drawing from Dicaearchus, Polybius and Cicero (but also Livy, Dionysius of Halicarnassus and, to a certain extent, Pseudo-Sallust) propounded a conception of res publica which, whilst recognising that sovereignty lay with the people, gave considerable predominance to the senate.

The 'populare' tradition, on the other hand, became prominent in Roman political discourse with the tribunates of the Gracchi in the second half of the second century BCE. Informed by Greek philosophy, it saw the civic community as the ultimate owner of all goods and empowered its institutional form, the popular assembly, to arrange their fair distribution. A submerged ideology, it is attested only in fragments of speeches and the reported discourse of the democrats in Cicero's de republica. These attestations, however fragmentary, show a clearly shared way of thinking about politics which is very much distinct from the 'optimate' way of reasoning. Basing their Republican framework on a significant role for the popular assembly, they advocated a form of corrective justice which required the implementation of some scheme designed to secure a more egalitarian distribution of property. Since the enactment of wealth redistribution was highly controversial, their shared understanding of justice, based on the notion that each section of the political community is entitled to the same amount of power, led them to fight for equality (at least) of political rights. Ultimately, therefore, the two intellectual traditions differ in the institutional arrangements they consider necessary to preserve the libertas rei publicae and on the related issue of how much liberty each section of society is entitled to have.

As mentioned above, no Roman politician was univocally devoted to one or the other intellectual tradition, and it is certainly not the case that those politicians who are often described in our sources as optimates made exclusive recourse to the 'optimate' tradition of thought, nor that those described as populares (even just for the year of their tribunate) constantly adopted the 'populare' tradition.

These intellectual traditions provided Roman politicians, whatever their stance or personal inclination, with the conceptual categories to analyse political issues, frame their choices, and justify their actions. However, the fluid nature of their application should not hide them from our sight.

THE LIBERTY OF THE COMMONWEALTH: THE 'OPTIMATE' TRADITION

The authors of the so-called 'optimate' intellectual tradition displayed similar orientations on questions relating to liberty, justice and sovereignty. Drawing from Greek philosophy, from Plato to Dicaearchus and Polybius, they shared the belief that the best, and indeed only, means to preserve the citizens' liberty, understood as a condition characterised by the absence of dependence on someone else's will and guaranteed by a series of rights, was the organisation of constitutional arrangements as a mixed and balanced constitution.

Despite some, at times significant, differences of emphasis, Polybius, Cicero and Dionysius of Halicarnassus all claimed that the best form of government to preserve the citizens' liberty was a mixed and balanced constitution, primarily for two reasons. First, they all claimed that this form of government, based on the criterion of distributive justice, allowed for diverse social interests to be valued in their difference and be kept in a state of equilibrium. Second, they maintained that by allowing the participation in governance of all political and social groups in a fashion commensurate with their economic status, and recognising the role of popular sovereignty in entrusting the administration of power to the senatorial elite, the mixed and balanced constitution neutralised the tensions between the mass of citizens and the social-political elite.

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56 Griffin and Barnes 1989: 56.