HISTORY OF EUROPEAN IDEAS
https://doi.org/10.1080/01916599.2025.2584863

Routledge
Taylor & Francis Group

REVIEW ARTICLE

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Arbitrium and *potestas* in Ancient Rome: On Quentin Skinner's Liberty as Independence

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ABSTRACT

This paper engages with the contributions of ancient Roman sources, as reconstructed by Quentin Skinner, to the development of the idea of liberty as independence. Focusing on the notion of liberty as a status of non-subjection to the arbitrary power of any other person or institution, the paper concentrates mainly on two points: first, it examines the Roman understanding of *arbitrium*, which, contrary to the early modern understanding, emphasises the role of rational choice constrained by virtue and moral conformity to prevailing norms. Second, it considers the conceptual implications of the Roman juridical understanding of liberty, which having *dominium* rather than *potestas* as its definitional antonym, was conceived as self-ownership and realised only in the public sphere. A closer investigation of how the Romans elaborated and discussed these ideas may help clarify what they meant by liberty and, in turn, enable us to cast in sharper relief the use that later thinkers made of them.

KEYWORDS
Roman liberty; Roman Republic; *arbitrium*; *dominium*; *potestas*

The main aim of the book is to outline and explain a major transformation of the meaning of liberty in Anglophone discussions. It traces how an understanding of liberty as a status of non-subjection to the exercise of arbitrary power by someone else was displaced. This liberty was understood as a status endowed with the ability to act according to one's autonomous will and the ability to live as one chooses. As Skinner succinctly and effectively puts it, this liberty is construed as independence. However, in the final decades of the eighteenth century, this ideal, Skinner shows, was replaced as the hegemonic ideology by the rival contention that liberty simply consists in not being restrained or interfered with. Liberty came to be construed as an absence of either physical or coercive restraint. The main reason for this displacement, Skinner tells us, was not the rise of modern commercial society, but rather opposition to the claims of liberty as independence and self-rule among equal citizens during the American and French revolutions. In essence, it was the democratic dimension of liberty as independence that was at the origins of its displacement.

The whole argument of the book is predicated on the important analytical distinction between, on the one hand, liberty as a predicate of choice and action, the ability to choose

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and act freely, and, on the other, liberty as a status, that is the status of a free person, who is not subject to the arbitrary power of any other person or institution within civil society or the state.

The origin of the idea of liberty as a status of independence, Skinner argues, can largely be traced to two (or arguably three) main traditions of Roman sources: the first, and most prominent, comes from the historians and philosophers of the late Republic and early Principate, namely Cicero, Sallust, Livy, and Tacitus; the second is found in the work of the classical jurists, whose writings survive thanks to Justinian's *Digest*, particularly Florentinus, Marcianus, Modestinus, and Gaius, whose *Institutiones* compiled foundational concepts of Roman law for pedagogical purposes. The third, arguably distinct, branch of the juridical tradition concerns the so-called *lex regia*, as formulated by Ulpian in the third century CE and preserved in the *Digest*. The relationship between this tradition and the *lex de imperio Vespasiani*, an important inscription dated to 70 CE and rediscovered by Cola di Rienzo in the fourteenth century, has been, and to some extent remains, the subject of intense scholarly debate.[1]

Skinner's focus is not on the ancient sources per se, but rather on the concepts and arguments that, present in these sources, were cited, adopted, and even moulded into new arguments by the early modern writers on which he concentrates. Nevertheless, a closer investigation of how the Romans elaborated and discussed these very ideas may help clarify what the Romans meant when using these concepts and, hence, would enable us to cast in sharper relief the use that later thinkers made of them.

In Republican Rome, liberty was conceptualised as a status characterised by the absence of dependence on the arbitrary will of others; this is the understanding of liberty appropriated by early modern thinkers. In this formulation, the notion that plays a central role in Skinner's analysis is that of *arbitrium*. *Arbitrium*, we are told, consists in the power of the will to act with impunity.

According to Skinner,

> Livy, and later Tacitus, both summarise what liberty requires by speaking of the need to outlaw what they describe as arbitrary power. By this they mean a power to act entirely according to one's own *arbitrium* or will, and thus entirely at discretion, without being subject to any form of control. (22)

Although at the turn of the seventeenth century translators of Livy and Tacitus, Philemon Holland, Henry Savile, and Richard Grenewey rendered *arbitrium* as 'at will and pleasure', or 'discretion', or even 'sovereign will' in the case of the *arbitrium principis* of Tiberius, the noun *arbitrium* in the texts of the late Republic and early principate, in particular Cicero, Sallust, Livy, and Tacitus, did not mean mere will, personal discretion without any form of control.

As a review of the entry *arbitrium* in the *Thesaurus Linguae Latinae* shows,[2] the term primarily denotes evaluation, choice, decision, power, ability, control, supervision, command, authority, opinion, and initiative – as well as wish, desire, inclination, whim, and caprice. As it has been recently shown, for example, when *arbitrium* is translated accurately, many passages in Tacitus' *Histories* yield a very different reading of the role of the soldiers to the one commonly held: the soldiers do not act on a whim, but according to their own initiative.[3] They acted, or were perceived as acting, as an armed citizen body that could take initiative and possessed the will and means to

adjudicate their sententia (or *iudicium militum*), so that their '*arbitrium* was not a mere unreasoned arbitrariness but rather a rational choice.'[4]

As Benveniste notes when discussing the etymology of *arbitrium*/*arbiter*,

> the *arbiter* is a *iudex* who acts as an *arbiter*, he judges by coming between the two parties from outside like someone who has been present at the affair without being seen, who can therefore give judgment on the facts freely and with authority, regardless of all precedent and in the light of the circumstances. This connection with the primary sense of 'witness who did not form a third party' makes comprehensible the specialization of the sense of arbiter in legal language.[5]

Alongside the meaning of judgment, in a judicial context, this legal dimension of the term came to become predominant in the Republic, taking a specialised role distinct from that of a judge, who, rather than an *arbitrium*, imparted an *iudicium*.

In 66 BCE, in his *pro Roscio comoedo*, Cicero undermines the argument of his opponent by claiming that his adversary had adopted two legal procedures, *iudicium* and *arbitrium*, in an improper manner: 'a judgement is one thing, arbitration is another (*aliud est iudicium, aliud est arbitrium*),' Cicero states,

> a judgement deals with a definite sum, arbitration with an indefinite sum. We come before a judge on the understanding that we either gain or lose the suit entirely; we come before an arbitrator with the expectation, neither of losing everything nor of getting as much as we asked … What is the formula in a judgement? It is precise, severe, and simple: IF IT IS SHOWN THAT 50,000 SESTERCES OUGHT TO BE PAID … What is the formula in arbitration? It is mild and moderate: AS MUCH AS IT SEEMS FAIR AND JUST SHOULD BE GIVEN.[6]

Unlike a *iudex*, whose *judgement* was bound by a strict juridical framework, severe and precise as Cicero put it, and left no room for personal interpretation, the *arbiter* applied the notions of fairness and equity by means of *bona fides* to form an opinion about a case. As Seneca puts it when discussing the nature of a benefit, which should not be actionable by law,

> a judge is restricted by the formula of instructions, which sets definite bounds that he cannot exceed, whether the other [the arbitrator] has entire liberty and is hampered by no bonds (*libera et nullis adstricta vinculis religio*): he can lessen the value of some fact or augment it, and can regulate his opinion not according to the dictates of law or justice, but according to the promptings of humanity or pity (*non prout lex aut iustitia suadet, sed prout humanitas aut misericordia impulit*).[7]

As Seneca argues, while the *iudex* must operate within the strict confines of the law, the *arbiter* has complete freedom to exercise his judgment according to his values and temperament. This, however, is not tantamount to say that the *arbiter* was expected to act erratically, rather he was expected to act as a *vir bonus*, dispensing judgement not by virtue of technical juridical expertise but on the basis of *bona fides*, adhering to a shared system of values and customs that ensured his judgement was not whimsical.[8] This invisible witness, to adopt Benveniste's formulation, who had the capacity to impart judgement in judicial actions, was not expected to collect all the evidence and ascertain the truth about the case at hand.[9] His role was instead to provide an estimate, an assessment of the case on the basis of good faith and all parties involved were expected to trust him, a *vir bonus*, who embodied the shared ideal of fairness.[10] The *arbiter*, who

was not a professional official and was appointed either by the praetor or by the parties in dispute, once he had rendered his award, 'ceased to exist.'[11]

In the late Republic, the verb *arbitrari* came to have as its prevailing meaning the idea of passing judgement, and, in judicial contexts, the more specialised meaning of doing so in the capacity of an *arbiter* (as opposed to a *iudex*).

In the classical authors, to whom Skinner refers, in the vast majority of cases, *arbitrium* meant a decision or judgement, understood as the outcome of personal will or choice. It was in the 17th and 18th centuries that *arbitrium* took on the meaning that Skinner, and, most importantly, the early modern translators of these Latin texts attribute to the term in antiquity, that of a decision 'based on personal whim and discretion' and, when applied to power, 'unrestrained' and potentially 'despotic.'[12] With the firm association of *arbitrium* with the *princeps* and his power to generate legally binding provisions, what, in the classical period, was understood and perceived as 'will held in check by virtue', and, in Medieval times, 'by reason,' came to express the caprice of power, what, in their fight against the ancien régime, the philosophers and legal reformers of the Enlightenment perceived as the king's 'arbitrary' exercise of his will.[13] With the establishment of the princeps as legislator, the principle of *arbitrium* moved from being a *facultas voluntatis et rationis* to serving as the foundation of the *princeps*' power as privileged legal interpreter.[14] In the eyes of the revolutionaries of the eighteenth century, the alignment of the *arbitrium principis* with *lex* constituted one of the pillars of absolutist power to defeat.

In the Roman Republican context, the debate appears to focus not on the constraints that prevent power from becoming uncontrolled, but on the nature of its source. When analysing the system designed to avoid its degeneration, the Roman emphasis lies on *humanitas* and *misericordia*, two qualities of the individual. It is about being a *vir bonus*; ultimately, it is a matter of exercising personal *virtus*. The Romans do not discuss tracking the interests of those subject to power, as in the early formulation of Philip Pettit, recently brought back to prominence by Samuel Arnold and John Harris,[15] nor do they refer to the need for those subject to power to exercise forms of control over it.[16] In the cases that concern *arbitrium*, as the ancient texts show, it is not a matter of laws, which, voted by the whole community, could be said to track the interest of the whole community, but of individual virtue, which was also encapsulated in *consuetudo*, *mos*, and *exempla*.

The book delineates very lucidly a clear distinction, perceived as such by the early modern protagonists of Skinner's story, in how classical sources conceived liberty: first, the classical writers in their historical and philosophical texts described slaves as people subject to the will of others and agreed that anyone living in such a state of subjection could be described as living in servitude. Second, the jurists of the classical period, whose works were later encapsulated in the *Digest*, stated that a slave is someone subject to the will and power of a master by virtue of being in his ownership. The defining trait of a slave, in the juridical Roman tradition, is that they are the property of those who have power over them.

This distinction brings into focus two main dimensions of Roman liberty that otherwise remain obscured from our sight: first, in Rome liberty as independence was conceived and enacted only in the public sphere. Second, this Roman understanding of liberty was conceptualised, first and foremost, as self-ownership.

As Skinner notes, early modern commentators did not always maintain the distinction between the idea of a slave as someone who is subject to the will and power of a master by

virtue of being in his ownership and the broader understanding found in classical writers, who spoke of slaves as persons subject to the will of others and held that anyone living in such a state of subjection could be described as living in servitude. However, this distinction is what the ancient texts refer to as being *in dominio*, as in the case of slaves, and *in aliena potestate*, as in the case of the *filiusfamilias*, women, and those under guardianship. As Paul notes when commenting on the *lex Fufia Caninia*, the word 'power' has several meanings: with reference to magistrates, it signifies *imperium*; with reference to children *patria potestas*; with reference to slaves, *dominium*.[17]

In relation to the *potestas* of his father, the *filiusfamilias* held a legal position not dissimilar to that of a slave: '[i.e. like the slaves],' Gaius tells us, '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 … '[18] The *paterfamilias* possessed the *ius vitae necisque* and the *ius vendendi*: the right to kill members of his family and the right to sell his son.[19] Provision IV.2 of the XII Tables attests the right of the *paterfamilias* to sell his children.[20] Whilst, contrary to the opinion of Gaius and Ulpian, it seems more probable that a father had the right to hire out, rather than sell, his son, the fact remains that the father was endowed with the right over the bodily person of his son.[21] The *filiusfamilias*, by contrast, was capable of obligations but not of rights; he could accumulate debt but not act as a creditor in his own name (he could do so only in his father's interest).[22] Although he had the right to *commercium*, the property he gained never belonged to him, but always to his father. Only by his father's permission could he manage property, 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.[23] He had the legal capacity to make a testament and could act as a witness; however, he could not benefit from a will as heir, since any legacy or succession was vested in his father. Although if the *filiusfamilias* had committed a private law offence his father was liable, if he had perpetrated a *crimen*, a public law offence, the responsibility lay with him, not with his father. While the *filiusfamilias* had the right to *conubium*, the *patria potestas* over his children and the marital power over his wife were vested not in him but in his father.

Although under his father's *potestas* in matters of private law, the *filiusfamilias* could act independently in the public sphere, as Hermogenian states, 'with respect to public law the right of paternal control does not apply (*quod ad ius publicum attinet, non sequitur ius potestatis*).'[24] Interestingly, the preceding text ends with Ulpian's observation that a *filiusfamilias* who is a magistrate can compel his father, in whose power he is, to accept and transfer an inheritance.[25] The intrinsic tension between the two dimensions of the *filiuasfamilias*' role as dependent on his father's *potestas* in all matters of private life, and holder of a superior authority in the public sphere, is well exemplified by Quintus Claudius Quadrigarius in his *Annales* and reported verbatim by Gellius. In 215BCE, Quadrigarius tells us, during the consulship of Tiberius Sempronius Gracchus and Quintus Fabius Maximus, the father of the latter, at the time proconsul, met his son the consul without dismounting from his horse.

> As the father drew near, the consul said: 'What next?' The lictor in attendance quickly understood and ordered Maximus the proconsul to dismount. Fabius obeyed the order and warmly commended his son for asserting the power which he had as the gift of the

people (*Fabius imperio paret et filium collaudavit, cum imperium, quod populi esset, retinere*).[26]

As Pomponius, commenting on the work of Quintus Mucius, states 'in all matters relating to the public interest the son of a family takes the place of the father of a family; for instance, where he discharges the duty of a magistrate, or is appointed a guardian.'[27]

Thus, the *filiusfamilias*, who was under the power of his father in many aspects of his private life, was free, that is independent in public life, to the point that he could hold *imperium*, because the people had granted him this power. In this tradition, contrary to early modern aspirations of women within their family context, or to nineteenth century Marxist analyses in the context of social dependency, liberty as independence belonged solely to the public sphere.

By focusing the distinction between these two classical traditions of liberty Skinner shows not only that liberty as independence belongs to the political sphere, but also that, as a consequence, its definitional foil was *dominium*, not *potestas*.

In the narratives of the so-called struggle of the orders, which despite some differences in emphasis, present a homogeneous picture of the events, the plebeian movement was sparked by the claims of the *nexi* (free men fallen into debt bondage), who are described as fighting for the abolition of *nexum* in the name of liberty.[28] Livy represents the plebeians as demanding the right not to be under the *dominium* of anybody else, that is to be their own *domini*. The important point they make is the need to be protected in their own person, as in their view it is their *corpus* that is affected by the exercise of the arbitrary interference of the creditors. When eventually they succeeded in their intent, in line with their previous claims, a law was enacted, the *lex Poetelia*, which guaranteed the free status of the debtor's person, recognising that only the goods of the debtor and not his person (*corpus*) are subject to distraint.

It follows that the request of liberty the bondsmen invoked and eventually gained in 326 BCE,[29] was in effect tantamount to claim to power, more specifically, power over themselves, not over external objects, or property. They asked for *dominium* over themselves, protected by legal recognition, which is, ultimately, self-ownership.

By invoking self-ownership, rather than ownership over external goods (labour, land, money, or even businesses), the plebeians did not address the causes of their socio-economic distress. The first unrest caused by the condition of the *nexi*, which gave rise to the so-called first secession of the plebs led to a political settlement, satisfactorily accepted by both parts, namely the establishment of the tribunate of the plebs. By framing their struggle in terms of self-ownership, the plebeians laid the groundwork for its political conclusion: the establishment of a magistracy, which, in line with their request, was endowed with the right to protect Roman citizens in their own person, the *ius auxilii*, as one of the basic Roman liberties.[30]

The notion of self-ownership was such a constitutive element of Roman community, that had become ingrained in the political configuration of the main popular assembly, the *comitia centuriata*.

Cicero's, Livy's, and Dionysius' descriptions of this institution, whose ideological construction must find its origins in a reassessment of the archaic history of Rome between the 80s and 50 BCs, present an homogenous picture.[31] Although the timocratic democratic structure of this assembly granted the highest power to the wealthiest and relegated

those who did not own any property to one single *centuria*, it did not deprive them of their place in the political body of the community. They were registered by the censors on the basis of the only thing they possessed and with which they could provide the commonwealth: their children (hence their appellative as *proletarii*), or, in case they did not have any, their own person (hence *capite censi*). It was the idea of self-ownership that was essential for the formation of a free political community: the free *res publica* should be made up of members who were in their own *dominium* and could dispose of themselves and act as they wished.

Once the censors had distributed citizens into their *centuria* and *tribus*, and had celebrated the *lustrum*, in principle every five years, a new political, military, and religious community was formed. Its members, who, in the first place, owned themselves, were bound to each other by a web of mutual duties and rights. Far from being a territorial unit, therefore, the *res publica* was a community characterised by horizontal, albeit hierarchical, obligations and rights binding individuals to one another.[32] They, not their assembly, made up the commonwealth and the laws, conceived in Rome as the orders of the people, were the outcome of an agreement among individuals – agreement, in turn, binding on the entire community.[33]

Amongst many other merits, this wonderful book has the rare quality of having something innovative to say about the ways in which liberty was conceptualised in ancient Rome, while, simultaneously, making a powerful intervention in the present. Historical research, Skinner tells us, may disclose general theories of liberty, which have been hidden from our sight and may be worth considering again. The prospect that the ancient world is relevant nowadays as it can help make sense of the world we inhabit is exhilarating.

However, this view of historical research has exposed Skinner's project to criticisms that, in the opinion of its opponents, undermine its whole validity. According to them, the ideal of liberty as independence, first elaborated by Roman authors, is elitist, inherently conservative, misogynistic, and imperialist.[34]

Around the turn of the second century BCE, Scipio Africanus made an important remark, preserved without context by Isidore of Seville, whose interest lay in explaining the rhetorical figure of climax: 'a climax is a gradation,' he explains,

> when with that by which the preceding phrase ends, the subsequent one begins, and then, as if through steps, the order of speaking is maintained, like that phrase of Africanus: 'from innocence worthiness is produced, from worthiness esteem, from esteem command, from command liberty (*ex innocentia nascitur dignitas, ex dignitate honor, ex honore imperium, ex imperio libertas*).' Some call this figure a chain, for the reason that one noun is linked, as it were, with another, and thus many items are brought together in a doubling of words.[35]

Scipio appears to conceive liberty as a notion predicated on *imperium*, the power proper to the highest Roman magistrates. In his opinion, a person is free not only when in a status endowed with the ability to act according to his autonomous will, but also, when possessing the capacity to impose his own will on others. According to Scipio, only those who hold *dignitas*, an idea that expresses the notion of individual merit, distinct, but closely linked to wealth, will be able to achieve a magistracy (*honour*). This, in turn, will provide them with the highest form of power in the public sphere (*imperium*), from which the true status of *libertas* springs.[36] The

iconography of Libertas on coins seems to support Scipio's view. On a denarius issued by Vibius Pansa in 48 BCE,[37] Libertas (on the obverse) is associated on the reverse with a helmeted Roma, seated on a pile of arms, holding sceptre and placing her left foot on the globe, while a flying Victoria crowns her. And in the *Sixth Philippic*, Cicero states,

> the Roman people should be slaves is contrary to divine law; the immortal gods have willed it to rule all peoples (*populum romanum servire fas non est, quem di immortales omnibus gentibus imperare voluerunt*) … Other peoples can endure slavery; the assured possession of the Roman people is liberty.[38]

Alongside the social and political structures of the Roman Republic, by contemporary standards, imperialist, misogynistic, and elitist, it seems that the ideal of Roman liberty as independence was predicated on the dependence of others.

However, it should be noted that this is not the only way in which Roman sources discuss this ideal. As Cato the Elder states,

> it is proper that we enjoy the same rights, law, liberty, and commonwealth; glory and honour only in so far as anyone has procured them for himself (*iure, lege, libertate, re publica communiter uti oportet; gloria atque honore, quomodosibi quisque struxit*),

and Cicero reports the orator M. Antonius to have wished 'to be equal with others in liberty, the first in honour (*libertate esse parem cum ceteris, principem dignitate*).'[39] According to this strand of thought, to establish and maintain the citizens' liberty, it was crucial that all members of the political community shared the same basic rights and did so on the same basis. *Gloria*, *dignitas* and *honour*, by contrast, were dependent on personal circumstances and merit, and so permitted differentiation amongst the citizen body.

It is one of the most remarkable achievements of this book to have succeeded in making us think again and in a new light about the contributions of ancient Rome to the intellectual landscape of the ancient world and of the world we inhabit.

Notes

1. Crawford, *Roman Statutes*, 39; Brunt, "Lex de imperio Vespasiani", 95–116; Mantovani, "Les clauses 'sans précédents'", 25–43; Capogrossi Colognesi and Tassi Scandone, *La Lex de imperio Vespasiani*; Lee, *Popular Sovereignty,* 26–33. Most recently, Laurendi, "The *Leges regiae*", 97–110.
2. *ThLL* Vol. 2, 0, 410, 1 - 415, 23 (Hey).
3. Tac. *Hist*. 1.12.1; 1.45.1; 1.46; 3.49.2.
4. Makhlaiuk, "*Omnia deinde arbitrio militum acta*", 457–88.
5. Benveniste, *Le Vocabulaire des institutions indo-européennes*, 325. For a different etymology see Martino, *Arbiter*, 59 ff. who connects *arbiter* to the Punic *'rb*, "guarantor and mediator (in trade activities)," which reached Rome through the trade exchange in the Mediterranean via the Etruscan emporia. See Martino, *Arbiter*, 11–26 for scholarly review of previous etymologies (including from the compound ad ('towards') + baeto-bito ('go') + ter ('one who goes to' a place, looks into or examines as an eye-witness, and act as 'a judge with equity').
6. Cic. *Rosc. com*. 12-3. However, see Cic. *Mur*. 27.
7. Sen. *ben*. 3.7.
8. Cato *de agr*. 144.2; 148.1 on *viri boni arbitratu*. See also Plaut. *Rud*. 1041-5.
9. On the original meaning of *arbitrari* as 'to witness' as well as 'to judge' see de Vaan, *Etymological Dictionary,* s.v. *arbitrari*.

10. See, for example, Cato *de agr.* 144.2 and 148.1. Cf. Cic. *de fato* 17.39 where Chrysippus is described as an *arbiter* in his attempt to strike a compromise.
11. *Dig.* 4.8.19.2 (Paul. 13 ad ed.): *arbiter esse desierat.*
12. Meccarelli, *Arbitrium*, 43–53.
13. Porret, *Le crime et ses circonstances,* 18–19 and Sbriccoli, "Beccaria ou l'avènement de l'ordre", 233–48.
14. F. Suarez, *Tractatus de legibus* 1.5 n. 20: *unde sicut liberum arbitrium definiri solet, esse facultatem voluntatis et rationis, ita lex, quae aribitrium principis appellari solet, non immerito potest exstimari utriusque facultatis.*
15. Pettit, *Republicanism*; Arnold and Harris, "What is Arbitrary Power?" 55–70.
16. Pettit, *On the People's Terms*. For a third formulation of what counts as arbitrary, see Lovett, *The Well-Ordered Republic*, 51–63.
17. *Dig.* 50, 16, 215: *in persona magistratuum imperium, in persona liberorum patria potestas, in persona servi dominium.*
18. Gai. 1.55: *Item in potestate nostra sunt liberi nostri, quos iustis nuptiis procreavimus. Quod ius proprium civium Romanorum est (fere enim nulli alii sunt homines, qui talem in filios suos habent potestatem, qualem nos habemus).*
19. Dion. Hal. 2.26.4; cf. 8.79.4 See also Cic. *Dom.* 77; 84; Gell. *NA* 19.9. Thomas, "Vitae necisque potestas", 499–548, esp. 545. See also Saller, *Patriarchy, Property, and Death in the Roman Family*, esp. 102-132.
20. Crawford, *Roman Statutes*, vol. 2, n.40, IV.2 (631): *si pater ter filium venum duit, a patre filius liber esto.*
21. Cornell, *The Beginnings of Rome,* 283.
22. Watson, *The Law of Persons in the Later Roman Republic*, 62–75. For recent overviews see Lewis, "Slavery, Family and Status", 151–174; Vuolanto, "Child and Parent in Roman Law", 487–497.
23. Dion. Hal. 2.26.
24. *Dig.* 36.1.14.
25. *Dig.* 36.1.13.5.
26. *FRHist*24, fr. 1(Q. Claudius Quadrigarius) (= Fr. 57 Peter); Gell. *N.A.* 2.2. Cf. Val. Max. 5.4.5.
27. *Dig.*1.6.9 (Pomp. 16 *ad Q. Muc*).
28. On the first secession of the plebs, its relation to the debt crisis, and the claims advanced by the plebeians Cic. *Rep.* 2. 58-59; Sal. *hist.* 2. 11; Liv. 2. 23.1-31. 7-8; Dion. Hal. *ant.* 5.63.1-67.3; 70.1-5; 6.22.1-29.1; 34.1-44.3; 83. 4-5.; Dio. 4 fr.17; Zon. 7.13-14. For a full discussion see Arena, "Republican Liberty and the Notion of Economic Independence", 621–646.
29. Liv. 8.28 (326 BCE); Varro *Ling.* 7. 105 (313 BCE).
30. On the association of the powers of the tribunes of the plebs and liberty see Arena, *Libertas*, 45 ff.
31. Gabba, "Studi su Dionigi da Alicarnasso," 175–225.
32. With the advent of the *princeps*, the ties become vertical: by the so-called *lex regia* the people transfer or alienate their *res publica* to him. This is also an important tradition for the early modern authors that Skinner discusses, 49–57.
33. McIlwain, *Constitutionalism: Ancient and Modern*, 44–50.
34. For example, Maddox, "The Limits of Neo-Roman Liberty," 418–31; Kapust, "Skinner, Pettit and Livy," 377–401; Ando, "A Dwelling Beyond Violence," 183–220.
35. Fr 32 (Manuwald) = Isid. *Orig.* 2.21.4: *climax est gradatio, cum ab eo, quo sensus superior terminatur, inferior incipit, ac dehinc quasi per gradus dicendi ordo servatur, ut est illud Africani: "ex innocentia nascitur dignitas, ex dignitate honor, ex honore imperium, ex imperio libertas." hanc figuram nonnulli catenam appellant, propter quod aliud in alio quasi nectitur nomine, atque ita res plures in geminatione verborum trahuntur.*
36. Ando, "*Ex imperio libertas*," 104–17.
37. *RRC* 449/4.6.
38. Cic. *Phil.* 6.19. See also Arena, *Libertas*, 76–77.
39. Cato fr. 252 (Malcovati, 96); Cic. *Phil.* 1.34.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This work has been conducted under the aegis of the European Research Council consolidator grant 'Ordering, Constructing, Empowering: Fragments of the Roman Republican Antiquarians' (n. 866400), PI Valentina Arena.

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