

LICENTIA: CICERO ON THE SUICIDE OF POLITICAL COMMUNITIES

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THE AIM OF THE present paper is to offer an analysis of an understudied concept of Cicero's political writings: *licentia*. *Licentia* can be defined as a freedom given to an individual or a group to act as they please, when this freedom, for whatever reasons, should not be given. This study of the notion will reveal the key role it plays in Cicero's analysis of the decay of the Roman Republic. *Licentia* enables Cicero to show that the responsibility for the fall of the Republic bears primarily on those who failed to enforce the norms which used to sustain it. I illustrate first that the occurrences of *licentia* throughout the Ciceronian corpus form a coherent whole, before highlighting how Cicero uses the notion to describe a crucial mechanism at play in the weakening of social norms at Rome, which I call the logic of permissiveness.¹ Although much attention has been given to the Roman notion of *libertas*, few scholars have turned their eye to the role *licentia* plays in the debates of the Late Republic, and no study has been entirely devoted to its analysis.² Two facts can, I think, account for this lack of interest. The first has to do with the study of *libertas*, the other with scholarly assumptions about Cicero.

Licentia is most often used by Cicero to denote the grant of an excessive freedom to an individual or a group. But the very notion of excessive freedom does not fit well within the common view of Roman *libertas*. Understanding *licentia* requires one to move from that common view to a notion of freedom that is different from it in three respects: focus, structure, and philosophical basis.

The debate on the meaning and extent of Roman *libertas* has focused on its origin in the master-slave dichotomy, and on its political translation in terms of legal status. This is already noticeable in the first book-length study of *libertas*,

I wish to thank all those who, by commenting on previous versions of this piece, have advanced my own thinking about *licentia*: in Paris, Augustin Gridel, Charles Guérin, and Carlos Lévy; at Princeton, Jed W. Atkins, Yelena Baraz, Teddy Fassberg, Guillaume Grégoire-Sauvé, Emily Hulme-Kozey, Harriet Flower, Robert Kaster, Joshua Katz, and Ian Walling. I owe a special debt to Melissa Lane, under whose supervision I started working on the topic; and to Jean-Louis Ferrary (+), who directed my first studies on Roman political thought.

1. I use here "social norms" to capture what J. Hölskeskamp (2010, 18) calls "socially-morally binding standards": these standards lay more stress on compliance with communal expectations than our notion of morality does, but they are still based on a claim to ethical correctness.

2. Scholars writing on *libertas* often mention *licentia*, but only in passing (Momigliano 1971, 519–20; Brunt 1988, 320–21; Mouritsen 2001, 10–11; Arena 2012, 167 n. 420). None of them has paid attention to its political importance. Klösel (1967, 129–33) has illuminating comments on *licentia* but does not provide a thorough analysis of the term. He also overlooks the importance of permissiveness in Cicero's thought. These are the two intended contributions of the paper.

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written by Chaim Wirszubski in 1950, which concentrated on *libertas populi Romani* as the people's freedom from domination by a king or a faction.³ It also constitutes the basis of Peter Brunt's analysis of the uses of *libertas* in the Republic, however alert Brunt may have been to the different ways in which that dichotomy was used in Roman political debates.⁴ Since then, this understanding of *libertas* has become dominant,⁵ finding a remarkable echo in contemporary conceptions of freedom as non-domination, that is, as non-subjection to an arbitrary power, in the work of Quentin Skinner and Philip Pettit.⁶ Valentina Arena has recently given to this tradition its capstone in her remarkable study of Roman *libertas*. She argues that the two main political tendencies of the Late Republic, *populares* and *optimates*, shared the same understanding of *libertas* as non-domination and differed only in the means they privileged to preserve that freedom.⁷

In order to understand the concept of *licentia*, and its use in Roman political discourse in general and in Cicero in particular, we need to step back from that view in three respects: focus, structure, and spirit. Our focus must shift, because primary and secondary sources concentrate on the people's struggle to secure its own freedom from domination by the kings, the patricians, the *nobiles*: *libertas* in that tradition is seen as an ideal, not as a potential threat.⁸ Yet *licentia* means nothing but freedom becomes dangerous. We must therefore adopt a point of view that allows us to understand how freedom, including freedom of the people, could be seen with mistrusting eyes. We must also conceive of freedom as having a structure that is different from non-domination, and revert to a more common understanding of it as non-interference. This is because *licentia* most often implies, for Cicero and other Roman writers, the enjoyment of a particular freedom which should, and therefore could, be curtailed by the authority that has power over it: the beneficiary of *licentia* is not securely protected against a cancellation or restriction of that particular liberty, whereas liberty as non-domination requires such a protection.⁹ To be clear, I am not suggesting that *licentia* is a legal status, formally granted by an authority. The range of its uses goes well beyond legal matters (the same for *libertas*, after all). What I am saying is precisely that it is wrong to see *licentia* as a legal protection on the model of neo-Republican liberty. As the study of the word's meaning will reveal, *licentia* always stems from a normative (but not necessarily legal) authority, whether it is given explicitly or only implicitly.¹⁰ In all non-metaphorical uses of the word, this normative authority can always revisit or cancel the existing permission. We must therefore revert to a broader, if somewhat underdetermined, concept of freedom, distinct from the

3. Wirszubski 1950, 4 and *passim*.

4. Brunt 1988. Brunt stresses the wide variety of uses of *libertas* in the Republic and the different meaning it received according to the different political ideals of our sources (see esp. p. 321).

5. Hellegouarc'h 1957, 542–64; Klösel 1967; Bleicken 1972; Raaflaub 1984.

6. See in particular Skinner 1998; Pettit 1998; 2012. These three studies quote Wirszubski as their main reference on Roman *libertas* (Skinner 1998, 22, 37 and *passim*; Pettit 1998, 32; 2012, 2).

7. Arena 2012, 6.

8. On this point, see Cogitore 2011. On the associations between *libertas* and the plebs, see also Wiseman 2008, 84–139.

9. On this point, see Pettit 2012, 83.

10. As will be shown throughout the paper, this normative authority can be legal (a court), moral (the *mos maiorum*), literary (Cicero as orator), philosophical (a particular Hellenistic school), or even metaphysical (nature).

neo-Republican concept of entrenched liberty.¹¹ Finally, we must admit that talk of freedom in the Late Republic could be grounded in a philosophical basis different from that of neo-Republican political theory: in Cicero at least, political freedom is never wholeheartedly endorsed as one of the ends of politics. Cicero's civic ideals owe much more than currently acknowledged to a theory of natural law that makes virtue the foremost aim of political activity:¹² the very phrase "natural law," although central to Cicero's political writings, never occurs in Arena's book.¹³ Many of us might find Cicero's political theory repellent, but it needs to be taken into account in any impartial interpretation of Cicero's political thought.¹⁴

This brings us to the second cause of the scholarly neglect of *licentia* in Cicero's political thought: the long-standing skepticism vis-à-vis Cicero's use of moral terms in his political theory. Going back at least to Hegel,¹⁵ modern scholars have criticized Cicero's oversimplification of the situation faced by his generation.¹⁶ The underlying assumption seems to be that Cicero's outbursts against his opponents were nothing but expressions of his subjective opinion. While this reading of Cicero has not gone unchallenged in the past,¹⁷ recent contributions have stressed how deeply Cicero's moral discourse is embedded in the wider frame of his philosophical and rhetorical thinking.¹⁸

In this paper, I take a new step in that direction by showing how the notion of *licentia* unites Cicero's moral and political theory to provide a coherent and powerful analysis of the contemporary political developments. *Licentia* is a concept Cicero needs in order to explain how a Republican polity, although master of its destiny, can abdicate its responsibilities and give way to behaviors that

11. On the underdeterminacy of the Roman concept of freedom, see Ando 2010, 190.

12. My understanding of the place of *libertas* among Cicero's political ideals is informed by Lepore 1954, 303–400 (although I do not agree with Lepore's thesis that Cicero came at the end of his life to understand *libertas* as one's ability to promote the freedom of the Republic, which rests on a very controversial interpretation of *Off.* 1.70); Dermience 1957 (stressing the philosophical, i.e., Platonic and Stoic overtones of Cicero's understanding of freedom as domination of reason over passion); Kohns 1977 (especially on the measure of political participation that Cicero deems prudent to grant to the people); Christes 1987 (esp. p. 170 on Scipio's preference for monarchy among "unmixed" regimes, despite its lack of *libertas*); Cowan 2008 (which emphasizes the rhetorical use of *libertas* Cicero makes in the *Philippics* in order to persuade the people that his only goal is to free them of the servitude imposed on them by Caesar); and, finally, Kennedy 2014, with whose main thesis (Cicero's ideal in *De re publica* is a form of *concordia* that recognizes the different worth of society's different groups, and in *De legibus* "justice and natural law," 496; in neither treatise is *libertas* wholeheartedly endorsed as an ideal) I find myself in agreement.

13. On its centrality in Cicero, see Girardet 1983, 136.

14. To the extent in which the present paper advocates for taking some distance from neo-Republican political theory in order to interpret Roman political debates, it falls in with a recent trend started by Ando 2010 (see also Clarke 2014).

15. The most thorough survey of historians' and philosophers' judgment on Cicero is to be found in Habicht 1990, 105–19. Habicht makes clear that he shares Hegel's and others' view on Cicero's lack of political acumen.

16. See the famous judgment of Syme 1939, 144–45; Meier 1966, 91 n. 164; Gruen 1974, 498–99; Brunt 1988, 89; Wood 1992, 177, 204; Fuhrmann 1989, 290. Edwards (1993) takes Cicero as a prominent example of the Roman obsession with immorality, ascribing to this tendency his constant recourse to invective (see esp. 10–11 and 25–26). Somewhat more recently, C. Steel has explained Cicero's use of moral categories by his inability to provide solutions for the structural problems of the Republic (Steel 2001, 113–61, and 197 for a judgment of Cicero's moral mindset).

17. See Michel 1960, 537–51; Mitchell 1984; Lévy 1992, 495–536.

18. Connolly 2007; Baraz 2012; Atkins 2013; Zarecki 2014. Kaster (2005) shows that keen political intuitions on communal life underlie Roman moral categories: to uncover them, one has to start by unraveling their meaning(s). The approach followed in this paper is greatly influenced by and indebted to Kaster's.

directly threaten its survival. For Cicero, *licentia* dramatically undermines Roman moral standards in two ways. The first is based on the logic of exemplarity so important in Roman society: just as a good example provokes emulation, a bad one gives everyone a pretext to imitate it and spreads. The second comes from a fact of human psychology: vice, when it is not punished, seeps in and takes roots in the soul of the individual, goading him toward more and more wrongdoing.¹⁹

In order to elucidate the role played by the concept of *licentia* in Cicero's political thought, I will proceed in two steps. First, I will spell out what I take the exact meaning of *licentia* to be, showing how the term originally derived from the verb *licere* ("to be permitted") and specialized in the pejorative sense of a freedom given to wrongful conducts. This part of the paper will be philological and analytical. In the second part of the paper, I will demonstrate how Cicero puts this meaning of *licentia* to use in his attempts to explain how the norms ensuring the survival of the Republic have fallen into decay among many of his contemporaries.

1. WHAT IS WRONG WITH *LICENTIA*?

A. *Licere* and *Licentia*: Some Linguistic Elements

The substantive *licentia* derives from the verb *licere*. The primary meaning of *licere*, according to the two standard Latin etymological dictionaries, is that of "to be available for a price, to be offered for sale."²⁰ One thing that this meaning implies is that something is being offered for sale *by its owner*: the owner, who has the right of property over the thing, makes it available to potential buyers for a particular price. From this meaning of *licere* derives the sense of "being permitted," which for Ernout-Meillet was soon understood as a separate verb by Latin locutors. Cicero provides us with two clear definitions of this meaning of *licere*: *id enim licere dicimus, quod cuique conceditur* (*Tusc.* 5.55);²¹ *licere id dicimus quod legibus, quod more maiorum institutisque conceditur* (*Phil.* 13.14).²² The use of *concedere* resonates with what we just saw about *licere* in the sense of "to be offered for a price": since the primary meaning of *concedere* is "to withdraw, to give way to, to yield,"²³ *licere* seems to be understood by Cicero as implying that the laws and the *mos maiorum* have authority over individuals, and that *they* make it the case that the latter enjoy some room for maneuver. In any case, it seems essential to *licere* that it comes from a normative authority: what Cicero says about *licere* would not make sense if the verb had the meaning of "being possible," a meaning he himself contrasts with the primary sense of *licere* immediately after the two passages just quoted. But as I said in the introduction,

19. Apart from its political significance, *licentia* plays an important role in Cicero's rhetoric and poetics. This would require a separate treatment, which I plan to do elsewhere. I will focus here on the political aspects of *licentia*.

20. Ernout-Meillet 2001, 357; *TLL*, s.v., I-A-1; De Vaan 2008, 340.

21. "What is granted to people, we say that it is allowed." All quotations of Latin are taken from the relevant Budé texts, unless otherwise stated.

22. "What the laws, our ancestors' customs and the established usage grant, we say that it is allowed."

23. *OLD*, s.v., 421.

although Cicero's second definition gives *licere* a primary legal meaning, the uses of the word show that the normative authority in question can be other than legal.²⁴

A freedom to act granted by an authority is that we call a permission.²⁵ But as legal philosopher Joseph Raz has remarked, permissions come in two forms: they are either explicitly granted, or only implicitly, when it is the case that no existing norm forbids a particular behavior.²⁶ Raz admits that "permission" in its ordinary sense refers to the explicit kind, but he shows that the term can also be applied to tacit permissions. This distinction helps us formulate a first, working definition of *licere*: an act *licet* when something or someone, who has authority over the domain the act belongs to, gives an individual or group the possibility to perform it, either explicitly or by not forbidding it. This implies that the authority does not recognize an act as unlawful, which does not necessarily mean that it explicitly recognizes it as lawful, but that it gives to the behavior permitted a presumption of lawfulness.²⁷ Of course the uses of *licet* very soon ceased to be restricted to the legal domain: the lawfulness in question could well be moral or religious or, even more often, a mere norm of politeness or civility.²⁸ Finally, *licere* took on the meaning of "to be physically or technically possible" without any normative connotation, only as a statement of fact: but Cicero makes clear that this meaning is only derivative and secondary.²⁹

Now, to *licentia*. Both Ernout-Meillet and the *TLL* trace *licentia* back to the adjective *licens*, meaning essentially "to whom much, too much, is permitted." This *licens* would be the adjectival use of the present participle of *licere*, also spelled *licens*, the meaning of which would be "who receives a permission."³⁰ However, neither Ernout-Meillet nor the *TLL* explains how *licens* and *licentia* acquired the pejorative meaning they suggest. Since *licentia* is well attested in Plautus and Terence, it seems appropriate to start with an analysis of its meaning in context, before suggesting a possible scenario for its morphological derivation.

In Plautus and Terence, *licentia* appears to carry two close but distinguishable meanings. The first one is that of "permission," as demonstrated in the following passage from Plautus' *Trinummus*: *scuta iacere fugereque hostis more habent licentiam* ("usage gives people the permission to throw away their shield and run away from the enemy," Plaut. *Trin.* 1034).³¹ *Licentia* designates here a permission given by an authority (*mos*) to a conduct. It is unlikely that *mos* has

24. I give examples in n. 29 below.

25. Stolpe 2010, 100. The authority, which by definition has competence over a domain, can revisit the permissions it has given in the sense of having the power to change the norms if they must be.

26. Raz 1979, 65–67.

27. Therefore, not every *licet* implies an explicit recognition of lawfulness; but every *licet*, at least in its nonderivative sense, implies that an act or behavior is not against the law (cf. Servius' definition, *Ad Aenidem* 6.400: *licet: fas est*). This being said, the overwhelming majority of the occurrences of *licet* in the *TLL* that designate a permission can more likely be construed as explicit permissions than as implicit ones (for instance, all the uses of *licet* we find in Roman laws).

28. Moral *licet*: Plaut. *Mil.* 521; Ter. *Haut.* 797. Religious *licet*: Plaut. *Amph.* 617; Cic. *Inv. rhet.* 2.95. Politeness: Plaut. *Asin.* 12; *Mostell.* 323.

29. *Rab. Post.* 11; *Tusc.* 5.55; *Phil.* 13.14. This sense of possibility exists also in English, when I say: "this opportunity allowed me. . . ." But as the *Oxford English Dictionary*, s.v. "allow" indicates, this is only a derivated meaning, from the primary one of "to acknowledge, admit, or declare."

30. Ernout-Meillet 2001 and *TLL*, s.v. *liceo*, 7.2.1368.60.

31. All translations are my own unless otherwise noted.

explicitly allowed people to run away from the battlefield; rather, it implicitly condones such behavior by not punishing it.³² Since this behavior seems to be publicly known, and not punished, *mos* can be said to permit it implicitly.

In early Latin, however, the word *licentia* could also convey a second sense, well illustrated in a passage of Terence's *Heautontimoroumenos* in which Chremes advises his friend Menedemus not to yield to all of his son Clinia's demands. If he does, Chremes argues, the young man will understand that paternal affection compels his father to grant him whatever he asks for and turn to a more and more dissolute way of life, convinced that Menedemus, his father, will condone it, *nam deteriores omnes sumus licentia* ("since indulgence makes us all worse," Ter. *Haut.* 483). *Licentia* designates here not a single instance where permission is granted, but the tendency for someone (here Clinia) to be granted permissions, and the state of absolute freedom that ensues. The idea is not only that Menedemus lets his son get his way by refusing to pry into his conduct: Chremes makes it clear that Clinia will blackmail his father into refraining from using his *patria potestas* and explicitly giving way to his demands.

Licentia thus appears to carry two meanings in early Latin: that of a "permission" given to an act or a general type of acts, and that of a "general tendency to be granted permissions." How can we account for these two meanings? Here we enter into the realm of historical morphology, where the scantiness of our sources and the indirectness of our access to the language render all hypotheses uncertain. I would like nonetheless to offer the one I consider more likely, taking as my guide the study of words ending in *-antia* and *-entia* carried out seventy years ago by Yakov Malkiel.³³

Although it is not extant in our sources before Cicero, it is well possible that there existed in the time of Plautus and Terence a word *licens* that corresponded to the adjectival use of the present participle of *licere* and meaning "to whom permission is (explicitly or implicitly) granted." Although *licere* is an impersonal verb, the example of *libens* shows that *licens* could perfectly well be used in a personal sense. Just as the impersonal *libet* ("it pleases") produced a personal participle, *libens* (meaning "pleased"), *licet* ("it is allowed") will have given rise to the personal participle *licens*, meaning "enjoying a permission."³⁴ This is understandable since *libet* and *licet*, though impersonal, ascribe a certain quality to the person they are applied to: in the case of *libet*, a being pleased; in the case of *licet*, a being allowed. Now, the suffix *-ia* serves to derive abstract substantives from adjectives. Nouns ending in *-ia* can therefore be employed *in abstracto*, without reference to a particular field or action but to designate a given quality taken absolutely.³⁵ This in fact is the underlying reason why words ending in *-ntia*, a subclass of nouns in *-ia*, can indicate a quality attached to a person. Speaking of someone's *audacia* absolutely means that this person in general shows him or

32. This interpretation is supported by *Trin.* 1033, which equates *licentia* with being "freed from the laws," *libera a legibus*.

33. Malkiel 1945, esp. 43–54 for the Latin language.

34. Ancient grammarians were aware of this *usurpatio*, cf. Pompeius' commentary on Donatus' *Ars grammatica* (Keil 1868, 261): *impersonalia verba quot habent participa? dicit, non debent habere, nisi forte usurpaverit [. . .] ut inveniamus participa, dicit, haec qui posuerit usurpabit.*

35. Malkiel 1945, 43.

herself to be *audax* (e.g., Plaut. *Capt.* 287; *Cas.* 626; *Mil.* 189). Yet *lubentia*, the closest parallel to *licentia*, can be used to designate something general, when used absolutely: when someone is in a state of *lubentia* without qualification, it means that joy fills the heart, and that *all* feelings are affected by joy; joy describes the individual's general state. My hypothesis is that *licentia*, in addition to the meaning of a particular permission, might indicate when used absolutely that one is in a state where permission to act as one wishes is generally received (in accordance with the meaning of *licet*, this permission would most often be explicit, more rarely implicit). This use of *licentia* would be comparable to a meaning of ἐξουσία well instantiated in Greek: a state in which one's possibilities are almost unlimited.³⁶ It would also fit with the three other pre-Ciceronian occurrences of *licentia* of which we are aware.³⁷

In any case, both the *TLL* and the *Oxford Latin Dictionary* confirm that *licentia* ends up displaying in classical Latin two principal meanings, the neutral one of "permission," and the pejorative one of "absolute permission," in which the authority would be categorized as demonstrating "permissiveness," bringing about a debauched state where individuals would be able to act as they like. English offers an analogous case: the word "permissiveness," which possesses a strongly pejorative overtone, is derived from a verb devoid of such a connotation, like *licentia* from *licere*. But the suffix "-ive," "implying a permanent or habitual quality or tendency," gives the adjective "permissive" its pejorative connotation.³⁸

The two meanings of *licentia* thus established are essential to explain how the word was employed in the Ciceronian period and in Cicero's own writings.

B. *Licentia* in the First Century BCE

If we sort out the uses made of *licentia* in the last decades of the Republic, it appears that we can group them into three categories. The first one corresponds to the first meaning given by the dictionaries for *licentia*, that of a simple and neutral "permission" (explicit most of the times, sometimes implicit). In this sense, the notion that it emanates from the action or omission of an authority is *always* present. The second sense of *licentia* designates a "state of general permission," or a "permissive situation." A third class, which stands out in relation to the others, combines the notion of a particular permission (which comes from the first meaning of the word), and the pejorative notion of a permissive situation: it expresses the idea of a permission explicitly or tacitly given to a wrongful conduct. This specialized usage of *licentia* is prevalent in this period.³⁹ Thus,

36. Thuc. 3.45; Pl. *Gorg.* 525a4, 525d5; *Resp.* 563e8.

37. Plaut. *Rud.* 1225, where the word seems to indicate the permission that Trachalio gives to Daemones to do whatever he likes; Lucil. 30.68 Marx, where the word indicates the vices in which people who are allowed too much indulge. As for Ter. *Ad.* 508 (*nimia illaec licentia profecto evadit in aliquod magnum malum*, "this excessive permission will surely lead to some great evil"), it seems to be intermediate between the meaning of a specific permission (without any negative connotation, otherwise *nimia* would be pleonastic) and that of a general permission given to Aeschinus.

38. See the 1989 edition of the *Oxford English Dictionary*, s.v. *-ive*.

39. A fourth meaning of *licentia*, "immoral behavior" or "wantonness," could be discerned in a number of occurrences, but the link with a notion of permission is always perceptible in Republican texts.

throughout the ninety-five occurrences of *licentia* in Caesar, Cicero, Sallust, and Cornelius Nepos, seventeen designate a single instance where permission is given (without any explicit value judgment),⁴⁰ thirty-three are absolute uses of *licentia* indicating a state of full permission,⁴¹ and forty-five refer to an instance where a permission was accorded to a particular wrongful conduct, one that is mentioned and usually with a genitive of object.⁴² In all cases, *licentia* indicates the grant of a permission or possibility which could have been refused.⁴³ Let us give a few examples of each category:

1. *Licentia* designating a simple permission: *licentia* is often used by Cicero in situations in which a *prima facie* norm forbids a behavior, but a more authoritative norm allows or tolerates it, making it thereby lawful (explicitly if it allows it, implicitly if it tolerates it). For instance, epideictic eloquence is permitted to use poetic figures that are usually forbidden to orators: this *licentia* is glossed by Cicero as a *venia*, a toleration, granted implicitly to orators by the public, and explicitly by Cicero.⁴⁴ *Licentia* as neutral permission comes up in other parts of the corpus. In a letter written to Atticus on June 6, 44 (*Att.* 15.11.4), Cicero tells his friend about his nomination as a *legatus* to his son-in-law Dolabella, about to serve for five years as a proconsul. This function will give Cicero an even greater liberty of movement than the common *liberae legationes*, recently curtailed by a *lex Iulia*.⁴⁵ As a *legatus* to a proconsul, Cicero will enjoy the absolute liberty to go everywhere he wishes, which even a *libera legatio* cannot give.⁴⁶ There is no

40. Cic. *Att.* 15.11.4; *Fam.* 12.17.2; *De or.* 1.70, 3.153; *Leg.* 2.14; *Luc.* 30; *Off.* 1.103, 1.148, 3.20; *Orat.* 37, 68, 155; *Pis.* 76; *Sen.* 44; *Tusc.* 1.16; *Verr.* 2.3.3; Sall. *Jug.* 103.4; *Cat.* 51.12–13. In all these cases *licentia* can be rendered as “permission,” whereas “possibility” would not work for all.

41. Caes. *BCiv.* 1.21.2, 1.51.3, 2.31.4, 3.110.2.3; *BAfr.* 54.1; *Bellum Alexandrinum* 56.2; Cic. *Ad Brut.* 25.1.10; *QFr.* 1.1.22, 3.3.9; *Brut.* 316; *Cael.* 48; *Div.* 2.150; *Dom.* 132; *Fat.* 38; *Flacc.* 16, 20; *Leg.* 2.17; *Mil.* 78, 84; *Nat. D.* 1.65, 1.107, 2.7; *Off.* 2.28; *Quinct.* 92.7; *Verr.* 2.3.77, 2.3.106, 2.3.210; *Sest.* 134; Sall. *Jug.* 15.5, 39.5; *Cat.* 6.7, 51.30; Sall. *Hist., Oratio Philippi* 11; [*Ad Caes. sen.*] 2.3.

42. Caes. *BGall.* 7.52.3; *BCiv.* 2.31.7; *BAfr.* 85.8; Cic. *Att.* 4.9.4, 10.4.1; *Fam.* 15.20.1; *Amic.* 83; *Cael.* 7, 16; *Deiot.* 29; *Div.* 2.127; *Dom.* 47; *Fat.* 15; *Fin.* 2.70, 2.73; *Font.* 40; *Mur.* 20; *Nat. D.* 1.123; *Phil.* 1.34; *Rep.* 1.44, 1.67, 1.68, 3.23, 3.41; *Scaur.* 16; *Sest.* 103; *Pro Tullio* 8, 40, 46, and frag. 4 Clark; *Tusc.* 4.71; *Verr.* 2.2.67, 2.3.29, 2.3.129, 2.3.147, 2.3.205, 2.3.220, 2.4.116; Nep. *Alcibiades* 4.4; Sall. *Jug.* 31.22; *Cat.* 12.4; *Hist., Oratio Lepidi* 13 *Hist., Oratio Phil.* 9; [*Ad Caes. sen.*] 1.5.

43. This includes non-paradigmatic cases in which the permission is taken by someone: that person is at the same time the authority who gives it and its beneficiary (see, e.g., *Fam.* 12.17.2; *Font.* 40).

44. *Orat.* 37–38. For similar uses of *licentia*, see *De or.* 1.70, 3.153; *Orat.* 68, 155. I take it that *licentia* is used here because the case comes close to situations in which the paradigmatic meaning of *licere* applies: an authority (the public, or Cicero as an authoritative orator) who has power to determine what can and cannot be done states or implies that something is, despite contrary appearance, not unlawful (cf. Stolpe 2010, 100). The same could be said of the freedom enjoyed by Academic philosophers in *Off.* 3.20; there are *prima facie* reasons to stick to one’s school’s doctrine, but the Academy relaxes this bond on its members (on this rare freedom, see *Luc.* 8 and 60).

45. The commentary of Beaujeu (1991, 185, 276–277) in the Budé edition is very helpful on this point: since the *lex Gabinia* of 67, promagistrates could appoint their *legati* themselves (before that, their appointment was the role of the Senate, although already in cooperation with the promagistrate, as Schleussner [1978, 172–85] shows). The *lex Iulia* in question remains unknown.

46. *Et habent, opinor, liberae legationes definitum tempus lege Iulia nec facile addi potest ad id genus legationis ut cum velis introire exire liceat; quod nunc mihi additum est. bella est autem huius iuris quinque licentia* (“a definite amount of time, I think, has been set to free missions, and it is hard to add to them the permission to go in and out as you please; which additional permission has just been granted to me. This permission given for five years is really pleasant”).

hint here that such a practice is illegitimate, especially when the sentence is contrasted with Cicero's harsh words against *legationes liberae* in *De legibus* (3.18). What is certain is that Cicero, by being *legatus* to a proconsul, will be able to enjoy a freedom which customary practice recognizes unusual.⁴⁷ Other cases could be given, in Cicero and other authors.⁴⁸ In all of these examples, *licentia* does not have pejorative connotation but simply designates the implicit or explicit grant of a permission by an authority. The meaning of "possibility" is emphasized in some cases, but without ever erasing the connotation of "permission."⁴⁹

2. *Licentia* designating a situation in which individuals or groups are allowed to act absolutely as they like: Cicero uses *licentia* in that sense in the *Pro Flacco*. In order to play down testimonies given by Greek cities against his client, Cicero deprecates the way Greek assemblies used to make their decisions: *ut hanc Graeciam quae iam diu suis consiliis perculsa et adflicta est omittam, illa uetus quae quondam opibus, imperio, gloria floruit hoc uno malo concidit, libertate immoderata ac licentia contionum* ("not to talk about contemporary Greece, which for long has been turned upside down and shattered by its own decisions, that ancient Greece which used to be distinguished by its wealth, its power, its glory, has fallen because of one single evil, the unrestrained liberty and the total freedom of its assemblies"). As Cicero goes on to explain, the lack of procedural constraint checking the power of the people led the Greek cities to embark on dangerous and unjust policies (*Flacc.* 16).⁵⁰ In the *Pro Milone*, Cicero uses *licentia* when he imagines what would have happened had his client not killed Clodius on time: *ea vis [. . .] illam perniciem extinxit ac sustulit, cui primum mentem iniecit, ut vi irritare ferroque lacessere fortissimum virum auderet, vincereturque ab eo quem si vicisset, habiturus esset impunitatem et licentiam sempiternam* ("this force [the *fortuna p.R.*] crushed and got rid of this nuisance, by inspiring him to provoke and attack with the sword this most courageous man, and thus to be defeated by the man which, if killed, would have let him enjoy eternal impunity and freedom to act as he liked," *Mil.* 84).⁵¹ All these examples illustrate the second meaning of *licentia*, that of a situation of permissiveness and impunity enjoyed by an individual or a group.

47. On this point, and on the difference between *libera legatio* and being *legatus* to a consul, see Suolahti 1969.

48. Thus, we also find in Sallust this neutral meaning of *licentia*, in the *Bellum Iugurthinum*: tired of the war, Jugurtha's father-in-law Bocchus, king of Mauretania, sends ambassadors to Marius with full power to negotiate peace: *eos ad Marium, ac dein, si placeat, Romam legatos ire iubet, agendarum rerum, et quocumque modo belli componendi licentiam ipsis permittit* ("he orders them to go to Marius and then, if he accepts, to Rome, and gives them full powers to carry out their business and end the war by all means," *Jug.* 103.4). Here, clearly, *licentia* refers to the grant of an explicit permission by an authority to a subordinate.

49. I am thinking of *Orat.* 1.70, 3.153; *Off.* 1.148; *Verr.* 2.3.3 (four cases out of seventeen).

50. On this contrast, see Morstein-Marx 2004, 68–118; Connolly 2007, 163–68; Guérin 2011, 2: 229.

51. In the same vein, the author of the *Bellum Alexandrinum* recounts how Caesar's victory at Pharsalus spells the end of his lieutenant Cassius' absolute power in Alexandria, as the victorious general will now turn his eyes toward Egypt: *confectum bellum licentiam superiorum intercludebat* ("the end of the war brought to a close the total permission that he previously enjoyed," *BAlex.* 56.2.3).

3. *Licentia* as a permission explicitly or tacitly given to commit a particular wrongful act: this use of *licentia* is quite frequent in Cicero's speeches. In the *Pro Murena*, for instance, he denies that Lucullus, to whom his client used to serve as a legate, has allowed him to twist the historical facts in favor of the latter: *ne ab ipso propter periculum nostrum concessam videamur habere licentiam fingendi, publicis litteris testata sunt omnia* ("lest we seem to have been granted by Lucullus himself the freedom to alter the facts because of my client's danger, all events [of the war against Mithridates] have been recorded in official reports," *Mur.* 20). The permission would here be explicit.⁵² The author of the letter *ad Caesarem* known as Pseudo-Sallust too employs *licentia* in this way when he advises Caesar to set a legal limit on the expenses allowed to individuals, in order to restore civil peace: "this [the return of peace] will happen if you take away the freedom to spend and steal" (*id ita eveniet si sumptuum et rapinarum licentiam dempseris*, [Sall.] *Ad Caes. sen.* 1.5). In many occurrences in the corpus, however, *licentia* refers to a permission to do wrong that is only implicit. This is the case, for instance, when a wrongdoer enjoys the tacit approval of the regime.⁵³ *Licentia* can also mean "impunity" rather than "permission," when an authority fails to actively fight against wrongdoing.⁵⁴ Surely impunity is not exactly the same as tacit permission, since the behavior is not officially legalized, but its effects are almost identical: as we will see, Cicero thinks that not clamping down on an act of wrongdoing that is publicly known acts as an encouragement to those tempted to perform it. After all, one is obliged to qualify the meaning of "forbidden" when something is officially forbidden but actually tolerated. Finally, *licentia* can refer not to a permission but to the making available of an option by an individual or a group, when it is implied that this option is judged not to be illegitimate.⁵⁵

With these distinctions in mind, we can now focus on Cicero, whose specific use of *licentia* is the main topic of this paper. For an elucidation of Cicero's analysis of the decline of the Republic, the second and third meanings of *licentia* adduced above are key. In order to provide an explanation for the weakening of public morality in his time, Cicero puts *licentia* to use both in its meaning of a permission given to individuals to act as they wish (explicitly in most cases, sometimes tacitly), and of a permission to do wrong (here again, explicitly or tacitly). Essential to both cases is that permission is given by an authority figure

52. Also explicit are the permissions given to individuals by the community in *Rep.* 1.67–68; the one taken by Tiberius Gracchus in *Rep.* 3.41; the one given by Verres in *Verr.* 2.2.67, 2.3.29, 2.3.205, 2.3.220. Explicit permission to do wrong is often given by a tribunal, e.g., *Pro Tullio* 8, 40.

53. This would have been the case, according to Cicero, if the Pompeians had seized power in Rome, according to *Att.* 10.4.1: *hi sunt qui, nisi me civitate expulissent, obtinere se non putaverunt posse licentiam cupiditatum suarum* ("they are the ones who thought that, unless they expelled me from the city, they would not be able to have free rein to satisfy their desires"). Also belonging to this group are the occurrences at *Dom.* 47 and *Phil.* 1.34.

54. This is the case, I take it, in *Fam.* 4.9.4; *Cael.* 16; *Deiot.* 29; *Fin.* 2.73; *Scaur.* 16 (on the impunity of false witness in Rome, see Guérin 2015, 114); *Pro Tullio* 8.

55. See, e.g., *Fin.* 2.70; *Sest.* 103. This includes cases in which an option is made available only because it derives from an option that is openly made available, for instance, *Rep.* 1.44: if the people authorizes monarchy, then it must make it possible that kings change their character at whim.

who has the opportunity to grant it or not. This is why I advocated in the introduction that we shift from a neo-Republican understanding of freedom as non-domination to a more common understanding of it as non-interference. For it belongs to the definition of *licentia*, which is a kind of freedom, that the authority granting it, either by explicit or by implicit permission, could have done otherwise: it is an allowance, not an entrenched liberty.⁵⁶

The two types of *licentia* we have singled out (permission to act as one pleases, and permission to do wrong) are, for Cicero, extremely harmful attitudes: by failing to uphold the norms it is supposed to enforce, the authority granting *licentia* dramatically weakens them. For if an authority gives up on enforcing these norms, or, worse, if it encourages individuals to adopt wrongful behaviors, the moral effect on the rest of the citizenry will prove devastating: instead of lending its moral prestige to the norms ensuring the proper functioning of society, this authority figure will radically weaken them, and allow the behaviors it condones to spread throughout the citizenry, in virtue of the law of imitation. It will also comfort vicious individuals in their dispositions, rendering them more likely to reoffend. Throughout his work, Cicero devotes a very careful attention to these effects, and the aim of the second part of this paper is to highlight it.

2. LICENTIA AND THE MECHANISMS OF PERMISSIVENESS

For Cicero, *licentia* has two main consequences on the political community. First, it establishes a precedent that subsequent wrongdoers will use to claim a right to do wrong. Second, it reinforces the vicious dispositions of the wrongdoer, making him a greater threat to the community. Since the second effect will have a role to play in some cases of the first, and can be explained more briefly, it will be useful to deal with it now.

For Cicero, any display of *licentia* runs the risk of creating in the wrongdoer a detestable habit. The first and foremost purpose of the political community is to inculcate its citizens with virtue.⁵⁷ It directly contradicts its mission when it allows criminals to persist in their wrongdoing and lets them acquire a bad *consuetudo*. This link between *licentia* and *consuetudo* appears throughout the Ciceronian corpus.⁵⁸ It is given a proper logic in the *Verrines*, when Cicero explains how the many failures of the political community to clamp down on his previous crimes have comforted him in his dispositions: *o consuetudo peccandi, quantam habes iucunditatem improbis et audacibus, cum poena afuit et licentia consecuta est* (“O habit of doing wrong, what beauty you have in the eyes of wicked and violent men, when punishment was absent and permissiveness has ensued!” *Verr.* 2.3.176). The sequence which Cicero describes can be explicated as follows: vice has made an individual perform a misdeed. For some reason, the political community has not struck back (*poena afuit*). This refusal to punish has been understood by the wrongdoer as a (tacit) permission to continue along this path (*licentia consecuta est*), thereby giving birth to a vicious habit (*consuetudo*

56. In Philip Pettit’s (2012, 83) view, liberty as non-domination requires entrenchment. On the fact that every permission depends on the decision of the authority, see Stolpe 2010, 100.

57. *Rep.* 4.3 Bréguet; *Leg.* 1.58.

58. *Flac.* 20; *Rep.* 3.41; *Pro Tullio* 8. Cf. also Caes. *BCiv.* 3.110.2.3.

peccandi). This phenomenon is thus easy to account for. We will see later how it contributes to some key instances of the other bad effect of *licentia*, to which we now turn: the way in which it sets dangerous precedents.

As a process of collective psychology, this social mechanism must be placed in the wider frame of Roman cultural history. Historians have made clear that the cardinal points of common Roman morality were an inheritance of the nobility's code of behavior. It was this aristocratic morality that was transmitted to the Roman people as a whole and set the norms of proper public behavior.⁵⁹ What concretely did this morality consist in? The *nobiles* honored the values that constituted the basis for the legitimization of their power: hence their "ethos of excellence" focused on the display of the greatest *virtus*, on the one hand,⁶⁰ and on the other, their declared devotion to the Republic.⁶¹ Apart from its particular content, this aristocratic morality was characterized by a specific mode of enforcement. As a group, the *nobilitas* exercised peer pressure on its individual members to make them abide by these *mores*, developing a collective ethos that shamed those who broke it.⁶² Furthermore, this way of enforcing morality was transmitted to the rest of Roman society. At Rome, approval by the onlookers played a key role in defining what counted as correct behavior.⁶³ The Roman "culture of shame"⁶⁴ was certainly exacting, but it seems to have been recognized by all as a set of moral principles that promoted the welfare of the Republic in a satisfying manner (hence its wide acceptance). Important parts of this collective ethic finally found a philosophical legitimization in Cicero's moral works.⁶⁵

It is precisely this cultural background that made *licentia* so problematic and, by contrast, intransigence toward any breach of social rules so necessary. If one could get the impression that some behaviors, although apparently blameworthy, were condoned by the community or the persons representing it, a very powerful obstacle toward adopting them was removed, namely, the disapproval of the community's leading men.

In particular, immoral attitudes exhibited by these men themselves were thought to dramatically lower the ethical standards of the whole society: both because these individuals, as current or former magistrates, were supposed to enjoy the support of some large part of the people, and because their conspicuous position made them into an example that could be used as a pretext for imitation. Every allowance given by a person or a body endowed with authority to a wrongful behavior, that is, every display of *licentia*, was doomed to weaken in everyone's mind the force of the principles that were being violated. The next step was a general adoption of these blameworthy, but not blamed behaviors.

59. On this transmission, see Eder 1990, 12–32.

60. On this point, see Hölkeskamp 1987, 204–40.

61. Hölkeskamp 1987, 204–40; 2010, 89; Flaig 1995; Morstein-Marx 2004, 204–40.

62. Earl 1967, 35.

63. Bartsch 2006, 117–37.

64. For this qualification, see Hölkeskamp 1987, 217.

65. Book 4 of Cicero's *De re publica* is entirely devoted to the praise of Roman communal norms such as *verecundia* and *decus*. In *Off.* 1.98–99, *decorum* (the value corresponding to *πρέπον*, one of Panaetius' four *ἀφορμαί*) is defined as what receives the approval of one's peers. This element very probably comes from Panaetius himself, but Cicero gives to it a particular prominence in his writings (see Dyck 1996, 257–58).

The concern for the spreading of bad examples pervades Roman moral thinking,⁶⁶ but it is in Cicero that we find it receiving its fullest expression. Cicero knows what an important role *exempla*, that is, manifestations of virtuous behavior by prominent individuals, play in shaping the behavior of his fellow citizens: a new man, he based part of his *persona* on the respect of the examples set by previous generations.⁶⁷ But Cicero also knows that the mechanism through which good *exempla* are emulated can work the other way around. He thematizes that phenomenon under the name of *licentia*.

Cicero's concern with *licentia* is already prominent in some of his early speeches. Its first attestation is in the *Pro Tullio*, delivered in 72 or 71.⁶⁸ The whole purpose of courts, says the orator, is to put an end to the "bad habits and excessive freedom of men" (*hominum malam consuetudinem nimiamque licentiam*) by passing an authoritative judgment against crime (*Pro Tullio* 8). An excessively permissive court will do nothing but encourage criminal behavior, for "is there any difference between magistrates defending a crime, and them giving power and full freedom to criminal activity?" (*an quicquam interest utrum magistratus peccato defensionem constituent an peccandi potestatem licentiamque permittant?*, *Pro Tullio* 40).

Cicero's awareness of the damaging effects of *licentia* is even more prominent in the *Verrines*, published one year or so after the *Pro Tullio*. The *Verrines* are a general denunciation of the black sheep of the senatorial aristocracy, and Cicero scatters them with remarks on how to reinstate moral order.⁶⁹ That is why he exhorts the judges to show the greatest severity: otherwise, he tells them, "look what an infinite license to steal money you will give to all men!" (*iudices, videte, quam infinitam sitis hominibus licentiam pecuniarum eripendarum daturi, Verr. 2.3.220*). The court should realize, Cicero says in substance, that they are setting a precedent that might be taken as a pretext by potential criminals.

We must wait thirteen years to see Cicero make renewed use of the logic of *licentia* in such a consistent way. His target is not Verres but his new personal enemy, Clodius. In the *De domo sua*, delivered on September 29, 57 BCE, Cicero exhorts the pontiffs to annul the confiscatory measures Clodius had the *comitia tributa* vote on April 25, 58 BCE.⁷⁰ Cicero's appeal to severity is based on the logic used against Tullius' enemy Fabius and Verres. If tribunes of the plebs are allowed to propose bills against all procedural rules, the tribunate will soon become an instrument for greedy individuals:

Date hanc tribuno plebis licentiam et intuemini paulisper animis iuventutem et eos maxime qui imminere iam cupiditate videntur in tribuniciam potestatem; collegia, medius fidius,

66. See, e.g., Plaut. *Trin.* 1028–50 (with the comments of Blösel 2000, 29–32); Ter. *Ad.* 414–18; Hor. *Epist.* 2.1.145–51; Vell. Pat. 2.3.3–4; Sen. *Ep.* 97.10. See also the analysis of the institution and transmission of *mos* put forward by Varro in Macrob. *Sat.* 3.8.9 and Servius *Ad Aeneidem* 7.601.

67. For an exposition of a role of *exempla* as models in Cicero's time and for Cicero himself, see Van der Blom 2010, 12–25. For the role of authority in Roman society in Cicero's times, with particular regard to oratory, see May 1988 (esp. 6–11) and more recently Guérin 2011, 219–94.

68. I use here Clark's (1911) OCT. For the date and context of the speech, see Crawford 1984, 47–49.

69. See Van der Blom 2010, 75–76. For more on the logic of *licentia* in the *Verrines*, see 2.3.205–6.

70. See the introduction to Willeumier's Budé edition (1952, 12–13, 22).

tribunorum plebis tota reperientur, hoc iure firmato, quae coeant de hominum locupletissimorum bonis, praeda praesertim populari et spe largitionis oblata.⁷¹

Give this permission to the tribune of the plebs and look after that at the youth, in particular those who seem to distinguish themselves already by their avidity for the tribunician power: I assure you that, once this right has been established, entire colleges of tribunes will be found that will associate themselves to seize the property of the rich, especially if they make their booty popular by holding the prospect of a distribution.

In other speeches from the fifties, such as the *Pro Sestio* and the *Pro Milone*, Cicero's justification of the use of violence against Clodius is based on the same logic: any weak reaction from the forces of order would have been used as an occasion for further criminal behavior, not only by Clodius, but by all of those like him; Cicero calls this phenomenon *licentia* (*Sest.* 134; *Mil.* 84).

Cicero is so convinced of the force of this logic that he does not recoil from using it for his own rhetorical purposes. The orator is ready to employ in favor of his former *tiro* Caelius the argument he blamed as intolerable in the mouth of Hortensius. It is *licentia* he uses to describe the process at play (*Cael.* 48):

verum si quis est qui etiam meretriciis amoribus interdictum iuuentuti putet, est ille quidem valde seuerus—negare non possum—sed abhorret non modo ab huius saeculi licentia verum etiam a maiorum consuetudine atque concessis. quando enim hoc non factitum est, quando reprehensum, quando non permissum, quando denique fuit ut quod licet, non liceret?⁷²

But if there is anyone to think that mercenary love should be forbidden to the youth, this person is certainly very serious (I cannot deny that), but out of tune not only with the permissiveness of our times, but even with the habits and indulgence of our ancestors. For when was it not practiced, when was it not permitted, when was the time when what is allowed now was not?

True, Caelius has had an infamous relationship with Clodia, the seductive patrician woman, but she is an enchantress, and boys will be boys; it would be a waste of time and energy to start clamping down on all such behavior. *Licentia* is here explicitly acknowledged as an allowance to do wrong. But since it is in line with the *concessa* granted by the *mos maiorum*, since Caelius lives in a depraved society, there is something to be said in favor of applying to him the same standards that were and are implicitly used for others.

We have seen thus far that Cicero's speeches demonstrate his awareness of the inner logic of permissiveness. What proves that Cicero identifies there a key cause of the weakening of social standards is that he puts this very logic at the center of his political theory.

71. *Dom.* 47.

72. I use here the text of Austin 1960. Cicero defends indulgence at other places of his corpus, most notably in *Mur.* 58–68. Cicero there argues for forgiveness and indulgence provided they do not violate *officium* (65). The argument is similar in *Pro Caelio*: just before the passage quoted, Cicero shows that giving some freedom to young men, provided they do not commit adultery, is permissible: like Prince Hal, they will change once they come of age (42–43). From both passages, we can conclude that Cicero allows toleration of non-virtuous behaviors provided they do not prevent individuals from fulfilling the *officia* of a Roman citizen. As Stem (2006, 221) notes, an important part of these *officia* is to do whatever will maintain the Republic. In most cases of *licentia*, however, toleration will precipitate its ruin.

A major thread of Cicero's political philosophy, especially in *De re publica* and *De legibus*, is the opposition between popular *libertas*, on the one hand, and magisterial *imperium* (oriented by, therefore associated with, aristocratic *consilium*), on the other.⁷³ Cicero acknowledges the existence of a thirst for liberty in every human being,⁷⁴ but he also (and above all) exalts *imperium* guided by *consilium* as the implementation of natural order (*Rep.* 1.60, 1.65; *Leg.* 1.23). He recognizes the people's political freedom (understood as political participation) as necessary to ensure political stability, but he does not include it among the main ends of political activity, in which moral virtue takes pride of place.⁷⁵ Downplaying the role of moral virtue in Cicero's political theory and attributing to him a whole-hearted devotion to the people's *libertas* is no doubt necessary to turn him into an ancestor of neo-Republican theory, but it does not fit with our evidence, as Clifford Ando and Geoff Kennedy have already seen.⁷⁶

It is precisely because *imperium* and *consilium*, on the one hand, and *libertas*, on the other, cannot be equated, that there is need for a mixed constitution. The challenge that the mixed constitution successfully takes up is to combine these two principles in a stable manner. For this goal to be achieved, the people must feel that they are not dominated, that is, that power ultimately remains in their hands,⁷⁷ but they must also recognize that the *optimates* in general and the magistrates in particular occupy a legitimate position in the state: the first because of their acknowledged *auctoritas*, the second owing to their benevolence toward the people (the *caritas* they share with kings).⁷⁸ *Libertas* and *imperium/consilium* thus successfully constrain each other. Enough participation is given to the people to satisfy their natural thirst for liberty, but enough is also made to ensure that the right, that is, rational policies are implemented.

This fragile equilibrium is destroyed when one of these two elements, taking its proper goal as absolute, starts to assert itself and to reject any limitation.⁷⁹ For Cicero, the greatest danger lies in the people's assertion of their liberty for its own sake, without concern for the policies that ought to be adopted. A situation

73. This point has been demonstrated by Ferrary (1982). See also Kohns 1977.

74. *Rep.* 1.43, 1.47, 1.55, 1.69. This recognition of popular participation, in *De re publica* at least, has been highlighted by Arena (2016).

75. On freedom as a necessary element of the stable, mixed constitution, see *Rep.* 1.55, 2.50, 2.57. The ends of political action are stated by Scipio in *Rep.* 5.6 Bréguet: *huic moderatori rei publicae beata civium vita proposita est, ut opibus firma, copiis locuples, gloria ampla, virtute honesta sit.*

76. The narrowing of political goals to *libertas* only is particularly noticeable in Arena 2007, which argues that Cicero praises political virtue above all as an instrument toward the preservation of the mixed constitution (which is itself a guarantee of *libertas*). The same interpretations lead Arena to assume an evolution of Cicero's political thinking from *De re publica* to *De legibus* in Arena 2016, which she leaves unexplained, and which I think can be avoided by offering a deflationary reading of Scipio's comments on *libertas* in *De re publica*. See the criticisms of Ando (2010) and Kennedy (2014) on ascribing to Cicero a deep commitment to defending popular *libertas*.

77. For this Republican affirmation, see *Rep.* 2.43. See also *Planc.* 10: *semperque sapientes ea quae populus fecisset ferenda, non semper laudanda dixerunt.*

78. *Rep.* 1.55: *ita caritate nos capiunt reges, consilio optimates, libertate populi, ut in comparando difficile ad eligendum sit quid maxime velis.* On the importance of the people's recognition of the legitimacy of the orders given by the magistrates, see Cambeis 1984.

79. In this, Cicero could be influenced by Athenian reflections on unaccountability: Hoekstra (2006) argues that fifth-century conceptualizations of the δῆμος as holder of boundless and unaccountable power equated it with a tyrant. Cicero puts this equation to new use in *De re publica* by showing what becomes of a people that is granted a state of total permission, i.e., of *licentia*.

in which a people uses their power to grant themselves whatever they like, without due consideration of the justice of their claim, is precisely what the *De re publica* calls *licentia*: *si populus plurimum potest, omniaque eius arbitrio geruntur, dicitur illa libertas, est vero licentia* (“if it is the people who prevails, and everything is handled at their whim, this is called liberty, but it is in fact permissiveness,” *Rep.* 3.20 Bréguet). This line is spoken by Philus, whom Cicero presents as taking up Carneades’ argument against the existence of a natural law to prove, like Plato’s Thrasymachus, that every constitutional arrangement is a means to further the interests of a particular class.⁸⁰ Yet it recalls Scipio’s own opinion in Book 1 about an unmixed democratic constitution: the absolute power of the Athenian assembly has given full license to the mob to act as they please, to let out their fury (*furor*), and to bring about thereby the ruin (*pestis*) of the city.⁸¹ Popular freedom, when it is not checked by *imperium* and *consilium*, necessarily leads to the people granting themselves all liberty to do wrong.

A neo-Republican could rightly claim that calling *licentia* the unrestrained power of the assembly is in line with her theory. For neo-Republicans, each citizen must be protected against arbitrary interference from any group, and avoiding the tyranny of the majority is a Republican ideal.⁸² Scipio’s words could be interpreted as meaning that every citizen must be protected against the whim of the popular assembly: Cicero, after all, suffered from what we would call tyranny of the majority when he was exiled by Clodius’ law, and *licentia* was precisely the word he used to redescribe Clodius’ self-proclaimed ideal of *libertas* (*Dom.* 131; *Leg.* 1.17). The problem with that move is that it does not account for the Ciceronian uses of *licentia* that do not square at all with Republicanism. The scope of what the people should not be allowed to do is much broader for Cicero than for neo-Republicans, and goes far beyond discriminatory measures such as Cicero’s own act of banishment: it includes any act contrary to moral virtue as Cicero understands it. Allowing homosexuality, for instance, is for Cicero a case of *licentia* (*Rep.* 4.4 Bréguet). It is hard to believe that Cicero condemns what he takes to be vice only because it threatens the liberty of the commonwealth, as Arena would have it.⁸³ This example should also suffice to show that Cicero is not committed to guaranteeing citizens the secure enjoyment of “basic liberties” defined in neo-Republican terms as co-exercisable liberties that promote the welfare of those who have them: his position is much closer to the paternalism seen by neo-Republicans as a form of domination.⁸⁴ The scope of *licentia* is not always incompatible with,

80. On the sources of Philus’ speech in Book 3, see Ferrary 1977, as well as Hahn 1999.

81. *Rep.* 1.44: *iam Atheniensium populi potestatem omnium rerum ipsi, ne alios requiramus, ad furorem multitudinis licentiamque conversam pesti . . .*

82. Pettit 2012, 211.

83. Arena 2012, 60, for whom *virtus* is only a means toward the preservation of Rome’s *libertas*. I think on the contrary that *De re publica* shows that *virtus* is an end in itself (1.52), and that *honestum* is the only proper goal of a political community (4.3 Bréguet).

84. See Pettit 2012, 98 on “criminalizing victimless offences” as a case of paternalism, and p. 135 on the neo-Republican mistrust toward “communal norms.” Arena (2012, 49) talks of “basic Roman liberties” in a way evidently influenced by Pettit’s account. Arena’s desire to interpret Cicero in neo-Republican terms leads her to read his opposition to the *leges tabellariae*, documented especially in *Pro Sestio* (103, where Cicero calls the secret ballot *licentia tabellae*) and *De legibus*, as a defense of the people against “interferences of the self” (p. 60). No neo-Republican can talk of “interference of the self”; cf. Pettit 2012, 49 on “revealed will and real will.”

but in any case broader than, what neo-Republican theory would recognize as excessive freedom. This is the difference in philosophical basis I alluded to in the introduction.

Thus, Cicero in *De re publica* is concerned with people enjoying complete liberty—in fact, liberty to do wrong (wrong being here broadly understood, so as to encompass moral faults). But as with any case of *licentia*, such an excessive liberty must be given by an authority. In Cicero's analysis *licentia* never originates within the people. It starts at the head of the state. Even a mixed constitution, such as Rome, can collapse if its magisterial/aristocratic element starts according too much importance to the people's freedom, that is, if they start privileging it over the enforcement of justice. The permissions unduly granted by the *principes*, through their own behavior and their flattery toward the people, lead the citizenry to value their freedom more than anything else, social and moral standards included.⁸⁵ Since the State's leading men seem to prize the people's freedom so much, why not maximize it? Cicero insists on this fact in the longest quotation from Plato that can be found in his corpus, in Book 1 of *De re publica*.⁸⁶ In his translation of his model, *licentia* plays a prominent role.

Plato's depiction of the mechanisms of *παρανομία* manifestly shapes Cicero's understanding of the process of *licentia*, but that question receives a new treatment under his pen. *Licentia* in this passage does not translate any Greek term,⁸⁷ and constitutes a further reflection on the role of *exempla*.⁸⁸ Let us imitate Scipio and quote the passage in its entirety:

“cum enim, inquit, inexplēbiles populi fauces exaruerunt libertatis siti malisque usus ille ministris non modice temperatam sed nimis meracam libertatem sitiens hausit, tum magistratus et principes, nisi valde lenes et remissi sint et large sibi libertatem ministrent, insequitur, insimulat, arguit, praepotentes reges tyrannos vocat [. . .]” ergo illa sequuntur: “eos qui pareant principibus agitari ab eo populo et servos voluntarios appellari; eos autem qui in magistratu privatorum similes esse velint eosque privatos qui efficiant ne quid inter privatum et magistratum differat, ferunt laudibus et mactant honoribus, ut necesse sit in eius modi re publica plena libertatis esse omnia, ut et privata domus omnis vacet dominatione et hoc malum usque ad bestias perveniat, denique ut pater filium metuat, filius patrem neclegat, absit omnis pudor, ut plane liberi sint, nihil intersit cuius sit an peregrinus, magister ut discipulos metuat et iis blandiatur spernantque discipuli magistros, adulescentes ut senum sibi pondus adsumant,

85. Kennedy 2014, 492–93: “Liberty, for Cicero, must coexist with recognition of the *dignitas* of the ‘best men’ and the *auctoritas* of the senate [. . .]. Liberty isolated from *dignitas* and *auctoritas* is licence.”

86. *Rep.* 1.66–67. The passage is a translation of Plato's *Republic*, Book 8, 562c–563d. Scholars who have studied the passage as such (Poncelet 1947; Boehm 1984; Gregory 1991) have not considered the question of *licentia*, nor tried to make explicit the social mechanism at play. For Plato's influence on Cicero's political philosophy, see his own statement in *Rep.* 2.52, as well as Boyancé 1954; Büchner 1984b; Gotter 1996.

87. Ἐξουσία occurs at 563e8, but not at the place corresponding to the occurrence of *infinita licentia* in the Latin text. Moreover, it does not belong to the essence of ἐξουσία that it is given (explicitly or implicitly) by an authority, whereas it is, as we have seen, an essential feature of *licere/licentia*.

88. The behavior of the *mali magistri* in the passage comes close to Caesar's political strategy, as described by Yavetz (1965, 105): “César se rendit sympathique à la foule justement parce qu'il sut se départir de cette *gravitas* qui était exigée d'un haut personnage, et c'est pourquoi les *boni* qualifièrent sa conduite, dans laquelle ils ne voyaient que basse flatterie, de *levitas popularis*. Si nous définissons la *gravitas* comme une qualité personnelle qui permet à un chef politique d'adopter une position intransigeante afin d'atteindre un but impopulaire, nous pouvons dire, par opposition, que la *levitas* caractérise un homme qui *incommodo rei publicae gratiam sibi conciliet*.” In the prologue of Book 6 of *De re publica* (6.2), Cicero has strictly warned the *principes* against abandoning *gravitas* for the sake of flattering the people.

senes autem ad ludum adulescentium descendant, ne sint iis odiosi et graves; ex quo fit ut etiam servi se liberius gerant, uxores eodem iure sint quo viri, <quin> in tanta libertate canes etiam et equi, aselli denique libere [sint] sic incurrant ut iis de via decedendum sit. ergo ex hac infinita, inquit, licentia haec summa cogitur, ut ita fastidiosae mollesque mentes evadant cuiusmodi ut, si minima vis adhibeatur imperi, irascantur et perferre nequeant; ex quo leges quoque incipiunt neclegere, ut plane sine ullo domino sint.”

Scipio – “When,” he [Plato] says, “the insatiable throats of the people are parched with thirst for liberty, and through the aid of evil ministers have drained in their thirst a pure draught of liberty instead of a moderate mixture, then unless the magistrates and the leaders are very mild and lenient and serve up liberty to them generously, the people persecute, attack, and accuse them, calling them excessively powerful kings or tyrants.” What follows is this: “Those who obey the leaders are attacked by the people and called willing slaves; but they shower with praise and give exorbitant honors to magistrates who act like private citizens and private citizens who act as if there were no difference between private citizens and magistrates. In such a commonwealth everything is inevitably filled with liberty: private homes have no master, and this evil extends even to animals; ultimately fathers fear their sons, sons neglect their fathers, all sense of shame is lost, and they are utterly free. There is no difference between citizen and foreigner, the teacher fears his pupils and fawns on them, pupils scorn their teachers, the young take on the gravity of old men, while old men are reduced to children’s games, so as not to be hateful or tiresome. Slaves behave with too much freedom, women have the same rights as their husbands, and even dogs and horses and asses go about so freely in this atmosphere of liberty that people have to get out of their way in the streets. The final outcome of this extreme permission,” he says, “is that the minds of citizens become so delicate and sensitive that if the least authority is brought to bear on them they are angered and unable to endure it; the result is that they begin to ignore the laws as well, so that they are utterly without any master.” (Trans. Zetzel)

Scipio reproduces that passage in the larger framework of his treatment of constitutional changes. He rejects the idea of a linear and fixed succession of constitutional types, in favor of open possibilities of transition from one to another.⁸⁹ Just before the quotation from Plato, Scipio brings up the scenario that a popular revolution takes place against a just king or wise aristocrats (*Rep.* 1.65). This means that, in the situation which Scipio describes, the people have already rejected the principles of *imperium* and *consilium*, in favor of a boundless assertion of their rights to liberty understood as satisfaction of their passions without interference. This tendency is reinforced by political leaders without scruples (*mali ministri*). By flattering the people, by proclaiming that this freedom from the laws is the only political goal that should be pursued, they comfort them in the belief that they ought not to be forbidden anything. Various segments of the population (young people, women, slaves) take this exaltation of personal liberty as a pretext to assert themselves over and against the norms of proper behavior.⁹⁰

This situation receives a name of its own at the end of the passage: *infinita licentia*. Yet it does not conclude the process, but adds an ultimate consequence

89. For the support that Scipio/Cicero finds in Aristotelian political theory for this analysis, as opposed to Plato’s and Polybius’ schemas, see Atkins 2013, 80–119.

90. Contrary to the statement of Perelli (1990, 31), it seems possible to see, in this degeneration from *libertas* to *licentia*, the same process at work than in the passage from monarchy to tyranny, and from aristocracy to oligarchy. Instead of acting for the common good, the rulers (here, the individuals forming the people) only care about their individual liberty, to the detriment of all.

to it, which is the complete collapse of the political community. The mere principle of coercion (*vis imperii*) is now rejected as oppressive, for two reasons. First, once the political authorities have relaxed the bonds of public morality (*imperium/consilium*) in favor of giving the people some freedom to do wrong (*licentia*), the logic of precedent incites the people to ask for more of the same. Second, the logic of *consuetudo*, which we have already seen plays a crucial role: the people become accustomed to be free from any law and to enjoy the uncoerced satisfaction of their desires; they end up being unable to bear any imposition of *imperium* any more.

At the end of the process, there is no political community any more, but a collection of atomistic individuals asserting themselves. And as Scipio continues, following Plato, the risk is high that the individuals sell themselves to the highest bidder, to the one that offers them the largest satisfaction of their appetites, and throw themselves into servitude. The deleterious domination of personal desires leads directly to tyranny.

The best way to avoid this outcome is to have a ruling class that demonstrates its commitment to the moral and political standards stemming from natural law. This role is to be taken up by Cicero's *princeps rei publicae*, and by the Senate. The former is the focus of *De re publica*: he will provide himself as an example to the admiration and imitation of his fellow citizens,⁹¹ and direct the attention of public opinion to blameworthy behaviors.⁹² But here again, the prominence of a leading man can act in the reverse way. Tiberius Gracchus' neglect for justice toward his fellow citizens, the allies, and the provinces, says Laelius in Book 3, risks setting a detestable example for other magistrates:

Asia Ti. Gracchus, perseveravit in civibus, sociorum nominisque Latini iura neclexit ac foedera. quae si consuetudo ac licentia manare coeperit latius imperiumque nostrum ad vim a iure traduxerit, ut qui adhuc voluntate nobis oboediunt, terrore teneantur, etsi nobis qui id aetatis sumus evigilatum fere est, tamen de posteris nostris et de illa immortalitate rei publicae sollicitor, quae poterat esse perpetua, si patriis viveretur institutis et moribus.⁹³

Tiberius Gracchus had the same attitude towards his fellow citizens as he had in Asia,⁹⁴ and he made light of the rights our allies and the Latins acquired by treaties. If this habit and this excessive freedom should begin to spread, and if the basis of our rule moves from right to might, so that those who up to now have obeyed our will, would only be checked by fear, then even in spite of the efforts of our generation, I fear for the persistence of our state, which could be immortal, if we kept following the institutions and customs of our fathers.

Tiberius Gracchus favored the Roman people first in the distribution of Attalus' legacy, and then by giving them undue advantage over the Latin and allied

91. *Rep.* 2.69. See already *Leg. Man.* 14: *non potest exercitum is continere imperator, qui se ipse non continet.*

92. *Rep.* 5.6 Bréguet. This role of the *princeps* has been the object of a vast literature, which includes Heinze 1924; Zetzel 2001; and more recently Atkins 2013, 73–79. Here, as elsewhere, Cicero actually dreams of a return of the Senate's former position of "collective authority as guardian of the Roman system of values and norms" (Hölkeskamp 2010, 29).

93. *Rep.* 3.41 Bréguet.

94. The text is not without difficulty, and the interpretation is controversial. I follow here the convincing arguments of Büchner 1984a, 328.

peoples in the implementation of his agrarian law.⁹⁵ Whether the *licentia* he enjoyed was granted by the Senate's temporary inaction or by himself as tribune of the plebs, it runs the risk of spreading (*manare*) among his followers. In fact, as we have seen, any manifestation of *licentia* is doomed to spread.

The topic of the Senate's exemplarity receives more prominence in *De legibus*, where Cicero stresses the need for its absolute moral perfection if it is to maintain its authority: *is ordo vitio vacato, ceteris specimen esto* ("let this order be free from vice, and be a model for the rest of the citizens," *Leg.* 3.10). But this project stumbles over the poor moral state of these very *principes*. If current magistrates or former office-holders, endowed with authority as such, dismiss the fact that their prominence put them under the gaze of the Roman people and choose instead to gratify their desire of personal happiness at any cost, nothing could be more detrimental to the moral climate of the Republic.⁹⁶ Hence the story Cicero tells his two interlocutors in *De legibus*: if a prominent senator (Lucullus, as it happens) allows himself to indulge in a blameworthy behavior, the *licentia* he displays on such an occasion is likely to be imitated by the rest of the people.

ut enim cupiditatibus principum et vitiis infici solet tota civitas, sic emendari et corrigi continentia. vir magnus et nobis omnibus amicus L. Lucullus ferebatur quasi commodissime respondisset, cum esset obiecta magnificentia villae Tusculanae, duo se habere vicinos, superiorem equitem Romanum, inferiorem libertinum: quorum cum essent magnificae villae, concedi sibi oportere quod iis qui inferioris ordinis essent liceret. non vides, Luculle, a te id ipsum natum ut illi cuperent? quibus, id si tu non faceres, non liceret.⁹⁷

Just as the entire state is likely to be infected by the desires and the faults of the leaders, so it is improved and corrected by their discipline. Lucius Lucullus was a great man and a friend to all of us. There is a story that when he was criticized for the grandeur of his villa at Tusculum, he replied with great amiability that he had two neighbors: on one side a Roman knight, on the other a freedman, and that since they had grand villas, he ought to be allowed what was permitted to men of lower standing. But Lucullus, don't you see that you are yourself the source of their desire, that if you did not behave this way they would not be permitted to either?

Lucullus thought he could use his neighbors' attitude as an excuse for indulging in the same pleasures as them; but Cicero is able to readily retort that, as a *princeps civitatis*, it is he, Lucullus, who sets the example of what is allowed or not.

When Cicero's project of restoration founders on the civil war, the logic of permissiveness is used to account for the disaster. In a letter to Atticus dated from March 18, 49 BCE, Cicero bemoans the logic that drives Pompey into the

95. As Stockton (1979, 43) argues, Laelius must be referring to the dealings of the agrarian commission, of which Tiberius was a member.

96. See the analysis of *mutatio morum* in Wallace-Hadrill 1997, 9: "The transformation which concerns the Romans is that of *mores*. Though *mores* may be, to a Roman, nature not culture, they are subject to change. Emulation is the mechanism through which the *maiores* have transmitted their practices to the present, and it is the mechanism through which *mores* are corrupted. The leading men, *principes*, bear the heavy responsibility of setting a model to society: look back and you will see, 'that the state always had the character of its leading men, and that whatever transformation of manners (*mutatio morum*) emerged among its leaders, the same followed in the people (Cic. *Leg.* 3.31).' Just a few men who enjoy the benefit of social respect, *honore et gloria amplificati*, have the power to corrupt or correct the manners of the state."

97. *Leg.* 3.30.

abyss.⁹⁸ Pompey, he writes to his friends, keeps asking himself the wrong question: *Sulla potuit, ego non potero?*⁹⁹ Sulla set a precedent, and Pompey can claim the right to do what Sulla did. We know from Suetonius that Caesar thought the precedents set by Sulla were meant to be superseded (*Iul.* 77). The mechanism Cicero puts his finger on here is what historians have described as the collapse of the Roman nobility's collective discipline.¹⁰⁰ Individuals who strove for glory outside the traditional boundaries of aristocratic competition challenged and weakened the moral authority of the rest of the *nobilitas* by the contempt they showed for the rules that those peers tried to enforce on them. Besides being a slap in the face of the *nobilitas*' moral authority, this unrestrained ambition set a precedent for newcomers. In a letter to P. Servilius Rufus, dated from December 46, Cicero recalls the pessimistic predictions he made in 51 about the looming civil war, justifying them by a general observation: *quod exemplo fit id etiam iure fieri putant, sed aliquid atque adeo multa addunt et adferunt de suo* ("people think that what is supported by a precedent is done rightly, but they also add and bring something of their own, even a lot," *Fam.* 4.3.1).

Yet this logic can only play out because of the apathy of the political community. Caesar could only achieve a position of absolute power because of the passivity of the Romans. Their refusal to check his ambition gave him *licentia* to get his way. This argument is explicitly made in Cicero's last philosophical writing, *De officiis*. There Cicero looks back to the criminal permissiveness exhibited by his fellow citizens toward the Caesarian threat. They ultimately paid for it with their freedom, but Marseilles, one of Rome's oldest allies, suffered almost total destruction, which Cicero grieves:

multa praeterea commemorarem nefaria in socios, si hoc uno quidquam sol vidisset indignus. iure igitur plectimur. nisi enim multorum impunita scelera tulissemus, numquam ad unum tanta peruenisset licentia, a quo quidem rei familiaris ad paucos, cupiditatum ad multos improbos venit hereditas.¹⁰¹

I would recall many other misdeeds committed against our allies, if the sun had seen anything more shameful than that one. We therefore deserve our punishment. For if we had not tolerated the crimes of many to be left unpunished, no such permission would have been granted to one man, whose fortune few men, it is true, have inherited, but of whose appetites many wicked people have been made heirs.

Cicero gives here, in short, the complete cycle of *licentia*: after crimes have been committed, permissiveness from the community gives free rein and even stirs up the personal ambition of the wrongdoer, who in turn are taken as models by numerous others. The logics of both *consuetudo* and precedent seem to be at play here. They are specifically directed against Antony, Cicero's target. Cicero would have certainly thought that the proscriptions of the *triumviri* were a result of a long-standing apathy of the political community. But this is, of course, a history he could never write.

98. *Att.* 9.10.2. On the date, see Beaujeu's Budé edition (1993, 269).

99. On this point, see the comments of Adcock 1959, 63.

100. Hölkeskamp 1987, 277.

101. *Off.* 2.28.

Before concluding, we might notice that concern with *licentia* is not an idiosyncrasy of Cicero. It may lend support to Cicero's argument that Sallust was aware of a similar process. Although I cannot develop the point here, Caesar's speech at the end of the *Catilina* shows an awareness of exactly the same logic of permissiveness, with the irony that Cicero himself is there the *licens*, to whom too much (the execution of the conspirators without a trial) risks being allowed.¹⁰²

CONCLUSION: *LICENTIA* AND THE DUTY TO ACT

Let us briefly sum up the argument of the paper. We have seen, first, that *licere* and *licentia* implied a freedom explicitly and, more rarely, implicitly given by an authority. *Licentia* specialized, in late Republican Latin, in three core meanings: that of a permission, that of a permission to do whatever one likes, and that of a permission to a particular wrongful conduct. The last two are the best represented in the extant corpus. These two meanings are put to use by Cicero in his analysis of the logic of permissiveness: once a community or its representatives start allowing behaviors that they have good reasons to forbid, it rapidly leads to a widespread imitation of such blameworthy attitudes, and to the reinforcement of vicious dispositions in the wrongdoers. Cicero uses this logic in his rhetoric (to plead for severity or indulgence), in his political theory (to describe how individual freedom becomes an overriding ideal in the political discourse), and in the writings of the Caesarian and post-Caesarian periods (to account for the civil war and Caesar's tyranny). The logic of *licentia* thus appears to play a key role in a wide array of phenomena of the Late Republic.

To conclude, let us put things into perspective and place Cicero's thematization of *licentia* in the wider frame of a key philosophical question: that of the relationships between politics and morality. If there is a trait of Cicero's political theory that is common with contemporary Republicanism, it is his insistence on moral virtue as an absolute requirement to ensure the safety of the political community: without the active engagement of all men of good will, the Republic is doomed to fall.¹⁰³ But Cicero's concern with political virtue is very different from that of contemporary neo-Republicans. For the latter, civic virtue must be encouraged as an instrumental good: it ensures the safety of the Republican polity.¹⁰⁴ Valentina Arena thinks Cicero advocates *virtus* in his political writings on the same basis.¹⁰⁵ But the very distinction between virtue as an instrumental or intrinsic good does not make sense for Cicero. For as he shows in Book 3 of *De re publica*,¹⁰⁶ in Books 1 and 2 of *De legibus* (1.33, 2.11), and again

102. See *Cat.* 51.12–13, 51.27–31.

103. See Arena 2007, 63 (“Cicero seems to exhort all Roman citizens to become *optimi*, the best morally, because this is the only way to avoid conflict between common good and personal advantage, a conflict that is currently destroying the *res publica*”). Cicero's concern for the survival of the Republic is compared by Connolly (2007, 13–14) with what J. G. A. Pocock has called “the Machiavellian moment” in political thought. On apathy as a strong danger for the survival of the Republican regime, see Pettit 2012, 227–28.

104. On this question, see Weithman 2004; Lovett and Whitfield 2016. They all argue that Republicanism encourages citizens to practice virtue for its own sake, against the liberal principle of neutrality.

105. Arena 2007.

106. The aim of the whole book is to establish that *sine summa iustitia rem publicam geri nullo modo posse* (2.70). On the connection between *honestum* and *utile* in Cicero's *De re publica*, see esp. Schofield 1995 and Zetzel 2001.

at greater length in Book 3 of *De officiis*,¹⁰⁷ there is ultimately no difference to be made between *utile* and *honestum*, between what is instrumentally good and what has intrinsic value: cultivation of civic virtue both serves the purpose of maintaining political communities, the preservation of which is commanded by divine reason,¹⁰⁸ and constitutes human excellence.

It is for these two reasons that Cicero exhorts his audience to reject *licentia*. The *principes* must exhibit irreproachable behavior in order to maintain or even raise the public's moral standards; they must also keep away from *levitas popularis*, flattery of the people's thirst for boundless liberty. If the Republic yields on one of those points, a deleterious example will be set and rapidly spread throughout the political body: such is the process that *licentia* brings about. It thus becomes vital that the *boni* not let the people believe that immorality is now generally allowed; hence Cicero's constant appeals to political commitment. Cicero himself has struggled against the temptation of retiring and indulging in the pleasures of a peaceful and contemplative life.¹⁰⁹ Succumbing to such a temptation would have been tantamount to stopping to care about the Republic, that is, to an attitude of *licentia*.¹¹⁰ Cicero knows very well that the pleasures of private life exert a strong attraction on all the Roman establishment,¹¹¹ which is why he often turns to the Roman youth to kindle a regeneration of the Republic.¹¹² It is, indeed, a re-generation, because the moral principles Cicero wants the *iuvenes* to uphold are nothing more than the norms that have proven their worth over the history of the Republic: the communal *ethos* of the *nobilitas*. For Cicero, the recourse to political theory and the analysis of political behavior are simply a way (although the only proper one) back to the wisdom that the *maiores* unreflectedly possessed.¹¹³ But the idea that moral example could uphold the overall morality of the political community and improve the chances of its survival could also serve the instauration of a new regime: one that, though presented under the guise of *res publica restituta*, would place the image of a single individual at the top of the symbolical hierarchy.¹¹⁴

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107. Esp. 3.21–28. On the importance of justice in *De officiis*, see Atkins 1990.

108. *Rep.* 6.13. See, *contra*, Arena 2007.

109. On Cicero's attraction for, but ultimate rejection of, a life of *otium*, see esp. Baraz 2012, 44–96. For an interpretation of his well-known motto *cum dignitate otium* as advocating a balance between the allowance for the enjoyment of peaceful life by the greatest number and its protection by a few prominent men, see Boyancé 1948; Wirszubski 1954; Takahata 1999.

110. Already in the *Verrines* (2.3.3), Cicero rejects *otium* unduly taken as *licentia*.

111. See his well-known attacks against *piscinarii* (*Att.* 1.19.6, 1.20.3), and his rancor toward the Pompeians in May 49: *hi sunt qui, nisi me civitate expulissent, obtinere se non putaverunt posse licentiam cupiditatum suarum* (*Att.* 10.4.1).

112. For the message delivered in the *Pro Sestio* to the young generation, see Achard 1993.

113. On philosophy as a way of reestablishing and reinforcing *mos maiorum*, see Baraz 2012, 3: “What [Cicero] is attempting is much more than a comprehensive presentation of Greek philosophical knowledge to a Roman audience. It is an integration of that knowledge with *exempla* drawn from Roman history and tradition and the values that he believes lie behind them.”

114. Exemplarity is a key theme of Augustean propaganda; cf. *Res gestae* 8: *legibus novis me auctore latis multa exempla maiorum exolescentia iam ex nostro saeculo redixi et ipse multarum rerum exempla imitanda posteris tradidi*. One of Seneca's aims in *De clementia* will be to remind Nero of his role as a moral authority that sets the standard for his subjects (see esp. 1.8.1–3).

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