

XII.—The Roman Emperors as Heirs and Legatees

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The scope of this article is stated in the first paragraph, its conclusions in the last.

"Satis constabat lecto testamento Agricolae, quo coheredem optima uxori et piissimae filiae Domitianum scripsit, laetatum eum velut honore iudicioque. Tam caeca et corrupta mens adsiduis adulationibus erat, ut nesciret a bono patre non scribi heredem nisi malum principem." So Tacitus writes.¹ One is reminded at once of Augustus' statement in his will that in the last twenty years of his life he had received under the wills of friends one billion four hundred million sesterces.² But Tacitus, although he makes some strictures, did not consider Augustus a bad emperor. Had things changed thus radically between Augustan and Domitianic times? Or was Tacitus' comment unjustified? And is there discernible anything like a *policy* of the emperors with reference to inheritances and legacies? And, incidentally, how much information do we have in detail and in particular about the emperors as beneficiaries under wills?³

The practice on the part of individuals of remembering the leaders of the State in their wills did not arise with the Empire; it was already well established before Augustus. Large inheritances

¹ Agr. 43.4.

² Suet. Aug. 101.3.

³ The subject was discussed briefly by H. E. Dirksen, *Die Scriptores Historiae Augustae* (Leipzig, 1842) 238–246; more briefly and less well by Marquardt, *Röm. Staatsverwaltung*², 2, 294, more often cited than Dirksen; cf. also O. Hirschfeld, *Die kaiserlichen Verwaltungsbeamten bis auf Diocletian*² (Berlin, 1905) 110 ff.; Alexander Schenk, *Die röm. Kaisergeschichte bei Malalas* (Stuttgart, 1931) 318–320. Much of the evidence is treated also, though from a different point of view, by Hirschfeld, "Der Grundbesitz der röm. Kaiser in den ersten drei Jahrhunderten," in his *Kl. Schriften*, 516–575. On the slaves of the imperial family which are traceable to inheritances, cf. Ch. Huelsen, "Nota . . . sopra i nomi doppi di servi e liberti della casa imperiale," in *Röm. Mitt.* 3 (1888) 222–231. Certain passages commonly cited as parallels in editors' commentaries on the evidence, as, e.g., by Gudeman on Tac. *Dial.* 13.8, especially the notoriously familiar Tac. *Ann.* 6.29, are not relevant at all, being concerned with convictions and confiscations under indictment, usually for treason; cf. my "Ignorance of the Law in Tacitus and Dio," in *TAPhA* 64 (1933) 18–27, and below, page 150.

had come to Lucullus in return for his generosity with the proceeds of his governorship of Asia. And Cicero could say that the same might happen in the case of Titus Vettius as governor of Africa.⁴ The orator himself records his own receipt of twenty million sesterces in legacies and inheritances up to a year before his death, and many passages mostly in the letters record details of about a dozen particular bequests.⁵ Antony, too, received from persons of whom, Cicero asserts, he did not know even whether they were black or white.⁶ That there was a strong obligation upon the testator to remember his friends in his will is clear from the fact of Pompey's resentment at omission in Sulla's testament, as it is also implicit in Augustus' attitude (see below) and even in the familiar letter of Pliny to Tacitus.⁷

We know from scattered references many of the persons who willed property to Augustus, most of them before the period whose proceeds he totaled up in the reckoning alluded to above. Gaius Vibius Pansa, who died as consul in 43 B.C., made a bequest to Octavian, as the possession by the imperial family of the *figlina Pansiana* shows.⁸ Slaves of Tiberius, who are called Cornificiani, indicate a bequest to Augustus from Lucius Cornificius, the consul of 35 B.C.⁹ Livia's slave, Asia Cascelliana, is sign of a legacy to the Emperor from the aged and distinguished jurisconsult Aulus Cascellius.¹⁰ It is probable that Augustus was heir or legatee of King Amyntas of Galatia on his death in 25; for a number of slaves appear subsequently in the imperial household as Amyntiani, and imperial land-holdings in Phrygia are presumed to have the same origin.¹¹ Lucius Sempronius Atratinus, consul 34, when he died in 21, left Augustus as his heir.¹² Two years later the poet Vergil bequeathed one-fourth of his estate to the Emperor, including slaves who

⁴ Cic. *Flacc.* 85.

⁵ Cic. *Phil.* 2.40. For detailed study of Cicero's inheritances cf. Drumann-Groebe, 6.331 ff., S. L. Mohler in *TAPhA* 63 (1932) 73 ff., and their references. I cannot share the doubt of Cicero's figure for these receipts, cf. Tyrell and Purser, *The Correspondence of Cicero*, 1³, 39, note; Augustus received seventy times as much.

⁶ Cic. *Phil.* 2.41.

⁷ Plut. *Sulla* 38.1; *Pomp.* 15.3; Pliny, *Ep.* 7.20.6.

⁸ Hirschfeld, *Kl. Schr.* 546; Mommsen, *Staatsr.* 2³, 1007.

⁹ *CIL* 6.5245, 8753, 16658b; cf. *PIR*² C, 1503.

¹⁰ *CIL* 6.3952; Huelsen, *loc. cit.* (note 3) 224; *PIR* C, 389 (unaccountably lacking in *PIR*²).

¹¹ *CIL* 6.4035, 8738, 8894, 10395(3); cf. Hirschfeld, *Kl. Schr.* 520, 562; Huelsen, *l.c.* 223.

¹² Hieron. *ad a.* 1996; cf. *PIR* S, 260.

appear in the imperial family as Maroniani.¹³ A bequest by Marcus Valerius Messalla Potitus seems to be indicated by the fact that an imperial slave is called Potitianus.¹⁴ Publius Vedius Pollio, dying in 15 B.C., left to the Emperor a large part of his great estate, including his house in Rome, his villa Pausilypon between Naples and Puteoli, and some slaves.¹⁵ Augustus inherited many of Agrippa's properties, comprising certain estates whose income should endow the maintenance of Agrippa's public baths, the whole of the Chersonese, and some slaves.¹⁶ Maecenas in 8 made the Emperor sole heir to all his estate, excepting only a few negligible legacies to other friends. Included were his gardens on the Esquiline, his landholdings in Egypt, and slaves.¹⁷ And in the same year Horace in an oral will on his death-bed named Augustus as his heir.¹⁸ Herod of Judaea devised to him ten million drachmas in coined silver, together with other property in gold, silver, and fine clothing.¹⁹ Marcus Maecilius Tullus, *triumvir monetalis* in the last decade before Christ, and Quintus Ostorius Scapula, one of the first pair of praetorian prefects, 2 B.C., seem to have left legacies to Augustus; for slaves of Livia and Tiberius bear the *cognomina* Maecilianus and Scaplianus.²⁰ Finally, Gnaeus Cornelius Cinna, consul A.D. 5, who once had plotted the Emperor's assassination and been spared execution for his treason by imperial clemency, made Augustus his sole heir.²¹ In none of these cases known to us is it very difficult to understand why the testator left a large part or all of his estate to Augustus. These men had been his collaborators and colleagues, or his intimate friends; they owed their careers to him; they had received from him much of their wealth or the opportunity to win it; or they had been beneficiaries of his clemency or his favor.

¹³ Donatus, *Verg.* 37; *CIL* 6.4173.

¹⁴ *CIL* 6.4012; but Huelsen, *l.c.* 229, lists Potitianus among the names of servile origin.

¹⁵ Dio 54.23.5; Ovid, *Fast.* 6.639 ff.; Pliny, *N.H.* 9.167; slaves: *CIL* 6.1963, 8893, 5858, 5180, 10377, 10395; 8.21098.

¹⁶ Dio 54.29.4 f.; *CIL* 6.4808, 5202, 5203, 5223, 5299, 5849, 8012, 8756, 8820, 33768.

¹⁷ Dio 55.7.5; Suet. *Tib.* 15.1; Philo, *Leg.* 44; Tac. *Ann.* 15.39.1; Fronto, *Ep.* 1.8; Wilcken, *Ostraka*, 1, 392 ff.; slaves: *CIL* 6.4016, 4032, 4095, 19926, 22970.

¹⁸ Suet. *Hor. ad fin.*

¹⁹ Jos. *Ant.* 17.8.1; Hirschfeld, *Kl. Schr.* 519 and note 4; a slave: *CIL* 6.9005. Augustus later returned his inheritance to Herod's sons, Jos. *Ant.* 17.11.5.

²⁰ *CIL* 6.4124, 4125 (Maecil.); 6.4358, 4402, 5226, 9061a, 9066, 10302; Hirschfeld, *Kl. Schr.* 521; Huelsen, 225 f.

²¹ Sen. *Clem.* 1.19.12; cf. *PIR*² C, 1339.

Augustus would accept nothing under the will of anyone who was not personally known to him.²² Legacies and inheritances from testators who had surviving children he paid over to the children either at once or with interest later when they came of age or married. He made no effort to assure his inclusion in the wills of his friends; but he was fretfully anxious about their judgments of him as expressed in their wills, and felt hurt if their remembrance was niggardly or the expression of honor was reserved, happy if gratitude and loyalty were manifest.²³ Finally, Seneca reports an interesting anecdote: that when Augustus sat on the *consilium* of Lucius Tarius Rufus in judgment on the latter's son for attempted parricide, he announced his refusal to receive anything under Tarius' will, in order to guarantee the freedom of his judicial opinion.²⁴

Concerning Tiberius we are only less well informed than of his predecessor. Lucius Seius Strabo, the prefect of Egypt and father of Sejanus, dying in A.D. 16 or 17, left Tiberius his heir.²⁵ In the latter year the will of a Roman knight, Pantuleius, named the Emperor heir to half the estate. But there was a suspicion that the instrument had been forged; and Tiberius invalidated it, ordering the execution of an earlier and unsuspected will which left the whole property to Marcus Servilius. The forger had evidently thought to assure the success of his fraud by giving the Emperor a half interest; but he had mistaken his man.²⁶ Gaius Sallustius Crispus, the confidant of Tiberius, in 20 bequeathed slaves and his gardens at least to the Emperor, for they were clearly imperial property thereafter.²⁷ And Lucius Volusius Saturninus in the same

²² Was this consciously intended to contrast with Antony whom Cicero had censured because he did not know the persons who left him bequests? Cf. also Cic. *Off.* 3.74: *mihi quidem verae hereditates non honestae videntur, si sunt malitiosis blanditiis, officiorum non veritate, sed simulatione quaesitae.*

²³ Suet. *Aug.* 66.4; Dio, 56.32.3; 56.41.8; cf. note 19 above.

²⁴ Sen. *Clem.* 1.15.3-6.

²⁵ Pliny, *N.H.* 36.197; cf. *Hermes* 8 (1874) 473.

²⁶ Tac. *Ann.* 2.48.1; cf. my *Studies in the Reign of Tiberius* (Baltimore, 1943) 10 f. There is interesting precedent in the Ciceronian period for this case. In Verres' praetorship, 74 B.C., certain persons returned to Rome from Greece carrying what purported to be the will of the wealthy Lucius Minucius Basilus, lately deceased. The document was a forgery, which named as heirs together with the bearers Crassus and Hortensius, who, though suspicious of its genuineness, accepted the proceeds, when Verres granted possession; Cic. 2 *Verr.* 1.115 f.; *Off.* 3.73; Val. Max. 9.4.1; Ps.-Ascon. 250 (Stangl); cf. *RE* s.v. Minucius (37) Basilus.

²⁷ Tac. *Ann.* 3.30; 13.47.3; *Dig.* 30.39.8; *CIL* 6.5863, 8670-8672, 9005; 15.7249, 7250.

year left some bequest to Tiberius, for a slave of the imperial household called Volusianus is probably to be referred to him.²⁸ So too in 22 Gaius Ateius Capito, the jurist, remembered the Emperor in his will, as an imperial slave, Ateianus, shows.²⁹ But the same year Junia, the half-sister of Brutus and widow of Cassius, died, disposing a large estate in a will which made mention with honor of almost all the nobles in Rome except Tiberius; the Emperor took the deliberate slight "civiliter."³⁰ He was the sole heir of Gnaeus Cornelius Lentulus Augur's immense estate in 25. Suetonius alleges that Tiberius had forced Lentulus to suicide in order to inherit, but this can hardly stand against Tacitus' matter-of-fact reference to his death.³¹ Seneca attributes to him an estate of four hundred million sesterces.³² Slaves which had belonged to him appear in the imperial family as Lentiliani.³³ According to Dio, when Gaius Fufius Geminus was prosecuted for treason in 30 or 31, the defendant read his will in court, disclosing that Tiberius was co-equal heir with the testator's children. Was this intended to be evidence of Fufius' loyalty to the Emperor? But the Senators accused him of *μαλακία* (? cowardice) and he abandoned his defense and committed suicide.³⁴ Lucius Aelius Lamia seems to have willed his gardens to the Emperor in A.D. 33.³⁵ Suetonius has a story of a salacious picture of Atalanta and Meleager bequeathed to Tiberius with the provision that, if he found the painting offensive, he might have a million sesterces instead.³⁶ For those who reject as malicious legend the tales of his debaucheries on Capri, this story will be part and parcel of that legend; for those of contrary mind, an interesting item of detail. Not quite relevant perhaps, but worth mention in passing, is the matter of a bequest to Tiberius' slave Parthenius. Some testator had named Parthenius as his heir, supposing him to be a free man, and had instituted a substitute heir in case

²⁸ Tac. *Ann.* 3.30.1; *CIL* 6.10267; cf. Hirschfeld, *Kl. Schr.* 524, note 7.

²⁹ *CIL* 6.4246; Huelsen, 224; Hirschfeld, *Kl. Schr.* 521.

³⁰ Tac. *Ann.* 3.76; cf. my *Studies* (note 26) 84.

³¹ Tac. *Ann.* 4.44.1; cf. *PIR*² C, 1379; Suet. *Tib.* 49.1.

³² Sen. *Ben.* 2.27.2; cf. my "Seneca on Lentulus Augur's Fortune: A Note," forthcoming in *CW*.

³³ *CIL* 5.2386; 6.4273; cf. *Hermes* 43 (1908) 335, note 1.

³⁴ Dio, 58.4.5; cf. my *Criminal Trials and Criminal Legislation under Tiberius* (Middletown, Conn., 1935) 107 f.

³⁵ Tac. *Ann.* 6.27; Philo, *Leg.* 44; Suet. *Cal.* 59; *CIL* 6.8668; Hirschfeld, *Kl. Schr.* 529; Platner-Ashby, *Topogr. Dict.* 267 f.

³⁶ Suet. *Tib.* 44.2.

Parthenius should not enter upon the inheritance. Tiberius, claiming under the will as the master of his slave,³⁷ ruled in equity that half the estate should be awarded to the substitute heir.³⁸ It appears on the whole that bequests came to Tiberius for much the same reasons as to Augustus, from intimate friends and confidants or from persons whose wealth derived originally from Augustus' generosity.

General statements are made concerning Tiberius' attitude, similar to those about his predecessor. He entered into no one's inheritance unless it had been earned by his friendship with the testator; he refused absolutely to receive from any person who was unknown to him, or who instituted him in despite of others;³⁹ he would not accept inheritances from any persons who had surviving relatives, "so long, that is, as he retained any virtues at all" (*sic*).⁴⁰ Against this view stand Suetonius' allegation that Lentulus was driven to suicide by Tiberius, which has already been rejected as refuted by Tacitus, and a statement of Dio. That historian, writing of A.D. 31, records that the Emperor "was accepting every inheritance that was left to him; and for that matter nearly everybody left him something, even those who made away with themselves, as they had also done to Sejanus while he was alive."⁴¹ It is not surprising that the Prefect should be remembered in the wills of those who felt indebted to him for advancement or more material profit. But the evidence on Tiberius furnished by the earlier part of the sentence, insofar as it is inconsistent with the other statement of Dio quoted just above, can hardly be accepted, except by those who adhere to his interpretation of a good Tiberius until mid-reign and a bad Tiberius thereafter, and to the whole idea of a reign of terror in his last years. But Marsh has shown that the Tiberian terror is Tacitean rhetoric, not historical fact.⁴² And the present writer has elsewhere demonstrated that at least with reference to Tiberius' *liberalitas*, *providentia*, *clementia*, and *moderatio*, no division of the reign into contrasting halves can be sustained on the evidence.⁴³

³⁷ Cf. *Dig.* 49.14.46.8 (Hermogenianus).

³⁸ *Dig.* 28.5.41 f. (40 f.) (Pomponius *ap.* Julian.); cf. *Instit.* 2.15.4.

³⁹ Tac. *Ann.* 2.48.2.

⁴⁰ Dio 57.17.8.

⁴¹ Dio 58.16.2 (Loeb).

⁴² F. B. Marsh, *The Reign of Tiberius* (London, 1931) 284-288.

⁴³ Rogers, *Studies* (note 26 *supra*), esp. 87.

For none of the succeeding emperors is there source material comparable in amount and detailed character to that for Augustus and Tiberius, but what evidence we have is interesting and suggestive.

The personal extravagance of Gaius⁴⁴ made him much more interested in and eager for inheritances than his predecessors had been. He obtained a *senatusconsultum* allowing him to receive under wills although he had neither wife nor children.⁴⁵ If this statement of Dio can be taken as historical truth and not merely a gratuitous inference from events, it is extremely interesting. For it shows the Emperor in the same position before the law with regard to inheritance as any citizen; and even Gaius, absolutist that he was, condescended to conform. Gnaeus Domitius Ahenobarbus, the father of Nero, who died in A.D. 40, named his son as heir to one-third of his estate and the Emperor as his co-heir. Whether Gaius' share was the balance of two-thirds, or there was another heir or heirs unknown to us, we cannot say. But Gaius seized the whole estate, or so at least it is alleged.⁴⁶ Perhaps one should not be over-skeptical; for he did need to replenish his private purse and had recourse to auctions of some of his property to do so;⁴⁷ and the fact that the testator's widow, the Emperor's sister Agrippina, had been exiled in the preceding year for conspiracy against his throne, might in some measure explain, though not excuse, an unscrupulous handling of that particular estate. Gaius was also (perhaps sole) heir of his distant relative, Sextus Pompeius, the consul of A.D. 14; and around that fact Seneca, who is a very hostile source on this Emperor,⁴⁸ or some historian followed by him, has constructed a story which is not noteworthy for either consistency or plausibility. Gaius, according to Seneca, deprived Pompeius of his house; then he extended to him the hospitality of the imperial palace; there he starved Pompeius to death; and finally he arranged a state funeral for the deceased.⁴⁹ Now, Gaius might well be expected to take an interest in Pompeius' estate, for he was a very wealthy man with lands in Campania, Sicily, and Macedonia, and

⁴⁴ J. P. V. D. Balsdon, *The Emperor Gaius (Caligula)* (Oxford, 1934) 188 f.

⁴⁵ Dio 59.15.1.

⁴⁶ Suet. *Nero* 6.3.

⁴⁷ Cf. Balsdon, *l.c.*, and index, s.v. "auctions."

⁴⁸ Cf. Balsdon, *op. cit.* 224 f.

⁴⁹ Sen. *Tranq. An.* 11.10.

a house near the Forum Augustum.⁵⁰ But it is also not altogether surprising that Pompeius should bequeath property to the Emperor, who was also his relative, and with whose father, Germanicus, he had been on terms of intimacy.⁵¹ It was upwards of twenty-three years since Pompeius had been consul; he must therefore have been of an age to make death from natural causes not improbable; it is quite unnecessary to suppose that he was murdered. The credibility of his murder is not enhanced by the fact that he was accorded a public funeral; nor does his entertainment in the palace very aptly corroborate the alleged eviction from his own house by the Emperor. It seems more probable that for some very ordinary reason (his illness, or the renovation or sale of his house, or its destruction perhaps by fire—"nimium casus in urbe frequens") Pompeius removed from his home to the palace, where he died, that he was honored with a state funeral, that his property was willed to the Emperor, and that these events were distorted by a hostile tradition into the story which Seneca reproduces.⁵²

Gaius insisted that any legacy left to Tiberius in the will of a testator who, however, had survived that Emperor, was due now to himself. This represents a political theory of the imperial position which was subsequently to re-appear, and, being in accord with the absolutist tendency manifest in Gaius, is entirely credible and acceptable.⁵³ It is said that he rescinded as "ungrateful" the wills, and summarily seized the property, of centurions who, discharged since Germanicus' triumph,⁵⁴ had left no bequest to Tiberius or to himself. This might be in some measure explained, if hardly justified, by the fact that much of their estates would derive from imperial bonuses on discharge.⁵⁵ It is also alleged, much less credibly, that he invalidated the wills of persons concerning whom anyone reported that they had intended to name the Emperor as heir; we shall find the same assertion made concerning Domitian, by the same source, and shall discuss it later in this article.⁵⁶ Under

⁵⁰ Sen. *l.c.*; Ovid, *Pont.* 4.15.15; 4.5.9 f.

⁵¹ Ovid, *Pont.* 4.5.25 ff.

⁵² Whether a slave belonging formerly to Pylaemenes, the son of King Amyntas, came into Gaius' possession by bequest or confiscation, we cannot say; *CIL* 6.5188; Huelsen, *loc. cit.* (note 3) 229.

⁵³ Dio 59.15.1; see below, 153; Balsdon, *op. cit.* (note 44) 185.

⁵⁴ Suetonius says, since the beginning of Tiberius' reign.

⁵⁵ Suet. *Cal.* 38.2; Dio 59.15.2.

⁵⁶ Suet. *ibid.*; see below, 156.

this threat, according to Suetonius, testators quite unknown to Gaius named him among their intimates, and parents made him co-heir with their children; and when they lived on after their wills were made, he considered it a mockery of him and sent many of them poisoned foods — which hardly inspires one with confidence in the original statement!⁵⁷ This seems to presume a rather improbable publicity attendant upon the making of testaments, but perhaps one is to suppose the witnesses acting as *delatores*. Furthermore, the story presents a picture of Gaius the monster, a characterization which Balsdon has discredited, in this writer's judgment successfully.

To Claudius was bequeathed a house in Prusa of Bithynia, by Claudius Polyaenus, a citizen of that place, whose will later came under the eye of Pliny.⁵⁸ An imperial slave called Turranius seems to indicate some inheritance by Claudius under the will of Gaius Turranius, the long-time *praefectus annonae*.⁵⁹ Another, Laconianus, referred to Gaius Julius Laco, the Spartan noble whom Claudius restored to the position of which he had been deprived by Tiberius, may with equal or greater probability have come to him by bequest of Publius Graecinius Laco, Tiberius' *praefectus vigilum*, who was highly honored by Claudius.⁶⁰ And it is stated of Claudius that he would allow no one who had any relatives to make the Emperor his heir.⁶¹

Nero is alleged to have murdered his aunt, Domitia, by poisoning in A.D. 59, and suppressed her will, in order to obtain her estates at Baiae and Ravenna.⁶² Tacitus, certainly not one to conceal Nero's crimes, has no mention of Domitia's death. Suetonius relates that she was ill "ex duritie alvi"; when Nero called upon her, she fondled his beard and said she would be willing to die as soon as he had dedicated it. He replied as though in jest that he would do so at once, and bade the physicians purge her more thoroughly. Before she was dead, he seized her property and suppressed her will. Thus, according to the biographer (though he does not indicate just how), Nero added her murder to his mother's. Dio reports that, unwilling to wait a few days for her natural death,

⁵⁷ Suet. *ibid.*; cf. Dio 59.15.6.

⁵⁸ Pliny, *Ep.* 10.70.2, 4.

⁵⁹ *CIL* 6.5873; cf. Hirschfeld, *Kl. Schr.* 524, note 7.

⁶⁰ *CIL* 6.27032; cf. Hirschfeld, *ibid.*; *PIR* G, 129 and Dio 60.23.3.

⁶¹ Dio 60.6.3.

⁶² Suet. *Nero* 34.5; Dio 61.17.1.

Nero poisoned her in order to acquire her estates at Baiae and Ravenna. And the scholiast on Juvenal remarks as a matter of course that Nero killed her, although what Juvenal himself says requires for its adequate explanation no inclusion of Domitia among the Emperor's victims.⁶³ If the remarks exchanged between nephew and aunt at her deathbed, as recorded by Suetonius, are not invented out of whole cloth, hers sounds like the words of a doting aunt, and his might well have been thought a joking retort, if Suetonius had not decided that appearances *must* be deceiving and written "velut irridens." Even Dio allows that she was dying of natural causes, and while we do not know her age, she was certainly well along in years.⁶⁴ It almost seems that the strongest evidence for Nero's murder of her is that, guilty of so many, he might as well be charged with one more. Nero had been raised in Domitia's home after his father died and his mother went into exile. Later she was accused by Agrippina of rivaling her for Nero's affections.⁶⁵ Now Domitia's parents, brother, both sisters, all her brothers-in-law, her niece Messalina, and her great-nephew Britannicus were all deceased; her known surviving relatives appear to have been Nero and her grand-niece Octavia. To whom should she bequeath her estate? It seems safe to reject Nero's murder of her, his seizure of her property, and the suppression of her will, under whose terms rather he came into the inheritance.

It would appear that Servilius Nonianus, the senator and historian, left Nero some bequest, if the *horti Serviliani* are correctly ascribed to him.⁶⁶ The Emperor probably inherited a house and other property from Sextus Afranius Burrus; for the house was later given to Octavia by Nero, and a former slave of his is found in the imperial household.⁶⁷

Other evidence is meagre and unsatisfactory. A passage of Dio (Xiphilinus) confuses Nero's policy, early and late, regarding the confiscation of convicts' property with his attitude toward bequests.⁶⁸ Of the latter it is said that he took all or most of what was left to him, and that, if less was devised to him or Tigellinus

⁶³ *Schol. Juv.* 8.213.

⁶⁴ Her father was consul in 16 B.C. and had died A.D. 25; her mother was born in 39 B.C.; her brother was consul A.D. 32 and had died in 40.

⁶⁵ *Suet. Nero* 6.3; *Tac. Ann.* 13.21.5.

⁶⁶ Hirschfeld, *Kl. Schr.* 531 and note 5.

⁶⁷ *CIL* 6.9059; *Tac. Ann.* 14.60.5.

⁶⁸ *Dio* 63.11.2 f.

than was expected, the wills were nullified. Mention of Tigellinus relates this evidence to the latter half of the reign; the corresponding statements of Suetonius are more narrowly limited to the last years. For the biographer, after narrating the Emperor's disappointment of the hoped-for wealth from Africa envisioned in Caesellius Bassus' dream, which Tacitus dates in A.D. 65, records several measures by which Nero is alleged to have supported his failing finances; included are the appropriation of five-sixths instead of one-half of the estate of any freedman bearing his family name who could not explain away his possession of it, and the confiscation of the property of those whose wills showed them ungrateful to the Emperor.⁶⁹ This last sounds almost like a doublet of Gaius and the centurions' wills. When Lucius Antistius Vetus was under indictment apparently for treason in 65, friends advised him, according to Tacitus, to bequeath the larger part of his estate to Nero and thus assure that his grandchildren would receive the balance at least. This, however, Vetus most nobly refused to do, so we do not learn whether Nero could be bribed by a legacy to him to intercede against the confiscation which was mandatory upon conviction of treason. The same historian has a similar story of the British king Prasutagus: that he named Nero co-heir with his own daughters, thinking to save thus his kingdom and his house, but was deceived utterly in both.⁷⁰ This is, however, a pet idea of Tacitus about the emperors.⁷¹

On Galba there appears no evidence beyond the general statement of Tacitus: "pecuniae alienae non appetens, suae parvus, publicae avarus." There is not even so much about Otho. Both Tacitus and Dio credit Vitellius with not interfering in the testate or intestate succession to the estates of Otho's adherents.⁷² Suetonius has a story that a Roman knight just before his execution announced that Vitellius was his heir; the will was ordered produced and read; it named the Emperor and a freedman as co-heirs; thereupon Vitellius commanded that both knight and freedman be put to death.⁷³ The only evidence on Vespasian concerns his inheritance from his own freedman,⁷⁴ and there is nothing about Titus.

⁶⁹ Tac. *Ann.* 16.1-3; Suet. *Nero* 32.1 f. Tac. *Ann.* 14.65 also relates to a freedman.

⁷⁰ Tac. *Ann.* 16.11; 14.31.1.

⁷¹ Cf. *Ann.* 6.29; *Dial.* 13.7.

⁷² Tac. *Hist.* 1.49; 2.62; Dio 65.6.3.

⁷³ Suet. *Vit.* 14.3.

⁷⁴ Suet. *Vesp.* 23.1.

A slave of Domitian seems to have come into his possession by the will of Calvia Crispinilla, and another from Quintus Vibius Crispus, who was one of that Emperor's intimates.⁷⁵

Suetonius asserts that Domitian would not accept inheritances from persons who had surviving children.⁷⁶ Now Agricola was of course such a testator; and if Domitian received under his will, that would refute Suetonius' statement. But it is noteworthy that Tacitus does not say that Domitian *did* receive; he says only that the Emperor was greatly pleased at being named in Agricola's testament. The historian is notorious for innuendo and implication;⁷⁷ we are not obliged to draw the inferences indicated and intended. In the present instance, supported by the statement of Suetonius, we may decline to accept the suggestion of Tacitus, and conclude that Domitian, like Augustus, took pride and satisfaction in being generously remembered in his friends' wills, but refused to receive under them if there were surviving children to inherit.⁷⁸

All other evidence on Domitian stands in contradiction to the foregoing. A second passage of Suetonius asserts that Domitian confiscated the estates of persons who were said by even a single informant to have indicated during their lifetime that the Emperor was to be their heir.⁷⁹ There is also the bitter innuendo of a sentence of Pliny in fulsome praise of Trajan, which does not assert but only implies and leaves the inference to be drawn by the reader (like Tacitus' account of Agricola's will). Pliny writes: "testamenta nostra secura sunt, nec unus omnium, nunc quia scriptus, nunc quia non scriptus, heres. Non tu falsis, non tu iniquis tabulis advocaris. Nullius ad te iracundia, nullius impietas, nullius furor confugit; nec quia offendit alius, nuncuparis, sed quia ipse meruisti. Scriberis ab amicis, ab ignotis praeteriris." It is clearly implied that the exact opposite was true of Domitian, in general at least, if not actually in particular.⁸⁰ The reference to forged wills recalls the incident of Tiberius and Pantuleius' testament. If there really

⁷⁵ *CIL* 6.8726; cf. Tac. *Hist.* 1.73; Marini, *Vat.* 9126, f. 359, known to me only by Huelsen's citation, *l.c.* (note 3) 224.

⁷⁶ Suet. *Dom.* 9.2.

⁷⁷ Marsh, *op. cit.* (note 42) 284 ff.; T. S. Jerome, *Aspects of the Study of Roman History* (New York, 1923) 324 ff.; I. S. Ryberg, "Tacitus' Art of Innuendo," *TAPhA* 73 (1942) 383-404.

⁷⁸ Tac. *Agr.* 43.4, quoted above, 140; on Augustus, see above, 143.

⁷⁹ Suet. *Dom.* 12.2; he reports the same of Gaius, cf. above, 147.

⁸⁰ Pliny, *Pan.* 43.1; there is allusion to Domitian in the passage just preceding; cf. also *Pan.* 34.1.

occurred another such episode under Domitian, one would rather expect his attitude to the case to be the same as Tiberius', whom he admired and whose memoirs, Suetonius tells us in a familiar passage, were his favorite reading.⁸¹ Similar to this Plinian condemnation is a sentence in Tacitus' *Dialogus* whose implied allusion is probably to be referred to Domitian.⁸² Tacitus makes Maternus say: "nec incertus futuri testamentum pro pignore scribam, nec plus habeam quam quod possim cui velim relinquere." The denunciations by innuendo of Pliny and Tacitus, proceeding from their well-known and unbridled hatred of Domitian,⁸³ are impugned by their avoidance of any statement of fact.

There seems to be no evidence extant of Nerva's attitude. That for Trajan consists solely of the passage in Pliny's *Panegyric*, just quoted in the discussion of Domitian. If that can be regarded as historical evidence, and not merely as sheer adulation, Trajan is represented as refusing, like Tiberius, to be accessory to the forging of wills; refraining from confiscation on the ground of ungrateful wills; declining to accept under the wills of testators unknown to him or instituting him in order to pay off grudges against others. It is clearly indicated that many persons bequeathed to Trajan, but we do not know any names.⁸⁴

Hadrian's biographer records of him that he refused to accept legacies from persons whom he did not know, or from those who, though known to him, left surviving children.⁸⁵ Rutilius Lupus, prefect of Egypt in the last years of Trajan, appears to have devised to the Emperor (one guesses Hadrian or Antoninus, the date being unknown) landholdings in Egypt.⁸⁶

Antoninus Pius declined inheritances from testators who left

⁸¹ Cf. above, 143; Suet. *Dom.* 20. Is it possible that the story of Minucius Basilus' will and Verres' grant of *bonorum possessio* on the basis of a forged instrument had become a rhetorical *locus communis*, and as such passed into anti-imperial writings, to be employed against whom it might hurt? From the *Verrines*, Cicero repeated it in the *De Officiis* three decades later; it appears in Valerius Maximus; the similar story is told of Tiberius by Tacitus and of Domitian by Pliny; cf. above, note 26.

⁸² Tac. *Dial.* 13.7. For the date of composition and publication of the *Dialogus*, cf. Schanz-Hosius, *Gesch. d. röm. Lit.* 2, 2³, 294 f.

⁸³ B. W. Henderson, *Five Roman Emperors* (Cambridge, 1927) 13 f., 88, 160 f.; *CAH* 11, 23.

⁸⁴ Pliny, *Pan.* 43.1. Another passage, *Ep.* 6.31.8 f., suggests Trajan's reluctance to have the treasury receive *bona vacantia* by the failure of a will, but is not relevant here.

⁸⁵ SHA, *Had.* 18.5.

⁸⁶ Hirschfeld, *Kl. Schr.* 554; Wilcken, *Ostraka*, 1, 392.

children of their own. And, his biographer continues, "primus constituit, ne poenae causa legatum relictum maneret."⁸⁷ This latter statement finds confirmation in the *Digest*: "Lites donatas se non suscipere divus Pius rescipit, licet bona relicturum se quis profiteatur: vel partem bonorum donatam non suscipere. Et adiecit et illum dignum fuisse puniri pro tam turpi tamque invidioso commento [et]⁸⁸ nisi durum esse videbatur in ultro venientem poenam statuere."⁸⁹ This detail of imperial policy, noticed above of Tiberius and Trajan, Antoninus seems thus to have enunciated in a *constitutio*. It was he also who established the rule, adumbrated by Gaius, that a legacy to an Emperor was due to his successor if the former died before the due-date of the bequest.⁹⁰ A passage of Malalas seems to confound the record of Pius' burning of the fiscal debts in A.D. 148 with the alleged repeal of a supposed *senatus-consultum* of Julius, which had provided that a senator must in his will devise half of his property to the regnant Emperor. We can agree with Schenk's judgment that such a decree never existed.⁹¹

Of Marcus Aurelius it is said that he sometimes refused inheritances, restoring them to the relatives of the testator,⁹² which probably means his adherence to well-established custom. But Commodus is alleged to have brought charges against individuals who would not name him as their heir; and after his assassination the Senate is said to have denounced him for destroying wills and depriving sons of their inheritance.⁹³

Pertinax, however, again would accept no legacy motivated by flattery, or coming to him by quirk of law, so as not to deprive rightful heirs of their inheritances. And, further, he enacted that

⁸⁷ SHA, *Pius* 8.5.

⁸⁸ Mommsen retains the *et* deleted by Iensius.

⁸⁹ *Dig.* 49.14.22.2; cf. Paulus, *Sent.* 5.12.7 f.: Litem in perniciem privatorum fisco donari non oportet, nec ab eodem donatam suscipi. Imperatorem litis causa heredem institui invidiosum est: nec enim calumniandi facultatem ex principali maiestate capi oportet (= *Dig.* 28.5.92[91]).

⁹⁰ *Dig.* 31.56.

⁹¹ Malalas, 11.281 (Dindorf) = 318 Schenk, *op. cit.* (see note 3): Καὶ ἔκαυσεν τοὺς χάρτας τοῦ ταμείου, ἐφ' οἷς ἡ σύγκλητος ἐγγράφως ὡμολόγησεν ἐπὶ τοῦ Καίσαρος Ἰουλίου Γαίου, παρ' αὐτοῦ κελυσθέντες μὴ τὸ ἐξεῖναι συγκλητικὸν διαθήκην ποιεῖν εἰς τοὺς ἰδίους, εἰ μὴ τὸ ἡμῖν μέρος τῆς αὐτοῦ περιουσίας διατίθεται εἰς τὸν κατὰ καιρὸν βασιλέα, εἰρηκῶς ὁ αὐτὸς εἰσεβέστατος Ἀντωνίνος διὰ θέλον αὐτοῦ τύπον ἕκαστον ἀπολαβεῖν τῶν ἰδίων καὶ βουλευέσθαι ὡς θέλει.

⁹² SHA, *Ant.* 7.1. The statement *seems* not to be restricted, in its application, to the time when he was Caesar under Pius, as the rest of the sentence is.

⁹³ SHA, *Comm.* 5.14; 19.6.

an old will should not lose its validity until a new one was formally completed and effective, so that property should not revert to the state because of the absence of a will and of heirs by intestacy.⁹⁴ His biographer's statement finds confirmation and somewhat fuller expression in a passage of Justinian's *Institutes*. It is there recorded that Pertinax delivered an address to the Senate, in which he ruled that a previous testament should not become ineffectual unless the subsequent one had been regularly made and completed. So much, it appears, was enacted into law by *senatusconsultum*. Further, in the same address, the Emperor made a pronouncement of his own policy:⁹⁵ he would not accept from a testator who made him heir on account of a lawsuit; he would not validate a defective will which named him heir to cover the defect; he would not inherit if he was named by word of mouth, nor under any written instrument which lacked strict legality.⁹⁶ Thus Pertinax placed himself categorically in the succession of Tiberius, Trajan, and Antoninus.⁹⁷

Very curiously, after Pertinax the Scriptores seem not to interest themselves in the attitude of the emperors toward wills, legacies, and inheritances; for the later period we are almost entirely dependent on the Codes and the jurists.

Severus and Caracalla repeated the policy of Pertinax in numerous rescripts; " 'Licetenim', inquit, 'legibus soluti sumus, attamen legibus vivimus.' " ⁹⁸ And the contemporary jurist Paulus writes: "Ex imperfecto testamento legata vel fideicommissa imperatorem vindicare inverecondum est: decet enim tantae maiestati eas servare leges, quibus ipse solutus esse videtur," in evident paraphrase of the Emperors' language.⁹⁹ Likewise, in A.D. 232, Alexander Severus addressed to Antigonos¹⁰⁰ a rescript which echoes the words of Paulus and asserts that there was abundant precedent for the principle that the Emperor does not vindicate "ex imperfecto testamento." ¹⁰¹

⁹⁴ SHA, *Pert.* 7.3.

⁹⁵ Dirksen, *op. cit.* (see note 3) 242, carefully differentiates this, as not binding on Pertinax' successors, from the earlier part which became legislation.

⁹⁶ *Inst.* 2.17.7 f.

⁹⁷ Cf. above, 145, 152 f.

⁹⁸ *Inst.* 2.17.8.

⁹⁹ *Dig.* 32.23.

¹⁰⁰ Was this the Macedonian veteran whom Caracalla had adlected into the Senate? cf. *PIR*² A, 736.

¹⁰¹ *Cod.* 6.23.3.

Not for a century and a quarter thereafter have we any evidence; then appears a novel and very interesting development. In 355, Constantius II ruled that a testator's decision to make the Emperor his heir was not irrevocable; he might change his mind and institute as his heir anyone else whom he could legally name. The decision was given at Milano, 18 February, and addressed to Volusianus, the praetorian prefect, but what circumstances motivated the pronouncement we do not know.¹⁰²

Sixteen years later Valens, Valentinian and Gratian declared that if the Emperor or Empress was instituted heir they should have a *ius commune* with the other heirs, which is to say they should have no preferential position, and that the same should apply to codicils and *fideicommissa*. And they added that the law already allowed a testator to make a disposition in favor of Emperor or Empress and, having done so, to change it if he wished.¹⁰³

Gratian, Valentinian II and Theodosius in 380 observed that just as the Emperor might be beneficiary, so unquestionably might any individual of whatsoever position or power receive inheritance or trust. Moreover, if the will of the deceased did not have the support of the law as regarded his legacies, trusts and manumissions, the heir, if he freely acknowledged the will, was obligated to execute it.¹⁰⁴ It is most interesting to have this reminder in the fourth century that the Emperor was not the only person who profited by the generosity of testators, as is shown in the earlier period by the familiar cases of Tacitus and Pliny mentioned in the latter's well-known letter, and of the legatees of Dasumius, as well as of Sejanus and Tigellinus.¹⁰⁵

In A.D. 389 came an interesting contraction in the Emperor's practice of receiving as heir. Valentinian II, Theodosius and Arcadius in that year announced that they would absolutely not accept under codicil or letter, but only under actual testament; they urged other heirs to follow the policy thus enunciated.¹⁰⁶ The inclusion of this constitution in the Theodosian Code shows that it was still law a half century later under Theodosius II; subsequently it must

¹⁰² *Cod.* 6.22.6.

¹⁰³ *Cod.* 6.22.7, given at Contionacium, 7 August 371.

¹⁰⁴ *Cod.* 6.23.16.

¹⁰⁵ Pliny, *Ep.* 7.20.6; *CIL* 6.10229; above, notes 41 and 68.,

¹⁰⁶ *Cod. Theod.* 4.4.2, given at Milano, 23 January 389; cf. Symmachus, *Ep.* 2.13.

have been rescinded or fallen into desuetude, for it does not appear in Justinian's Code.¹⁰⁷

More enduring and especially noteworthy is the constitution of Honorius and Theodosius II given at Constantinople, 9 March 416. A properly executed will must not be set aside because someone said that by a later unwritten will the decedent left his estate to the Emperor; no citizen nor imperial official should bear witness to such assertion, and violators should be held for forgery.¹⁰⁸ It seems most unlikely that this now became law for the first time. For the essential principle had been formulated at least as early as Paulus, two centuries before: "Ex nuda pollicitatione nulla actio nascitur; ideoque eius bona, qui se heredem imperatorem facturum esse iactaverat, a fisco occupari non possunt."¹⁰⁹ Now, it has been recorded by Suetonius of both Gaius and Domitian that they accepted under such supposititious wills.¹¹⁰ Are we to consider, then, that during the second century the iniquity of this proceeding was seen, and the jurists or legislators or both ruled against it, in principle or in law? Or had the jurists and perhaps also the law always taken this view from the beginning, although Paulus' statement of it is the earliest that happens to be preserved to us? (We have seen Alexander Severus saying there was abundant precedent. How far back shall one imagine those precedents ran?) And in the latter case, again, shall we conclude on the evidence of Suetonius that Gaius and Domitian defiantly violated the law or the jurisprudents' principle? or rejecting the biographer's statements as malicious fabrications of anti-imperial writers, suppose that even they conformed? The only *evidence* is that of Suetonius even if he contradicts himself on Domitian. Any view that runs counter to it must be utterly subjective and conjectural, resting at the very most and best upon one's idea of probability. The present writer hardly dares expect to be joined by a numerous company in choosing the last of the foregoing interpretations. But he does not hold very strongly with those who distinguish the black and the white Emperors, nor with those who consider that certain Emperors, after some years of more or less acceptable conduct, were transformed into iniquitous and nefarious monsters. And he is much less ready

¹⁰⁷ Dirksen noted this, *op. cit.* (see note 3) 245.

¹⁰⁸ *Cod. Theod.* 4.4.5 = *Cod.* 6.23.20.

¹⁰⁹ Paulus, *Sent.* 5.12.9 = *Dig.* 28.1.31.

¹¹⁰ See above, 147, 151.

than many apparently are to assume that while Rome was engaged in contributing to world civilization preëminently a system of law with orderly procedure thereunder, her very rulers stood in frequent and defiant exception.

Theodosius II and Valentinian III in 439 re-asserted the provisions we have seen made by Pertinax, that a proper will was not invalidated by a subsequent testament until and unless the latter was duly completed and validated.¹¹¹ And, further, Theodosius adhered to his grandfather's absolute refusal to receive under letter or codicil, by retaining that constitution of a half-century earlier in his Code.¹¹²

There follows another gap of a century in our knowledge of the institution, until Justinian's Code offers evidence of his policy. It is manifest in the constitutions of his predecessors which he retained and re-enacted in the *Code*, or which were embodied in the *Institutes* (also promulgated with force of law). Thus retained under Justinian were: the refusal of Pertinax and the Severi to accept "ex imperfecto testamento",¹¹³ Constantius II's rule that a testator's institution of the Emperor was revocable,¹¹⁴ that of Valens, Valentinian and Gratian placing the Emperor on an equality with other heirs,¹¹⁵ the pronouncement of Gratian, Valentinian II and Theodosius that not the Emperor alone but other persons also might be honored with a bequest;¹¹⁶ and the constitution of Honorius and Theodosius II which made it forgery to represent that an oral will post-dating a valid one had named the Emperor heir.¹¹⁷

From Augustus to Alexander Severus we have found fairly continuous evidence of the Emperors' practice in the acceptance of legacies and inheritances from private citizens. Out of a study of this material there emerges clearly a rather well-defined policy with regard to legacies and inheritances from private citizens, observed by most Emperors in this period of two and a half centuries. The much more scattered evidence for the following three hundred years is perfectly consistent with the earlier. The fundamental principles of the policy were: not to accept under

¹¹¹ *Nov. Theod.* 16.7, given at Constantinople, 12 September 439.

¹¹² Cf. above, 155 and note 106.

¹¹³ *Inst.* 2.17.7 f.

¹¹⁴ *Cod.* 6.22.6.

¹¹⁵ *Cod.* 6.22.7.

¹¹⁶ *Cod.* 6.23.16.

¹¹⁷ *Cod.* 6.23.20.

the wills of persons who had surviving children, which is attested for Augustus, Tiberius, Claudius, Domitian (with Tacitus and Pliny dissenting), Hadrian, Antoninus Pius, Marcus Aurelius and (in a manner of speaking) Pertinax; and the refusal to validate a defective will out of selfish interest, as is recorded of Tiberius, Trajan, Pertinax, Severus, Caracalla, Alexander, Honorius and Theodosius II. Two lesser principles are indicated: not to receive from testators personally unknown, reported of Augustus, Tiberius, Trajan and Hadrian; and not to accept any legacy motivated by the desire of the testator to penalize some one else, which is stated of Tiberius, Trajan, Antoninus Pius and Pertinax. Significantly apart, so far as our source material goes, stand only Gaius, Nero and Commodus. The last may be disregarded, for the exiguous evidence comes from a very unsatisfactory source. Concerning the other two it has been shown that part of the evidence is to be rejected as unhistorical, fabricated by a hostile tradition; part is intrinsically suspect as being highly implausible; and part appears to reflect the manifestation of absolutist tendencies, which might be expected rather naturally to distinguish their practice in this matter from that of most other emperors of whom we have knowledge.