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BRUTUS, CASSIUS, JUDAS, AND CREMUTIUS CORDUS:
HOW SHIFTING PRECEDENTS ALLOWED THE *LEX MAIESTATIS* TO GROUP
WRITERS WITH TRAITORS

by

Hunter Myers

A thesis submitted to the faculty of The University of Mississippi in partial fulfillment
of the requirements of the Sally McDonnell Barksdale Honors College.

Oxford, Mississippi

May 2018

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ACKNOWLEDGMENTS

Dr. Pasco-Pranger,

For your wise advice and helpful guidance through the thesis process

Dr. Lobur & Dr. Skultety,

For your time reading my work

My parents, Robin Myers and Tracy Myers

For your calm nature and encouragement

Sally-McDonnell Barksdale Honors College

For an incredible undergraduate academic experience

ABSTRACT

In either 103 or 100 B.C., a concept known as *Maiestas minuta populi Romani* (diminution of the majesty of the Roman people) is invented by Saturninus to accompany charges of *perduellio* (treason). Just over a century later, this same law is used by Tiberius to criminalize behavior and speech that he found disrespectful. This thesis offers an answer to the question as to how the *maiestas* law evolved during the late republic and early empire to present the threat that it did to Tiberius' political enemies. First, the application of Roman precedent in regards to judicial decisions will be examined, as it plays a guiding role in the transformation of the law. Next, I will discuss how the law was invented in the late republic, and increasingly used for autocratic purposes. The bulk of the thesis will focus on *maiestas* proceedings in Tacitus' *Annales*, in which a total of ten men lose their lives. The most striking trial that will be investigated is the one involving Cremutius Cordus, who praised Brutus and Cassius, referring to them as the "Last of the Romans." However, does this make him a traitor who belongs in Dante's ninth circle along with Brutus, Cassius, and Judas?

TABLE OF CONTENTS

Prologue	1
Roman Precedent and Exempla	4
The Application of Roman Precedent.....	5
Precedent in the Late Republic	9
Augustan Exempla	13
The Rewriting of Precedent under Tiberius.....	17
Inventing Maiestas	20
Origins of the Law - Perduellio	21
A Descendant of Perduellio - Maiestas.....	25
Two Test Cases: Caepio and Norbanus	28
From Varius to Sulla.....	34
Caesar's Law and Motivation	38
Maiestas in Tacitus' Annales	42
Examining Tacitus	42
Maiestas and Augustan Precedent in The Annales.....	47
Two Preliminary Tests Under Tacitus	49
Marcellus.....	51
Appuleia Varilla.....	53
Germanicus and Gnaeus Piso - Maiestas Turns Deadly	55
The Creep of Maiestas and Informers.....	59
Two Proceedings in 22 A.D., Maiestas Targets the Powerful	61
Gaius Silius, Calpurnius Piso, and the Protection of Informers	63
Cremutius Cordus, The Apex of Tyranny.....	68
The End of the Reign of Tiberius	71
Epilogue	74
Bibliography	76

Prologue

That upper spirit,
 Who hath worst punishment, so spake my guide,
 “Is Judas, he that hath his head within
 And plies the feet without. Of th’ other two,
 Whose heads are under, from the murky jaw
 Who hangs, is Brutus: lo! How he doth writhe
 And speaks not. The other, Cassius, that appears
 So large of limb. But night now reascends;
 And it is time for parting. All is seen. (*Inf.* XXXIV, 56-64)¹

Dante vividly describes the ninth circle of hell, an icy section reserved for those who betrayed others in their life on Earth. A person who committed this type of act was, and still is today, truly considered the worst of the worst. Why is the concept of betrayal such a powerful one? Could it be due to the premeditation required to betray another person, or perhaps one imagines the damage that could be done if they themselves were betrayed? Whatever the cause may be, the human race seems to be fascinated with the concept, as stories of treachery are as old as time itself. In *Genesis* Cain kills his own brother Abel, which constituted the first murder and first betrayal in the Abrahamic tradition.² When the Spartans held back the Persians at the “hot gates” of Thermopylae, they lost their lives due to the betrayal of Ephialtes (Hdt. 7.213).³ Caesar was stabbed to death close to the Theatre of Pompey by a group of senators, led by the trusted Brutus

¹ Dante Alighieri, *Inferno*, Canto XXXIV, 56-64, <http://www.sacred-texts.com/chr/dante/in34.htm>

² Gen. 4:8 (KJV).

³ G.C. Macaulay trans. Herodotus, “Herodotus on Thermopylae”, Livius, <http://www.livius.org/sources/content/herodotus/herodotus-on-thermopylae/>

and Cassius (Plut. *Vit. Caes.* 66).⁴ Some seventy years later, Judas would betray Jesus, leading to his crucifixion.⁵

Around the same time as Judas' actions, Cremutius Cordus was accused of treason for his written account of Roman history. His accusers specifically pointed at one phrase, in which he labeled Brutus and Cassius as "the last of the Romans". Knowing that his guilt and execution were certain, Cremutius Cordus took his own life. However, is there any resemblance between his actions, and those of Brutus, Cassius, and Judas?

Dante places the unholy triad of Brutus, Cassius, and Judas in the center of his *Inferno*, eternally trapped in the jaws of Lucifer himself. Their treason is inarguable, as Brutus and Cassius directly participated in Caesar's murder, and Judas handed Jesus over to the authorities who despised Jesus. They all betrayed the leaders of their time, one being secular, the other being spiritual. Brutus and Judas both betrayed a close friend. In virtually every society that has ever inhabited the Earth, treason is one of the worst possible offenses, and one which both the government and the populace will not tolerate. This sentiment is what allowed the Roman charge of *maiestas minuta populi Romani* (diminution of the majesty of the Roman people) to evolve from an accompaniment to a treason charge to a predetermined death sentence that either preceded or followed up a show trial under the emperor Tiberius. This law was originally proposed by a tribune of the plebeians named Saturninus who used it in order to prosecute people who he believed had diminished the majesty of the Roman people. However, as the shift from Republic to Empire occurs, especially under Tiberius, the law becomes a convenient tool which may be used to prosecute, and execute, anyone at the whim of the emperor. Eventually, this

⁴ Bernadotte Perrin trans. Plutarch, *The Parallel Lives: The Life of Julius Caesar*, Loeb Classical Library, http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Plutarch/Lives/Caesar*.html

⁵ Lk. 22:48 (KJV).

extends to persons who use contentious words, such as Cremutius Cordus. The *maiestas* law labels speech as sedition, turns writers into traitors, and leads to the death of many who use the wrong words.

Roman Precedent and Exempla

For mankind make far more determinations through hatred, or love, or desire, or anger, or grief, or joy, or hope, or fear, or error, or some other affection of mind, than from regard to truth, or any settled maxim, or principle of right, or judicial form, or adherence to the laws. (Cic. *De or.* 2.178)⁶

To explore the effect that precedent and exempla had on the treason law in ancient Rome, one must first have a sense of how these concepts behaved within the Roman government and judicial system. To begin the chapter, the concept of precedent in the abstract and in Roman law will be analyzed. This will include discussion of when precedent was relevant, and when it was not, as well as the idea of not polluting past decisions (*stare decisis*). Next, a case that Cicero participated in will be examined to illustrate the effect of precedent in the late Roman Republic. Also, the correlation between Julius Caesar's rise to power, and the increasing power of autocratic precedent will be explored. Following that, I will trace the further development of precedent during the Imperial age. Augustus' decision to govern Rome as a monarch, instead of maintaining a Republican form of government will be discussed, as well as a case that tested his *clementia* (mercy) and forced him to consider what sort of precedent he wanted to set with his legal decisions. Finally, this section will review the manner in which Tiberius redefined how precedent functioned in the Roman state. Tiberius' dual nature, as he appears to be both hidden and deliberate, creates a dangerous situation for those who

⁶ J.S. Watson trans. Marcus Tullius Cicero, *De Oratore*, http://pages.pomona.edu/~cmc24747/sources/cic_web/de_or_2.htm

he views as adversaries. By taking full control of the state, as well as having the ability to treat every case as a capital crime, Tiberius manipulates precedent into a convenient political tool.

The Application of Roman Precedent

Cornell University Law School defines precedent as “A case or issue decided by a court that can be used to help answer future legal questions.”⁷ Although precedent can be rather binding in the modern court system, the Romans did not see it the same way. Precedent was not the simple application of one judge’s decision years before a different case in question. Instead, advocates used past rulings as a tool when constructing their arguments. Roman courts did not cite past cases as a basis for their ruling, nor were they bound by the decisions of previous judges. Instead, the concept of precedent in Roman law is closely related to the cultural reliance on *exempla*: advocates would bring up past cases in order to convince the judges that their client should win the case.

According to Clifford Ando, Roman legal procedure was generally a two-stage process.⁸ In the first stage of the process, an authorized magistrate would hear the matter and discuss issues of law between the two parties. This process produced a statement of facts that would be resolved in the second phase of the legal process. This “formulary” procedure was technically restricted to disputes between two Roman citizens, although

⁷ Cornell University Law School, “Precedent”, <https://www.law.cornell.edu/wex/precedent>

⁸ Clifford Ando, *Exemplarity and Singularity*, (New York: Routledge, 2015), 112.

the same procedure could have also been used for non-citizens.⁹ However, as Rome transitions from Republic to Empire, the procedure shifts.

Although Justinian asserts that the decisions of cases should be based on evidence and the statute in question, Ando asserts that Ulpian's writings, written in the third century A.D., indicate that decisions made by emperors are the law of the land.¹⁰ It did not matter if the decision was inscribed, created in a formal setting, or made in the most informal way possible. Laws born in imperial decisions were known as *constitutiones*. These *constitutiones* could then be used as *exempla* in future cases. Ulpian clarifies that certain *constitutiones* were only applied to specific people and that they were not meant to be used as *exempla* (*Institutes frag. 1916 Lenel* = *Dig.* 1.4.1).¹¹ However, there are many other examples unrelated to imperial decisions where the language clearly moves closer toward *exempla* and *precedent* in some form.

One example of a ruling from 146 A.D.¹² that gives credence to an earlier decision reads, "In accordance with what the most high and gracious prefect Valerius Proclus decided... (*P. Oxy.* 8.1102, lines 6-7)".¹³ Another reads, "According to the laws and decision read to me, arable lands do not appear to come under testamentary covenant..." (*P. Oxy.* 8.1102, lines 13-14).¹⁴ A third example from Julian's digest states,

All points cannot be covered individually by statutes or decrees of the senate, but whenever in some case their sense is clear, he who exercises jurisdiction ought to

⁹ Ando, *Exemplarity*, 112.

¹⁰ Ando, *Exemplarity*, 113.

¹¹ Ulpian, *Digest*. From Ando, *Exemplarity* ... , 113.

¹² Papyri.info, <http://papyri.info/search?SERIES=p.oxy&VOLUME=8>

¹³ Oxyrhynchus Papyri, From Ando, *Exemplarity*, 114.

¹⁴ Oxyrhynchus Papyri, From Ando, *Exemplarity*, 114.

proceed *ad similia*, to similar cases and declare the law accordingly. (Julian *Digest* bk. 15 frag. 269 = *Dig.* 1.3.12)¹⁵

These words clearly show a move toward considering prior decisions when deciding on the merits of a particular case.

Ando goes on to discuss two important features of incorporating these past decisions into the cases that the advocates are trying to argue for. Ando first asserts that, “... instances of wholesale similarity, which is to say, cases of indisputable homology with earlier statute or case law, are clearly conceivable within this framework but require and receive no comment”¹⁶. In more complex situations, Ando argues, “... it was clearly in the interest of litigants to argue these issues themselves, to assert, in other words, the appropriateness of the embrasure of their cause within one or another framework”¹⁷. The lawyers would not leave the task of finding a similar past case up to a judge or judges. They would take it upon themselves to find this information in order to build the best case for their client.

In *Roman Law: Mechanisms of Development*, Schiller writes,

...in principle the Roman law had no case law, for the decision of one court did not establish a precedent binding if the same point rose again. However, a current of decisions in the same sense did influence judges; to these authors, however, this is not more than evidence of expert opinion respecting the law, much like the ‘jurisprudence’ in the courts of civil law countries today. Jolowicz is unwilling to go to such length, and declared: ‘Precedent, though unrecognized in the lawyers’ list of sources... undoubtedly played some part in the development of the law’¹⁸.

¹⁵ Ulpian, *Digest*. From Ando, *Exemplarity* ... , 115-116.

¹⁶ Ando, *Exemplarity*, 116.

¹⁷ Ando, *Exemplarity*, 116.

¹⁸ A. Arthur Schiller, *Roman Law: Mechanisms of Development*, (Mouton, 1978), 267, with reference to Jolowicz, *JSTPL* 14, (1937), 1-15.

This view aligns with Ando's view, in that the court had no obligation to rely on any past decisions: the judges were free to make whatever choice that they deemed reasonable.

However, the advocates believed that it was a wise and effective strategy to bring up past cases that best fit their narrative, and the fact that this practice continued showed that this method established some record of success.

Although "precedent" might be a rhetorically useful tool, G.A. Harrer emphasizes that there is nothing that suggests that one decision would lead to precedent.¹⁹ This is another important distinction that should be made between Roman law and the modern law practice of allowing one ruling to set a precedent. Instead, "Only 'where a particular interpretation has always been received, there ought to be no change made'" (Dig. 1.3.23).²⁰ The Romans were okay with the idea of respecting past decisions, but only when that decision had been made numerous times before. They accepted precedent as established most clearly when similar cases had received identical outcomes without regard to prior judgments.

To further explain this concept, known today as *stare decisis*, one ought to simply start with the translation, which means "to stand by things decided."²¹ In the case of *Kimble v. Marvel Enterprises* before the Supreme Court of the United States, the Court stated that *stare decisis*,

promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.²²

¹⁹ G. A. Harrer, "Precedent in Roman Law," *Studies in Philology* 19 : 53
<http://www.jstor.org.umiss.idm.oclc.org/stable/4171818>

²⁰ Callistratus, *Digest*, From Harrer, "Precedent in Roman Law".

²¹ Cornell University Law School, "*Stare Decisis*", https://www.law.cornell.edu/wex/stare_decisis

²² Cornell University Law School, "*Stare Decisis*".

This does not mean that a court will refuse to overturn a decision which, in hindsight, is seen as a bad ruling. This has happened with numerous dreadful rulings throughout the history of the Supreme Court of the United States, such as the historical *Dred Scott v. Sandford* case, and in more recent times *Bowers v. Hardwick*. When overturning these decisions, the court recognized the previous error, and explicitly set a new precedent. However, this type of activity by the court is not the norm, and whenever a legitimate reason exists, the precedent will hold. This type of “precedent by consensus” is what was seen during the late Roman Republic.

Precedent in the Late Republic

This idea of *exempla* and precedent was more than just a legal concept to Romans. The act of deciding which examples to uplift and which to condemn was part of the cultural process of setting *mos* for future generations. One interesting example of this case is Cicero’s *pro Flacco*, which Andrew Riggsby comments on in *Crime & Community in Ciceronian Rome*. In this extortion case that takes place in 59 B.C., Cicero largely ignores the question of guilt or innocence, and focuses on the ramifications that this decision will have on Roman tradition. In *pro Flacco* Cicero writes,

When you are given the ballot, jurors, it will not only be about Flaccus, but about the leaders and movers of the salvation of the city, about all good citizens, about yourselves, about your children, life, country, and the common salvation. (Cic. *Flac.* 99)²³

²³ Cicero, “Pro Flacco”, from Riggsby, *Crime & Community ... Rome*, 145.

This quote shows the value that Cicero places on the precedent that will be set, regardless of whether or not his client was guilty of the act in question. Flaccus was acquitted at the conclusion of the trial, largely due to Cicero's argument that a conviction would set a bad precedent. Riggsby writes, "The crime was not an issue. Not only could the jurors ignore the charge, but they had an obligation (*oportere*) to leave the election results intact."²⁴

When one analyzes this case, and the manner in which Cicero argues for his client, the reader will come to an obvious conclusion that Cicero is aware of the influence of court decisions to have power as *exempla* or precedent. He realizes that the decision in this case could potentially affect other rulings, and argues based on this point. This leads to the next conclusion that the reader should draw, which is that Cicero is unconcerned with managing the power of precedent carefully. He argues that a ruling against his client would create a bad precedent for the Republic, when one could argue that precisely the opposite was true, and that an acquittal based on future precedent would unjustly protect other powerful men in the future. Additionally, Cicero was not able to further the power of precedent on his own. He was required to solicit the consensus of the jurors in rendering their verdict of acquittal to give legitimacy to his argument. Their participation in Cicero's plan further strengthened the concept of precedent in the Roman world.

The shift in the Roman government over this time period is precisely what allows the notion of precedent to have a greater influence on the judicial system. Eleven years after Cicero gave his speech in defense of Flacco, Caesar would be given tribunician

²⁴ Andrew M. Riggsby, *Crime & Community in Ciceronian Rome*, (Austin: University of Texas Press, 1999), 144.

power for the remainder of his life.²⁵ Stefan Weinstock further explains this concept in *Divus Julius*, as he writes,

Another measure, both legal and religious, to protect Caesar's life against plots was the law rendering him, like the tribunes, inviolable (*sacrosanctus*). It was also decreed that he had the right to sit in the Circus on the benches (*subsellia*) of the tribunes, thus demonstrating his new status in public. He won a privilege which the other magistrates did not possess: a tribune could not be arrested, offended, or harmed, and could kill an offender without trial, as could any other citizen on his behalf.²⁶

By assuming these powers, Caesar promotes and encourages an example of precedent by one man. He is seizing political, judicial, and moral authority, and aligning that powerful combination to his own image. His possession of the highest honor known to the state was further strengthened by his ability to intervene with lower matters and other government officials. He held the benefits of both a magistrate and a tribune, positions designed to conflict with one another, since the tribunate was actually created to protect the *plebs* from tyrannical acts committed by magistrates. This consolidation of authority gave a force to his decisions that had never been seen before in Rome.

Yet after all, his other actions and words so turn the scale, that it is thought that he abused his power and was justly slain. For not only did he accept excessive honours, such as an uninterrupted consulship, the dictatorship for life, and the censorship of public morals, as well as the forename Emperor, the surname of Father of his Country, a statue among those of the kings, and a raised couch in the orchestra; but he also allowed honours to be bestowed on him which were too great for mortal man: a golden throne in the House and on the judgment seat; a chariot and litter in the procession at the circus; temples, altars, and statues beside those of the gods; a special priest, an additional college of the Luperci, and the calling of one of the months

²⁵ Stefan Weinstock, *Divus Julius*, (New York: Oxford University Press), 1971, 221.

²⁶ Weinstock, *Divus Julius*, 221.

by his name. In fact, there were no honours which he did not receive or confer at pleasure. (Suet. *Iul.* 76)²⁷

The quote above comes from Suetonius' *Life of Julius Caesar*, as he gives his best explanation for the motive behind Caesar's assassination. Consider the multiple powers and privileges that Suetonius lists only as "excessive". Simultaneously holding the offices of consul and dictator, free of any sort of term limit, already provides sufficient evidence that Caesar held total and complete power. His authority is only increased by the "censorship of public morals" position, which allowed him to control who was eligible to enter the senate. Also, the titles of *imperator* and *pater patriae* (father of the fatherland) would have meant that all of his decisions, both foreign and domestic, would face no public opposition.

Suetonius' indictment of Caesar does not stop there, as he goes on to list other attributes that were beyond "excessive", but "were too great for mortal man": golden thrones, transportation by litter, and statues of himself in the company of gods to name a few claims. These attributes are far removed from Republican ideology, as Caesar was able to essentially function as a king in the legal realm, and as a demigod in the cultural realm. The reason for mentioning Caesar's honors and privileges has less to do with the honorific titles themselves, and more to do with the inability to oppose a person with supreme power, both technical and perceived. From the end of the First Triumvirate until his death in 44 B.C., Caesar ruled virtually without challenge.

However, this autocracy was rather short-lived, as Pompey died only four years before Caesar was assassinated. In the aftermath of Caesar's death, Augustus emerged as

²⁷ John C. Rolfe trans. Suetonius, "*The Lives of the Twelve Caesars: The Life of Julius Caesar*", Loeb Classical Library, http://penelope.uchicago.edu/Thayer/e/roman/texts/suetonius/12caesars/julius*.html

a member of his own second triumvirate alongside Marc Antony and Lepidus. They went on to avenge the deified Julius by slaying the “Liberators” who were responsible for his death. However, as Augustus gained more influence, and eventually built enough consensus to rule without challenge, he was careful not to make the same mistakes his great-uncle did. He realized that many Romans would never bow to a king, or a man who acted like one. Therefore, he was very intentional in guising all of his activities as “preserving” the republic, and based his actions on Roman *exempla*.

Augustan Exempla

The effect that the transition from Republic to Empire has on the concept of precedent is demonstrated in Cassius Dio’s account of the debate between Agrippa and Maecenas about which form of government Augustus should pursue. Dio writes his *Roman History* between the years of 211 and 233 A.D.,²⁸ but this hypothetical conversation occurs in 29 B.C. Agrippa speaks first, and early in his speech arguing for republicanism, he states, “Equality before the law is an auspicious concept and works very justly in practice” (Cass. Dio. 52.4).²⁹ While there are numerous examples of this proving to be a false statement when applied to the Roman Republic, there is a higher chance for equality under this system than under the imperial form of government. Later, Agrippa returns to the problems of a judicial system operating under a monarch, saying,

Then, if some offenders are convicted, people will conclude that the judges have condemned them deliberately, to give

²⁸ Jona Lendering, “Cassius Dio,” Livius.org, <http://www.livius.org/articles/person/cassius-dio/>

²⁹ Ian Scott-Kilvert trans. Cassius Dio, *The Roman History: The Reign of Augustus*, (New York: Penguin Books, 1987).

you satisfaction. On the other hand, if you sit in judgement yourself, you will be compelled to punish many of your peers - an unhappy state of affairs - and you will inevitably be believed to be indicting some of them on grounds of personal animosity rather than of justice. (Cass. Dio. 52.7)

Agrippa shows great foresight in his words, as this is precisely the situation in which Augustus, and later Tiberius find themselves in due to the sole control they each held over the state.

Although Maecenas argues against republicanism and for a permanent imperial system, his points complement Agrippa's in respect to precedent. Early in his speech, Maecenas advises Augustus to "...pass all the appropriate laws without opposition or protest on the part of the masses..." (Cass. Dio. 52.15). This action obviously can only occur under solitary rule, and would not be possible during the Republic. This atmosphere in turn fosters what Maecenas advises later in the same paragraph, which is "... that you and they (your advisors) should also determine honours and punishments" (Cass. Dio. 52.15). This language strays very far from any sort of equal protection of the law. Instead, the emperor is empowered by the law to impose his will upon whomever he chooses.

However, these are not the most convincing words that Maecenas speaks on precedent, as he goes on to say, "The strength of this arrangement would be that whatever decisions you reached in consultation with your peers would at once become law" (Cass. Dio. 52.15). This short phrase permanently fastens the link between the imperial system and precedent. Under the new system, there is no room for the protest of the common people, or true debate within the Senate chambers, or any mechanism to hinder the effects of an erroneous judgment. Instead, the emperor literally has the ability to create precedent

through his words and decrees. Agrippa sees this as an obvious weakness, while Maecenas sees it as an advantage. They differ on their preference of government, but they both agree that an emperor will have the ultimate authority to set and enforce laws, for better or for worse.

Augustus understood the impact that his decisions made on both the present state of affairs, and also the effect they might have on precedent for future emperors. There are many examples of his cruelty, such as the proscriptions, and certain actions that occurred at the Battles of Philippi and Actium. However, once he assumes sole power, Augustus wisely understands that future emperors will most likely follow his lead with regard to serious decisions. This is precisely why Augustus decides to pardon Gnaeus Cornelius, the grandson of Pompey the Great who was involved in a conspiracy against Augustus. While the exact motives behind the conspiracy are not explicitly stated, Dio writes that the conspiracy had been discovered and that Augustus was contemplating what ought to be done with the men responsible. He found himself in quite a predicament, as Dio gives the following account,

For a time Augustus found himself caught in a serious dilemma: he was unwilling to put the conspirators to death, since he recognized that their execution would contribute nothing to his safety, or to let them go, in case this should encourage others to plot against him. (Cass. Dio. 55.14)

Augustus' realization of the consequences both actions would have is an important piece of evidence in favor of his mercy, and his recognition of the *exempla* that is to be set. He never speaks of wanting to kill the men out of vengeance, or to show his supreme power. He only contemplates taking their lives to discourage other conspiracies, and adds that the death penalty is an option he is reluctant to choose in this case.

Dio follows the introduction to this particular story with a lengthy exchange between Augustus and Livia about the fate of the men. Livia offers advice to Augustus as she discusses the problems associated with monarchy, the nature of man, and also the pragmatic benefits of forgiveness. This conspiracy attempt causes Augustus to realize the amount of physical risk that is associated with the monarchy, and Livia agrees with his assessment. After addressing the certainty that bad men will produce bad events, she offers a solution to this particular issue. In Dio's retelling of the story, Livia asserts,

I believe that far more wrongs are put right by kindness than by harshness. Those who forgive are loved not only by those to whom they have shown mercy - and these men will even strive to return the kindness - but they are also respected and revered by all the rest, who will not lightly venture to harm them. (Cass. Dio. 55.16)

Livia goes on to give an analogy about how doctors would rather treat a disease with mild medication than with surgery, and how Augustus should proceed with this example in mind.³⁰

After a lengthy discussion, Augustus listens to Livia's advice, and only issues the men a stern warning before releasing them.³¹ Dio acknowledges the success of Livia's initiative, writing, "...none of them ever plotted against him later or was suspected of doing so" (Cass. Dio. 55.22).

Dio's words in the case of Gnaeus Cornelius clearly establish Augustus' tendency to advocate for clemency over harshness, and the consciousness of setting a precedent that he expects others to follow. Toward the end of the discussion Livia appeals to Augustus saying, "Let us therefore try the experiment..." (Cass. Dio. 52.21). Augustus

³⁰ Scott-Kilvert, *The Roman History ... Augustus*, 55.17.

³¹ Scott-Kilvert, *The Roman History ... Augustus*, 55.22.

proves to fare rather well with building a legacy of positive examples, most prominently codified in his *Res Gestae*. However, when precedent is left to Tiberius, the outcome decisively shifts.³²

The Rewriting of Precedent under Tiberius

Augustus clearly describes his expectations for Tiberius in regards to harsh words, as Suetonius writes in *Life of Augustus*, quoting a letter of Augustus:

My dear Tiberius, do not be carried away by the ardour of youth in this matter, or take it too much to heart that anyone speak evil of me; we must be content if we can stop anyone from doing evil to us. (Suet. *Aug.* 51)³³

Augustus understood that an emperor would be criticized from time to time, and that attempting to prosecute unpleasant speech could have serious consequences for the emperor. Instead, what was most important was preventing a *coup d'état*, which might prove to be fatal. There is some evidence from Suetonius that Tiberius understood this early in his reign as he writes, “More than that, he was self-contained and patient in the face of abuse and slander, and of lampoons on himself and his family, often asserting that in a free country there should be free speech and free thought” (Suet. *Tib.* 28).³⁴ This

³² This section that spans from “Augustus understood the impact...” to “...the outcome decisively shifts.” heavily relies on a paper I wrote titled “*Clementia Augusti?* A Question of Mercy and Governance during the Augustan Period.” This paper was written to satisfy the requirements of a course titled “From Republic to Empire,” taught by Dr. John Lobur.

³³ Suetonius, “*The Lives of the Twelve Caesars: The Life of Augustus*”, Loeb Classical Library, http://penelope.uchicago.edu/Thayer/e/roman/texts/suetonius/12caesars/augustus*.html

³⁴ John C. Rolfe trans. Suetonius, “*The Lives of the Twelve Caesars: The Life of Tiberius*”, Loeb Classical Library, http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Suetonius/12Caesars/Tiberius*.html

seems like a thoughtful statement from the third Caesar, but the historical record suggests that he later alters his stance on the issue.

Much of Suetonius' writing about the latter half of Tiberius' reign is focused on his capricious nature, and his severity toward those he found to be unacceptable. When describing Tiberius' cruelty, Suetonius specifically mentions a *maiestas* trial regarding a decapitation of an Augustan statue. Suetonius writes, "this kind of accusation gradually went so far that even such acts as these were regarded as capital crimes..." (Suet. *Tib.* 58). He then goes on to list numerous acts which are all categorized under the treason law. The serious nature of the charge allowed Tiberius to set a precedent of certain guilt and harsh punishment, if it was something that Tiberius wished for that particular case.

According to Suetonius, Tiberius' prosecutions were both relentless and unmerciful. In *Life of Tiberius* he writes,

Not a day passed without an execution, not even those that were sacred and holy; for he put some to death even on New Year's day. Many were accused and condemned with their children and even by their children. The relatives of the victims were forbidden to mourn for them. Special rewards were voted the accusers and sometimes even the witnesses. The word of no informer was doubted. Every crime was treated as capital, even the utterance of a few simple words. (Suet. *Tib.* 61)

In this case, one is able to see both the purging of old, inconvenient precedents (e.g. refusing to execute prisoners on holy days) as well as the inception of a new precedent for prosecution. Aside from the legal implications that are created by Tiberius' actions, he also is able to form new cultural norms. In the sentence concerning children, Suetonius demonstrates how the imperial system conquered familial ties through betrayal and extinction. The prohibition of mourning suggests an atmosphere where those convicted of

treason become invisible people, erased from the historical record. The rewarding of accusers and witnesses honors a system of continuous allegations, providing constant ammunition ready whenever Tiberius felt the need to use it. The way in which the testimony of the informants went unchallenged proved that the trials were a complete sham, and in no way represented even a facade of justice.

Furthermore, the most revealing piece of this description by Suetonius might be the ultimate sentence, where he mentions that every crime was considered a capital crime. This erasure of distinction between offences creates numerous issues within a system of laws. When a concept such as “capital offense” suddenly applies to every crime, a concept of justice which attempts to punish offenders according to their offenses must cease to exist. Instead, the lines are blurred to where the person at the head of the system (Tiberius in this case) decides whether or not a crime is to be considered “capital,” no matter whether it warrants the distinction. Although some crimes are inherently worse than others, that is not of concern when the goal is to dissuade dissent and to punish those who take part in it.

Thus, when the republic becomes empire, precedent is no longer merely “persuasive.” When Tiberius holds the power of the state, he is able to use the law against anyone that he wishes, and pardon those that he favors. Based on the evidence, the *lex maiestatis* was created in order to prosecute those who had truly violated the majesty of the entire Roman state due to their actions. However, over time the law becomes a personal tool in Tiberius’ arsenal, capable of inflicting death and exile on its targets. This is able to be accomplished due to the gradual establishment of precedent concerning the law.

Inventing Maiestas

And from now on legislation was focused not on the community, but on particular individuals, and laws were most numerous when the state was most corrupt. (Tac. *Ann.* 3.27)³⁵

From its humble beginnings, the Roman civilization distinguished itself from other peoples in part by its system of laws. One of the earliest pieces of evidence that exists of the Roman system of law is the Twelve Tables, created by the *decemviri* in 451-450 B.C.³⁶ However, there is evidence of Roman law before the Twelve Tables, such as Livy's story of Horatius' slaying of his sister, and the proceedings that followed that event. To understand the meaning of this story, a reader must grasp how the Romans understood treason, and how that concept eventually became tied to actions that could be interpreted as "disrespectful" or "embarrassing" to the Roman state. This connection eventually leads to laws regarding *maiestas* (literally "greatness"), an offshoot of the general law concerning *perduellio* (treason). The first *maiestas* law, originally proposed by a tribune named Saturninus, was intended to be used as a control mechanism by the common people against those in power who had disgraced the state. However, as Sulla, then Caesar, then Augustus, then Tiberius took power over the state, the law became an apparatus for vengeance against all who stood in the way of the supreme authority of the time.

³⁵ J.C. Yardley trans. Cornelius Tacitus, *The Annals*, (Oxford: Oxford University Press).

³⁶ P.R. Coleman Norton, *The Twelve Tables*, *Project Gutenberg*, <http://www.gutenberg.org/cache/epub/14783/pg14783-images.html>

Origins of the Law - Perduellio

To fully understand *maiestas*, one must first closely examine the Roman concept of *perduellio*. In the mind of a Roman citizen or aristocrat, treason was one of the worst offenses that one could commit. The punishment for *perduellio*, or “acting like an enemy” was a public flogging followed by crucifixion.³⁷ A great example of a charge of *perduellio* is Horatius’ slaying of his sister, a historical legend placed during the reign of Tullus Hostilius, who was the third king of Rome (673-642 B.C.). Livy describes a conflict between Rome and neighboring state Alba Longa, and that rather than fighting a costly and bloody battle, Tullus Hostilius and King Mettius of the Albans agree to a three-versus-three fight between two sets of triplet brothers that are members of each army (Livy 1.24).³⁸ Two of the Roman *Horatii* brothers are slain, but the final Horatius craftily dispatches of the three *Curiatii* brothers single-handedly. After the battle, King Mettius honors his word and submits to Roman rule, and Horatius marches home with spoils in hand. His sister then meets him at the city gate and weeps, and all realize that she was betrothed to one of the slain *Curiatii* (Livy 1.26). Horatius kills her on the spot, and promptly says, “So perish every Roman woman who mourns a foe!” (Livy 1.26).

Although the conduct seems to warrant a simple murder charge, Horatius is actually tried for treason, as Livy writes,

The king, that he might not take upon himself the responsibility for so stern and unpopular a judgement, and for the punishment which must follow sentence, called together the council of the people and said: “In accordance

³⁷ Harries, *Law and Crime in the Roman World*, 72.

³⁸ Rev. Canon Roberts trans. Livy, *History of Rome*, (J. M. Dent & Sons, Ltd., London, 1905), <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.02.0026%3Abook%3D1%3Achapter%3D26>

with the law I appoint duumvirs to pass judgement upon Horatius for treason [*perduellionem*].” The dread formula of the law ran thus: “Let the duumvirs pronounce him guilty of treason; if he shall appeal from the duumvirs, let the appeal be tried; if the duumvirs win, let the lictor veil his head; let him bind him with a rope to a barren tree; let him scourge him either within or without the pomerium.” (Livy 1.26)³⁹

Horatius is initially convicted of *perduellio*, but his father appeals to the people and he is acquitted of all charges. This example shows the influence that family had on the Roman legal system. A murder could be considered treason because it involved the public slaying of a family member. On the other hand, the *paterfamilias* claimed that his own daughter was lawfully slain, and that he would have punished his son with his own power if it would have been unlawful (Livy 1.26).

Another issue that this instance raises is the question of whether a crime is a private matter or a public one. As the intervention of Horatius’ father points out in the previous example, murder was considered a private offense in many cases in early Roman history. It was largely handled by the *paterfamilias* of the family, and in fact the statute against murder was not codified until 80 B.C. under Sulla’s *Lex Cornelia de sicariis*.⁴⁰ Defining the boundaries between lawful and unlawful killing was a difficult task for the Romans, as Harries artfully explains,

Killing people was not always wrong. Enemies were killed lawfully in war; the outlaw could be killed out of hand, as could the adulterer and the thief, provided certain conditions were met. Killing in self-defence was an accepted and universal justification, although the killer might have to run the risk of proving his case in the court of law.⁴¹

³⁹ Livy, *History*.

⁴⁰ Harries, *Law and Crime in the Roman World*, 118.

⁴¹ Harries, *Law and Crime in the Roman World*, 118.

The last sentence is precisely what occurred in the case of Horatius, as he was forced to prove that the killing was just. However, as Bauman explains, Horatius particularly needed to demonstrate that the slaying of his sister in view of the king as well as the public was justified, and should not be considered treasonous conduct.⁴² Horatius was able to prove that his homicide did not meet the standard to be considered *perduellio*, and was acquitted of the charges: murder is not always “acting like an enemy”.

We see already in the attempt to apply *perduellio* to Horatius’ killing of his sister what seems to be a stretching of the concept beyond the bounds of military action. Throughout the republic, *perduellio* is allowed to further encompass illicit conduct that seems less than deadly or treasonous. Eventually it involves,

... the misconduct of magistrates and pro-magistrates, especially unauthorized warfare and departure from a province, military failures, cowardice, ill-treatment of allies and enemy prisoners, disregard of the auspices, and unfair division of booty; retention of office beyond the due term; bias in the administration of justice; neglect of sacral duties; misuse of public funds; the misconduct of censors, tribunes, and inferior magistrates; and breaches of duty by legates, senators, and private individuals who undertook services on behalf of the state.⁴³

The language that is used here is a clear indication that *perduellio* was usually regarded as a public offence, and not one that was merely committed against or by private parties. This makes complete sense for a crime that is frequently applied in a military setting, when the public safety is an issue of concern. In the case of Horatius, though, it is clear that the state is in no immediate danger. Nevertheless, the treason law is still applied due

⁴² Richard Bauman, *The Crimen Maiestatis in the Roman Republic and Augustan Principate*. (Johannesburg: Witwatersrand University Press 1970), 20.

⁴³ Bauman, *The Crimen Maiestatis*, 21-22.

to the setting of the crime and perhaps also for the detrimental effects it might have on the public morale.

Even though Livy's story takes place in the regal period, Livy started writing sometime after Actium, with one model hypothesizing that his work began in 26 B.C.⁴⁴ His complete history concerning the Roman state begins with the fall of Troy in 1184 B.C., and his surviving work stretches all the way to the organization of Macedonia as a Roman province. Even though Livy held sympathies for Pompey, and thus for a republic, Augustus tolerated him anyhow. Tacitus provides evidence of this when he speaks of the "friendship" between Augustus and Livy, despite Augustus referring to Livy as "The Pompeian" (*Tac. Ann.* 4.34). This being said, no other external evidence exists that corroborates the statement that the two men are actually friends.

Ronald Syme explores the relationship between the author and Rome's first emperor in "Livy and Augustus",

Livy's picture of the Roman past is patently schematic and wildly anachronistic, not to say fraudulent. Some take it to reflect the Augustan colour and atmosphere, with Livy as a perfect embodiment of the ideals prevalent or advertised in that epoch, comparable to what Virgil and Horace disclose. Hesitations might be felt. The beliefs about religion, patriotism, and morality discoverable or subsumed in the writings of Livy may have an earlier origin. Livy was a grown man long before the new dispensation came into force. And indeed, what is meant by "Augustan"?⁴⁵

Even if the two men held rashly different political views, the current climate allowed Livy to write under the shared idea that both Augustus and Livy were very much living in the Roman Republic.

⁴⁴ Jona Lendering, "Livy", *Livius.org*, <http://www.livius.org/articles/person/livy/>?

⁴⁵ Ronald Syme, "Livy and Augustus", *Harvard Studies in Classical Philology*, 1959, 64 : 28.

Having abolished the Republic, Octavianus pretended to restore it; and Caesar's heir came to terms with Caesar's enemies. There ensued a certain rehabilitation of Pompeius - and even of Cato. It was therefore possible for Livy to write as a *Pompeianus* without fear of any reproach from Caesar Augustus.⁴⁶

Rome had transformed into an empire long before Livy finished writing, but the Augustan program of upholding Republican traditions while ruling as emperor meant that direct confrontation between the men was unnecessary.

Perhaps Livy truly believed that Augustus wanted to preserve the Republic, or perhaps he thought that the political dynamics of his time more closely resembled the regal period, when one man held the power of life and death. While the Horatius legend gives some evidence of the early application of the law of *perduellio*, we must also keep in mind the possibility that Livy's account reflects contemporary concepts to some degree.

A Descendant of Perduellio - Maiestas

The ideological merging of *perduellio* with a new legal concept of *maiestas* was accomplished by a law proposed by the tribune L. Appuleius Saturninus in either 103 or 100 B.C.⁴⁷ Saturninus aimed to control the power held by the executives of the state, and to transfer some of that power to the people themselves. The generals of this time period continued to fail on the battlefield, and the people were willing to label that failure as treason. When Plautius lost four legions against the Lusitanians and fled, he was

⁴⁶ Syme, "Livy and Augustus", 58.

⁴⁷ Harries, *Law and Crime in the Roman World*, 72.

indicted for *perduellio*.⁴⁸ Q. Servilius Caepio and C. Mallius Maximus, two Roman aristocrats, were exiled for *perduellio* as a result of the mismanagement of the conflict against Jugurtha.⁴⁹ After the passage of Saturninus' *lex Appuleia de maiestate*, charges for "diminishing the majesty of the Roman people" began to be added to *perduellio* charges.

Once again, one must consider how the classification of this act as a crime against the public allowed the concept of *maiestas* to come into existence. Although it does not quite compare to a modern expectation of a checks-and-balances system, the law was well-suited to the tribunate system. The *maiestas* law allowed the general public to hold elites accountable for damaging a state that the people cared for so deeply. That being said, Harries points out that even from its inception, *maiestas* charges were pressed in a partisan fashion, writing,

The original context of Saturninus' reform was political and highly partisan. Saturninus' reforms in general extended the power of the *populus* over its executive, the magistrates and Senate, and included active interference in the administration of the provinces and provincial commands (as in the Delphic Piracy Law) and the imposition of oaths on senators that they would obey the laws (Lintott 1994: 95-101). In line with this, the *maiestas* law was born out of a desire to control the behavior of the military and political elite by making them legally accountable for damage to the 'greatness' of the Roman People (Ferrary 1983).⁵⁰

Thus, although the intent of the law was fairly clear, it was not always equally applied, and the punishments that were handed down to offenders varied.

⁴⁸ Harries, *Law and Crime in the Roman World*, 72-73.

⁴⁹ Harries, *Law and Crime in the Roman World*, 73.

⁵⁰ Harries, *Law and Crime in the Roman World*, 72, with reference to: Andrew Lintott, *The Cambridge Ancient History Volume IX: The Last Age of the Roman Republic*, (Cambridge University Press, 1994), pp. 95-101, and Jean-Louis Ferrary, "Les Origines de la Loi de majesté à Rome" *Comptes Rendus: Académie des Inscriptions et Belles-Lettres*, 1983, pp. 556-572.

Furthermore, Richard Bauman provides another angle from which to examine the *maiestas* law as he writes,

... the crime of *perduellio* was ill-suited to the purpose of the Popular faction, as that purpose was revealed in a series of prosecutions of generals in the last decade of the second century B.C., ... Saturninus found a more suitable remedy in the 'invention' of *maiestas*.⁵¹

When the military leaders failed or misbehaved, their actions usually did not meet the standard necessary to be considered *perduellio*. They did not willingly betray the state, divulge its secrets, or commit violence against it. However, to Saturninus as well as many others, the symbolic damage that their actions produced warranted prosecution.

Conveniently, this is where the idea of *maiestas* thoroughly fits in the form of a criminal charge. It is clear that the concept of *maiestas* of the Roman state predates Saturninus, but he was instrumental in the transformation of the concept into a criminal offense.

It must also be noted that Saturninus' law did not replace *perduellio* with the *maiestas* law. People were still charged with *perduellio* without the addition of the *maiestas* charge. However, the addition of Saturninus' interpretation of *maiestas* is quite telling of the way that Roman citizens viewed the status of the collective populace and also their perception of the state. They believed that the people and the state possessed such greatness, that it was *criminal* to damage that pristine reputation in any form or fashion. Embarrassment, especially in military matters, would not be tolerated and would invite prosecution. In this way, *maiestas* became an avenue by which someone could be punished for treason, even if it was unintended and indirect. The diminishing of majesty

⁵¹ Bauman, *The Crimen Maiestatis*, 16.

ultimately was a treasonous act in itself, which is why it is common to see someone being indicted on both *perduellio* and *maiestas* charges.

Two Test Cases: Caepio and Norbanus

According to Michael Alexander, there may have been a trial around 100 B.C for *perduellio* or possibly even *maiestas* against Q. Caecilius Metellus Numidicus,⁵² and perhaps a second *maiestas* trial in 98 B.C. against Sex. Titius.⁵³ Although both men were convicted and were exiled, the rest of the circumstances surrounding both of these cases are murky at best, and Alexander even notes that the trial of Numidicus might not have even happened at all. Around 95 B.C. however, there were two trials which are clearly marked as *maiestas* proceedings. These accounts are recorded in the *Rhetorica ad Herennium*, which was composed in the first century B.C. There is no official author, but the work is long thought to be Cicero's. One of the proceedings is the trial of Q. Servilius Caepio (son of the aforementioned Q. Servilius Caepio exiled for treason) who was accused of using violence to oppose Saturninus:

Cum Lucius Saturninus legem frumentariam de semissibus et trientibus laturus esset, Caepio, qui per id temporis quaestor urbanus erat, docuit senatum aerarium pati non posse largitionem tantam. Senatus decrevit, si eam legem ad populum ferat, adversus rem publicam videri ea facere. Saturninus ferre coepit. Collegae intercedere, ille nihilominus sitellam detulit. Caepio, ut illum, contra intercedentibus collegis, adversus rem publicam vidit ferre, cum viris bonis impetum facit; pontes disturbat, cistas deicit, impedimento est, quo setius feratur: arcessitur

⁵² Michael Alexander, *Trials in the Late Roman Republic 149 B.C. to 50 B.C.*, (Toronto: University of Toronto Press), 40.

⁵³ Alexander, *Trials*, 42.

Caepio maiestatis. Constitutio legitima ex definitione. Vocabulum enim definitur ipsum cum quaeritur, quid sit minuere maiestatem.

When Lucius Saturninus was about to introduce the grain law concerning the five-sixths *as*, Quintus Caepio, who was city quaestor during that time, explained to the Senate that the treasury could not endure so great a largess. The Senate decreed that if Saturninus should propose that law before the people he would appear to be doing so against the common weal. Saturninus proceeded with his motion. His colleagues interposed a veto; nevertheless he brought the lot-urn down for the vote. Caepio, when he sees Saturninus presenting his motion against the public welfare despite his colleagues' veto, attacks him with the assistance of some Conservatives, destroys the bridges, throws down the ballot boxes, and blocks further action on the motion. Caepio is brought to trial for treason. The Issue is Legal, and is established from Definition, for we are defining the actual term when we investigate what constitutes treason. (Rhet. Her. 1.12.21)⁵⁴

Caepio's trial raises several questions about *maiestas* procedure, and establishes a precedent for what warrants a conviction. As the final line makes clear, the author of the *Rhetorica ad Herennium* sees this as a test case for the definition of *maiestas*.

First, as an experimental case the trial of Caepio sets a precedent for what is considered *maiestas*, and what falls short of being considered a crime. Harries explains both sides of the issue:

The advocates on both sides would therefore offer their conflicting definitions of *maiestas*, on the lines of 'he diminishes *maiestas* who ...'. The prosecution asserts that 'he damages *maiestas*, who destroys the constituent parts of the "greatness" of the *civitas* or citizen body', by which was meant the votes of the *populus* and the council of the magistrates. Caepio's defence would run that *maiestas* meant to cause real damage to the greatness of the *civitas*

⁵⁴ "Rhetorica ad Herennium", *Loeb Classical Library*.

http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Rhetorica_ad_Herennium/1*.html, Discussed in E. Badian, "Caepio and Norbanus: Notes on the Decade 100-90 B.C.", *Historia: Zeitschrift für Alte Geschichte*, Bd. 6, H. 3 (July, 1957).

and that he in fact prevented such damage by protecting the treasury and refusing to acquiesce in the destruction of the *maiestas* of the people.⁵⁵

At this point the Roman people are deciding exactly what their concept of *maiestas* resembles in the civil arena, as the idea was mostly used in a foreign policy context until this point.⁵⁶ Was the democratic process in civic affairs more representative of the state's majesty, or did Saturninus' attempt to take the grain bill directly to the people harm the image of the state? This question eventually lends itself to a question still asked today: is the "letter" of the law or the "spirit" of the law more important?

In this particular instance, reminding ourselves of the context of the law's passage helps clarify its "spirit" and also the outcome of this case. The *lex Appuleia de maiestate* was introduced by Saturninus in his role as tribune of the plebeians. As we have seen, this law was introduced specifically so that the people, especially those who had no voice in the senate, would be able to hold officials accountable in the public court. When an elite member of society, such as Caepio in this instance, infringes on the fundamental rights of the people by disturbing their vote, he was subject to prosecution by this law. In this way, a precedent would form to discourage other people from similar conduct. Just as every law attempts to dissuade people from breaking it by the threat of some negative consequence, this case set a precedent for protecting the rights of the people, and imposing legal consequences on those who would impose on central Roman principles of popular political action.

⁵⁵ Harries, *Law and Crime in the Roman World*, 74.

⁵⁶ Valentina Arena, *Libertas and the Practice of Politics in the Late Roman Republic*, (Cambridge University Press, 2013), 134.

The other *maiestas* proceeding that occurs during this time period (the exact date is unknown, but according to Alexander it does not occur before 96 B.C.)⁵⁷ is directly tied to the earlier trial of Caepio (sen.) as it relates to misconduct that occurred during that trial. Gaius Norbanus was the prosecutor for the *perduellio* proceedings against Caepio and C. Mallius Maximus, which resulted in their conviction and exile. During the trial, Norbanus ejected two other tribunes, T. Didius and L. Aurelius, from the proceedings, and this was the primary basis of the accusation against him.⁵⁸ Also, Norbanus admitted to “the stoning of the eminent M. Aemilius Scaurus, and a riot in a temple.”⁵⁹ None of these claims were contested by Norbanus, but instead he and his ally M. Antonius argued that he was innocent of diminishing Roman *maiestas* by his actions.

Thus, Sulpicius (on behalf of the prosecution) and Antonius (on behalf of Norbanus) debated on the issue of *maiestas* rather than the facts themselves, which were undisputed. The main question at hand was if Norbanus’ actions had diminished the *maiestas* of the Roman people. Sulpicius claimed,

... *maiestas est in imperii atque in nominis populi Romani dignitate, quam minuit is qui per vim multitudinem rem ad seditionem vocavit...*

... *maiestas* is the status resulting from the empire and renown of the Roman people, and was diminished by the forcible incitement of the multitude to sedition... (Cic. *Part. Orat.* 30.105)⁶⁰

⁵⁷ Alexander, *Trials in the Late Roman Republic 149 B.C. to 50 B.C.*, 44.

⁵⁸ Thomas Robert Shannon Broughton, *The Magistrates of the Roman Republic*, (Ann Arbor, MI: MPublishing, 1951), 563.

⁵⁹ Harries, *Law and Crime in the Roman World*, 74.

⁶⁰ Translated and discussed in Bauman, *The Crimen Maiestatis*, 52.

In this instance, Sulpicius is claiming that the *maiestas* of the Roman people was violated because Norbanus had incited conduct that contradicted established standards of due process and justice.

However, Antonius responded to Sulpicius' points with some clever points of his own. Some of his assertions stand out in particular:

Non minuit maiestatem quod egit de Caepione turbulentius; populi enim Romani dolor iustus vim illam excitavit, non tribuni actio; maiestas autem, quoniam est magnitudo quaedam populi Romani in eius potestate ac iure retinendo aucta est potius quam diminuta.

The disturbance that the tribune raised against Caepio was not a diminution of *maiestas*, for it was inspired not by his act but by the just grief of the Roman people; *maiestas*, being the greatness, as it were, of the Roman People in preserving its power and rights, was increased rather than diminished by this action. (Cic. *Part. Orat.* 30.105)⁶¹

This is possibly the most important statement that Antonius makes in Norbanus' defense. He argues that Norbanus' actions during the trial of Caepio not only failed to diminish the majesty of the Roman people, but it actually did the opposite by increasing their status. The two generals that were being tried had committed a wrong against the state, and the people were right and just to be angry and to expect punishment. Harries notes that Antonius "developed the concept of the justified riot."⁶² As Bauman explains, the idea that even violent actions sometimes increased the *maiestas* of the people rather than decreased it would be a recurring theme in proceedings.⁶³ This allowed the jury to acquit Norbanus, and many others accused of diminishing *maiestas*.

⁶¹ Translated and discussed in Bauman, *The Crimen Maiestatis*, 52.

⁶² Harries, *Law and Crime in the Roman World*, 75.

⁶³ Bauman, *The Crimen Maiestatis*, 52.

Antonius wisely raises the question of who was wearing the symbolic white hat during the trial of Caepio by asking, *Minueritne maiestatem qui voluntate populi Romani rem gratam et aequam per vim egerit?* “Is maiestas diminished by an act which is desired by and advantageous to the Roman people?” (Cic. *Part. Orat.* 30.105).⁶⁴ The Roman People were undeniably upset about the conduct of their military leaders, and how their conduct cast a shameful light upon the state. The general populace was not concerned with a couple of tribunes being dismissed from the proceedings, or a stone being thrown. The matter at hand was the punishment of two leaders who had behaved shamefully, and Norbanus delivered the verdict that the people desired.

Si magistratus in populi Romani esse potestate debent, quid Norbanum accusas, cuius tribunatus voluntati paruit civitatis?

If a magistrate is supposed to be under the control of the Roman People, why do you accuse Norbanus who, as a tribune, was bound by the will of the State?⁶⁵ (Cic. *Orat.* 2.40.167)

Once again, Antonius rationalizes Norbanus’ actions by giving the excuse that Norbanus was merely acting as an agent of the people. This quote further promotes the same message as Antonius’ main point: Norbanus’ actions increased the standing of the state rather than damaging it. Furthermore, his actions provided the result that was desired by the people, and he should therefore be regarded as a proactive example. Tribunes were expected to protect the *plebs*, and give them a voice. According to Antonius, Norbanus did both of these things and the jury agreed: Norbanus was found innocent of *maiestas*.

⁶⁴ Translated and discussed in Bauman, *The Crimen Maiestatis*, 52.

⁶⁵ Translated and discussed in Bauman, *The Crimen Maiestatis*, 52.

From Varius to Sulla

After just more than twenty years, the body of *maiestas* law was amended, this time under the direction of the tribune Q. Varius Hybrida. Hybrida was a tribune during the Social War who was friendly to the Romans. Shortly before Varius proposed his new measure, a tribune named Drusus proposed a radical measure that would have added around 300 knights to the Senate, which would double the body in size.⁶⁶ Also, the measure called for investigations into the acceptance of bribes, which was a common senatorial practice. This earned him the ire of both the knights and the Senate, groups frequently in opposition to one another. Drusus was eventually murdered in his home, which provided political capital to the knights as Appian writes the following:

The knights, in order to make his policy a ground of vexatious accusation against their enemies, persuaded the tribune Quintus Varius to bring forward a law to prosecute those who should, either openly or secretly, aid the Italians to acquire citizenship, hoping thus to bring all the senators under an odious indictment, and themselves to sit in judgment on them, and that when they were out of the way they themselves would be more powerful than ever in the government of Rome. (App. *B Civ.* 1.37)⁶⁷

In Callie Williamson's book *The Laws of the Roman People: Public Law in the Expansion and Decline of the Roman Republic*, she claims that Varius' law was intended to "root out men of high status complicit in 'inciting' the Italians to revolt."⁶⁸ In Williamson's interpretation, then, the intention of the *lex Varia de maiestate*

⁶⁶ Horace White trans. Appian, *The Civil Wars: Book I, Loeb Classical Library*, http://penelope.uchicago.edu/Thayer/e/roman/texts/appian/civil_wars/1*.html

⁶⁷ White, *The Civil Wars: Book I*

⁶⁸ Callie Williamson, *The Laws of the Roman People: Public Law in the Expansion and Decline of the Roman Republic* (Ann Arbor: University of Michigan Press, 2005), 327.

was not far away from the original intent of the *maiestas* law proposed by Saturninus, as it was a tool that the people could use to keep their rulers in check.

Appian, however, has an alternative view of the law, which he felt was an invention that the knights intended to use to dominate the Senate, and prosecute with “vexatious accusation” under Varius’ law. Appian also claims that the law was not passed in a democratic fashion, saying, “the knights surrounded them (the tribunes) with drawn daggers and enacted the measure, whereupon accusers at once brought actions against the most illustrious of the senators” (App. *B Civ.* 1.37). He then gives three condensed accounts of the law being used against Roman aristocrats. The first use of the law was against Bestia, who voluntarily went into exile instead of standing trial (App. *B Civ.* 1.37). In the second case, Cotta defended himself and scolded the knights in court, but fled the city before the panel of judges reached a verdict (App. *B Civ.* 1.37). Lastly, Appian writes that the knights promised Mummius that he would be acquitted, but instead condemned him to exile (App. *B Civ.* 1.37). In Appian’s account, then, the equestrians are manipulating this popular law in the service of their own interests and power.

Ironically, the very law that Varius instituted to punish others would later be used against him. Williamson summarizes how this predicament occurred:

M. Plautius Silvanus also carried a measure instituting the selection of fifteen men from each tribe for jury duty in the court. In the future the court’s decisions were made by elite Romans drawn from all the tribes. The newly constituted body as a result convicted Q. Varius Hybrida himself, the sponsor of the *lex Varia*, of diminishing the grandeur (*maiestas*) of Rome.⁶⁹

⁶⁹ Williamson, *Laws of the Roman People*, 327.

Instead of working to pass a law to counteract Varius' statute, the already powerful Silvanus and company instead found it more favorable to stack the panel of judges in the favor of those who held "high status" within society. In this way, they needed no new laws, as they could maximize the use of those already in effect. Varius' rise and fall by means of a *maiestas* statute serves as yet another example of the partisan use of the law. When one holds momentary political power, it is a powerful weapon to wield. However, when the political pendulum swings the opposite direction, that weapon can quickly be turned against its former possessor.

In 81 B.C., Sulla established the *lex Cornelia de maiestate*, which further added to the treason law.⁷⁰ The evidence for the nature of this law is meager, but Robin Seager asserts that portions of Cicero's orations point toward Sulla establishing a *maiestas* law that laid the foundation for the *lex Iulia*.⁷¹ For instance, in "Against Piso," Cicero included the following as a non-exhaustive list of *maiestas* offenses:

If he had been in his senses, if he had not been already paying to his country and to the immortal gods that penalty which is the most terrible of all, by his frenzy and insanity, would he have cared, (I say nothing of his leaving his province, of his taking his army out of it, of his declaring and carrying on war of his own accord, of his entering a foreign kingdom without any command from the people or from the senate to do so; conduct which many of the ancient laws, and especially the Cornelian law concerning treason (*lex Cornelia maiestatis*), and the Julian law concerning extortion, forbid in the plainest manner; but I say nothing of all this,) ... (Cic. *Pis.* 50)⁷²

⁷⁰ Robin Seager, "Maiestas in the Late Republic; Some Observations," *Critical Studies in Ancient Law, Comparative Law and Legal History* (Hart Publishing, 2001), 148.

⁷¹ Seager, "Maiestas in the Late Republic," 148.

⁷² C.D. Yonge trans. Marcus Tullius Cicero, *Against Piso*, *Perseus Digital Library*, <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.02.0020%3Atext%3DPis.%3Achapter%3D21>

Cicero's speech allows the reader to deduce that much of the *lex Cornelia* was concentrated on military misconduct. This would be more closely related to the *perduellio* charge, which was used for cases of direct, military-involved treason. However, instead of outright betrayal, by "acting like an enemy", this statute was intended to prevent any one person or group from obtaining the amount of armed influence that a civil war or military coup would require.

Seager further describes how Sulla's law was starkly different than the one proposed by Saturninus more than twenty years earlier.⁷³ Sulla was an *optimatus*, so in general his policies sought to further extend the power of the Senate, thereby limiting the power of the tribunate. Seager mentions that the *lex Cornelia maiestatis* does not specifically weaken the tribunate, because Sulla had "already introduced harsh measures to curb the tribunate, depriving the tribunes of their legislative powers and banning them from the higher magistracies, so that men of talent and ambition would shun the office."⁷⁴

Williamson provides a thought-provoking take on Sulla's *leges Corneliae*, writing,

In these laws of the "dictator for writing laws and restoring the state," scholars have seen what appears to be, for the first time in Roman history, a systematically thought-out program rather than the customary reactions to immediate situations. It is more likely that the laws were designed to allow Sulla and the Senate to control undesirable members of the Roman elite by accusing them of crimes that could be sustained.⁷⁵

This stands in distinct contrast to the *maiestas* laws of earlier times, which were obvious aggressive efforts against a specific person or group that was a political enemy. Instead, Sulla sought to plan ahead and create a system of laws that could prevent troubles before

⁷³ Seager, "Maiestas in the Late Republic," 149.

⁷⁴ Seager, "Maiestas in the Late Republic," 149.

⁷⁵ Williamson, *Laws of the Roman People*, 336.

they occurred, and respond to them immediately when they did occur with a law that was already on the books. The most glaring example of this meticulous planning being codified into law was the legendary proscription list, condemning Sulla's enemies to death. Once the bloodshed ended, Sulla needed a way to strengthen his allies, as well as make it impossible for his enemies to rise while he was in power. He found a useful tool in the *maiestas* laws, albeit from an ideologically opposing source.

The use of these laws by Sulla demonstrates the utility and flexibility of the Roman treason law. *Maiestas* statutes did not discriminate between *optimates* and *populares*. The treason law provided a wide variety of uses, and the only distinction that mattered is which person or persons held power at that particular moment, and who their enemies were. The *lex Cornelia maiestatis* provided Sulla with a versatile law to attack his enemies, as well as protect himself from threats. This explains why the law survived until this point, and why it continues throughout the Republic and the Empire.

Caesar's Law and Motivation

Later, when Caesar came into power, the *lex Iulia maiestatis* became the defining statute for the law.⁷⁶ Ulpian's account of the law reads:

The charge [*crimen*] of *maiestas* refers to an action which is committed against the *populus Romanus* or its safety. He is liable by whose agency with deliberate malicious intent a plot is entered into to kill hostages [without the order of the emperor]; or that men should be within or assemble within the bounds of the city armed with weapons or stones against the interests of the *res publica*, or that they should

⁷⁶ Harries, *Law and Crime in the Roman World*, 76.

seize control of sites or temples, or that there should be a ganging-up or assembly, or that men should be brought together for seditious ends; or by whose agency and deliberate bad intent a conspiracy should be entered into to kill any magistrate of the Roman People, or anyone holding *imperium*, or other form of official power (*potestas*); or that anyone should bear arms against the *res publicae*, or that anyone should send a messenger or letters to an enemy of the Roman People, or give them a password or should so act with deliberate bad intent that enemies of the Roman People receive assistance from his advice against the *res publicae*; or who persuades or incites soldiers in such a way as to give rise to sedition or revolts against the *res publica*. (D. 48.4.1)⁷⁷

Caesar's statute was broad and expansive, covering a wide variety of activities that might have placed him or his associates in danger. Many of these descriptions closely resemble what one might find in a *perduellio* statute, which would involve armed insurrection against the state. However, it is hard to ignore the historical irony that Ulpian's account provides: Caesar himself brought men together for "seditious ends," and "persuaded and incited soldiers in such a way as to give rise to sedition or revolts against the *res publica*." Although Caesar believed he was preserving the Roman state, it is difficult to see his crossing of the Rubicon as anything but a violent attack on the Roman state of the moment. Nevertheless, Caesar won the conflict against Pompey and company, so he had the ability to declare as illegal any future emulation of his bold act.

This particular statute also seems to add clauses that are concerned with activities that might take place within the city. This is particularly exemplified by the phrases: "... that men should be within or assemble within the bounds of the city armed with weapons or stones against the interests of the *res publica* ...," "... that they should seize control of sites or temples ...," and "... that there should be a ganging-up or assembly ...". Just as

⁷⁷ Ulpian, *Digest*. From Harries, *Law and Crime in the Roman World*, 76-77

Saturninus proposed a *maiestas* statute in reaction to events that he had witnessed, it seems reasonable to say that Caesar might have incorporated these actions into the list prohibited by his *maiestas* law in reaction to contemporary events.

One such event could be the deadly brawl that occurred on the Appian way between the rival gangs of Milo and Clodius. Asconius notes that the two men held deep animosity against each other due to politics. Milo used his status as tribune to aid in the recalling of Cicero from exile, which Clodius vehemently opposed.⁷⁸ Milo was a candidate for the consulship at the time, which would have provided him with more power than Clodius, who was seeking to be elected to the praetorship. The two groups were passing each other outside of Bovillae, and according to Asconius, two well-known gladiators at the end of Milo's caravan, Eudamus and Birria, started the mass altercation. Once the battle had been firmly decided in Milo's favor, Milo realized that a wounded Clodius would pose more a threat to him than whatever punishment he might face if Clodius was dead. Thus, he ordered Clodius to be dragged out of the inn where he was seeking refuge, and he was killed in the street. Later, the senator Sextus Tediis discovered the body, and sent it to Rome in his personal litter.⁷⁹

Once the body of Clodius arrived in Rome, pandemonium ensued. Asconius writes,

There, in front of a public meeting, Plancus and Pompeius, who were partisans of Milo's electoral opponents, roused hatred against Milo. Under the direction of Sextus Clodius the scribe, the Populus carried the corpse of Publius Clodius into the Senate House and cremated it, using the benches and risers and tables and books of the stenographers; thanks to this fire the Curia itself also

⁷⁸ Asconius, *On Cicero's Pro Milone*, trans. John Paul Adams, <http://www.csun.edu/~hcfl004/asconius.htm>

⁷⁹ Asconius, *On Cicero's Pro Milone*

burned down, and also the Basilica Porcia, which was attached to it, was fired. Also that same Clodian multitude attacked the residence of Marcus [Aemilius] Lepidus, the interrex, for he had been named the curule magistrate, and the absent Milo's too, but they were driven off from there by arrows (Asc. *Mil.*)

The mob not only “seized” the site, but they burned down the Senate house. They then attempted to commit violence against officials of the state. After this, Asconius notes that the mob snatched the *fasces*, and marched to Pompey’s house, asking him to become either consul or dictator.⁸⁰ This destruction, violence, and anarchy is incompatible with a functioning state, and it makes sense that Caesar would include these sort of actions in a *maiestas* statute after seeing their effects.

Up to this point, one can see that Rome underwent a massive governmental shift in the half-century between Saturninus and Caesar. As more and more power became concentrated in the hands of one man, precedent began to shift to favor the intentions of the man in power rather than the intention of the law itself. This shift is exemplified in the *maiestas* statute, as under Saturninus it was meant to be a “check” on the leaders of the Roman state. However, as more powerful leaders emerge, the law becomes more flexible, and is used as a political tool. However, it does not lose any of its force, and its newfound flexibility does not detract from its power. The utility of the law ultimately depends on who holds power at the time, and under Tiberius, the law develops into an ambitious device that is able to devour any enemy of the emperor.

⁸⁰ Asconius, *On Cicero's Pro Milone*

Maiestas in Tacitus' Annales

Cornelius Tacitus provides one of the finest accounts of the reign of Tiberius, so it is truly appropriate that his *Annales* be used to analyze the dread Tiberius' inflicted with his use of the *maiestas* law. First, this section will examine Tacitus, and his potential for bias against the Julio-Claudians, which could possibly be attributed to enduring the reign of Domitian. That being said, there is no reason to doubt the accuracy of his stories more than the skepticism one might hold toward any other source. Tacitus provides detailed accounts of how Tiberius seized power, especially in the judicial realm, and used that power to silence those who dissented against him. As his reign continues, the *maiestas* statute is used repeatedly to squelch people and voices dangerous to the regime, and the precedent is established that the emperor himself was synonymous with the majesty of the Roman state. Tacitus paints a dark picture of the second half of Tiberius' reign over the Empire. If his stories are indeed true, then it was indeed a dark and dangerous time to believe in the freedom of speech.

Examining Tacitus

A passage in the *Annales* declares a moral purpose. History will commemorate virtue and condemn iniquity for ever -
*'praecipuum munus annalium reor ne virtutes sileantur
 utque pravis dictis factisque ex posteritate et infamia metus*

sit' (Tac. *Ann.* 3.65). If such was the proper and principal function of history, other reasons lay behind the writing of it, as the historian might admit from his understanding of human behaviour and of his own character. Ambition was an avowable motive in a Roman. There was also curiosity, artistic sense, and the revolt from the inertia or mediocrity of the age - and perhaps other things, deeper still.⁸¹

Before exploring the how the *maiestas* law is explained and enforced during the reign of Tiberius, it is logical to look into the person's work that is being used for the analysis. Tacitus was born in 55 A.D., most likely in the southern portion of Gaul.⁸² His family was rather wealthy, and he was sent to Rome as a young boy for education. He grew up during a time of civil unrest for the Roman state, seeing both the effects of the great fire of Rome, and also the Year of Four Emperors. These events undoubtedly affect the way that Tacitus interprets and writes his account of Rome's history.

Tacitus became a quaestor in either 81 or 82 A.D., and then a member of the Senate. Although the members of the Senate were still considered prestigious individuals, the body had lost virtually all *auctoritas* that it had once held, and this degradation intensified under Domitian. The Senate was interested in upholding the senatorial power and prestige of the republican system, which was at odds with the imperial system. Although some later commentary by Tacitus shows that he could co-exist within an imperial system, the Senate could not do the same with Domitian.

The effect that Domitian had on Tacitus is easily seen, as Tacitus chooses never to write about him directly, even after Domitian was assassinated in 96 A.D.⁸³ While he writes about the horrors of that age in vague terms, he refrains from direct criticism,

⁸¹ Ronald Syme, *Tacitus: Volume 2*, (Oxford : Clarendon Press), 1958, 520.

⁸² Jona Lendering, "Tacitus," *Livius.org*, last modified on August 19, 2015, <http://www.livius.org/articles/person/tacitus/>

⁸³ Suetonius, "*The Lives of the Twelve Caesars: The Life of Domitian*", *Loeb Classical Library*, http://penelope.uchicago.edu/Thayer/e/roman/texts/suetonius/12caesars/domitian*.html

perhaps concerned for his safety or to safeguard his writing from his own passions. In speaking of the age recently passed in his *Agricola*, Tacitus writes,

We certainly displayed extraordinary submission, and just as a former age witnessed the extreme of liberty, so did we the extreme of slavery, when even the opportunity to speak and listen was wrested from us by espionage. We would also have lost our very memories, together with freedom of speech, if it were equally in our power to forget as to be silent. (Tac. *Agr.* 2)⁸⁴

In this passage, it is fairly clear that Tacitus feels guilty, angry, and embarrassed about how the Roman state allowed Domitian to rule unchallenged for so long. He highlights the distinction between the freedom of older times (i.e., the Republic) and the subjugation endured during the recent years. He blames the entire Roman populace for the collective silence that was held during Domitian's reign, and his language suggests that he is offering his writing as a penance for the silence. By speaking out again, and writing about the past, it seems as though Tacitus wishes to atone for past fears by writing a factual, complete history of earlier times.

One aspect of freedom that is especially important to Tacitus is the freedom of speech. In the second chapter of *Agricola*, Tacitus recalls how Arulenus Rusticus and Herennius Senecio were both executed for expressing speech deemed inappropriate. Rusticus praised Thrasea Paetus, the leader of Stoic opposition against Nero. Nero had Rusticus executed for his words, and Vespasian executed Senecio, who was Paetus' son-in-law. Domitian engaged in the same sort of behavior, and publically burned the works of Paetus and Senecio, which Tacitus considered "violence." However, in the next

⁸⁴ Tacitus, *Agricola*, trans. Herbert W. Benario (Norman, OK : University of Oklahoma Press 1991), 26.

chapter of *Agricola*, Tacitus' commentary demonstrates that throughout the early empire, personal freedom was abridged in association with the rule of one man.

Now at last our spirit returns; but, although the emperor Nerva, at the very beginning of a most happy age, united two things formerly incompatible, the rule of one man and personal freedom, and although the emperor Trajan daily increases the good fortune of the time, and although the well-being of the people has not only expressed hope and a prayer for the future but also has received the fulfillment and realization of the prayer itself, yet by the nature of human weakness remedies are slower to take effect than their ills. (Tac. *Agr.* 3)

Tacitus points to Nerva as the start of an age of freedom, possibly even similar to freedoms that Tacitus believed were experienced during the Republic. He gives praise to Nerva and Trajan, who were the first and second rulers during a period widely known as the “Five Good Emperors.”⁸⁵ However, he points out that many freedoms were abridged across the entire 123 years that passed between the principate's beginnings with Augustus, and the assassination of Domitian. The pain and suffering that occurred over this time period would require more than two favorable leaders to overturn and create a truly free society.

Therefore, it seems as though Tacitus wants to repay a debt he feels is owed due to the recent period of silence. Perhaps he intended for his record to serve as a warning to future generations of the evil circumstances that may arise when many people choose to remain silent out of fear. He wanted his story of the imperial age to have a clear beginning in time, and begins his *Annales* around the death of Augustus, the first emperor of Rome. In his view, Domitian did not conceive the idea of stripping away freedoms and

⁸⁵ “Five Good Emperors,” *Encyclopedia Britannica*, June 27, 2017, <https://www.britannica.com/topic/Five-Good-Emperors>

rights from his own mind. Instead, this all began nearly a century before he took power, when Tiberius took control of the state after Augustus' death.

Tacitus views this transition of power from Augustus to Tiberius to be the pivotal moment of the Roman state, even more so than the elevation of Augustus to the principate. He recognizes the change of power structure, as book one of the *Annales* reads, "There was no fear for the moment, as long as Augustus' age and strength could sustain the man himself, his house and the peace" (Tac. *Ann.* 1.4). However, his tone drastically changes when describing the ascension of Tiberius, as his first action as emperor is described by Tacitus as a "criminal act" (Tac. *Ann.* 1.6).

Yet Tacitus' best description of Tiberius comes at the end of book six as an obituary:

His character also saw different phases. The period he spent as a private citizen, or holding various commands under Augustus, was, both for his life and his reputation, a noble one. The interval while Germanicus and Drusus remained alive was one of secrecy and hypocrisy as he affected virtue. While his mother still lived he was a mixture of good and bad. He was atrocious in his brutality, but his lechery was kept hidden while he loved, or feared, Sejanus. In the end, he erupted into an orgy of crime and ignominy alike, when, with all shame and fear removed, he simply followed his own inclinations. (Tac. *Ann.* 6.51)

There is no question that Tacitus held the second emperor and those who subscribed to his ideas in disdain. To him, the similarities between Tiberius and Domitian were strikingly obvious. To a writer like Tacitus, the curtailment of speech and ideas was a grave offense, which Tiberius, Domitian, and many emperors in between were certainly guilty of. *The Annales* allows readers to explore this critical time period in Roman

antiquity, and understand Tacitus' thoughts about the conflict between freedom of speech and the majesty of the state.

Maiestas and Augustan Precedent in The Annales

One of the many developments Tacitus traces in *The Annales* is how the treason law developed in the imperial age. He begins by explaining how Tiberius “reintroduced the treason law [*legem maiestatis*]” (Tac. *Ann.* 1.72), but that Augustus played a role in transforming the law to protect himself from unwanted speech. He describes how in previous times, the court made a distinction between actions, which were considered to be serious, and words, which were not treated as crimes. Most of the time, these instances involved the betrayal of Roman military operations. The transformation that Tacitus notices is when citizens are prosecuted for undesirable words, which is exactly what happens during the reign of Augustus.

In the first *maiestas* proceeding that occurs the imperial age, Tacitus describes how Augustus implemented the treason law against Cassius Severus in 24 B.C.⁸⁶ Tacitus writes,

It was Augustus who, angered by Cassius Severus' immoderate slander of distinguished men and women with his scandalous compositions, initiated judicial proceedings against defamatory writings under the specious cover of this law. (Tac. *Ann.* 1.72)

Augustus decided to pursue *maiestas* charges on account of Severus' writing, and Tacitus does not mention the outcome of the trial in this section of the *Annales*. However, the

⁸⁶ Jakob Wisse, “Remembering Cremutius Cordus: Tacitus on History, Tyranny and Memory”, *Histos* 7, 2013, 304.

historical record shows that Severus was exiled to Crete for these actions under Augustus, and his exile was enhanced by Tiberius for not being repentant of his actions. He lived out the remainder of his days at Seriphos until his death in 32 A.D.⁸⁷

This particular proceeding, although it may seem insignificant on the surface, has considerable implications for the transformation of *maiestas*. The first thing that ought to be considered is the status of the exiled man, Cassius Severus. Severus was a well-known orator, and Tacitus writes about a new style of oratory that Severus propagates during the age of Augustus in his *Dialogue on Orators*. The fact that Augustus, with the aid of a *senatus consultum* could exile a political opponent for speech presents a dramatic curtailment of freedoms in the Roman state. By convicting and exiling Severus, Augustus set a new standard by which the emperor could decide whether speech was tolerable or intolerable, and could respond to those who promoted intolerable speech as he saw fit.

The precedent that Severus' trial establishes begins a domino effect. This occurs because it breaks, and subsequently replaces, the precedent that was set before, that, "Actions were prosecuted, words were not punishable" (Tac. *Ann.* 1.72). Severus' trial and conviction is the proof that this is no longer the standard, and the new standard is set at the discretion of the *princeps*. Thus, the expansion of the law occurred quickly and suddenly, only needing one case to drastically alter the future of speech in Rome.

Soon after these proceedings Augustus dies and Tiberius takes control of the state in 14 A.D. Tacitus reports a discussion between Tiberius and a praetor named Pompeius Macer on the status of the *maiestas* law.⁸⁸ When the praetor asks if these particular cases should go to trial, Tiberius replies that, "the laws should be upheld". Once again, this

⁸⁷ Tacitus, *Annals*, 4.21

⁸⁸ Tacitus, *Annals*, 1.72

language used by Tiberius provides solid evidence for the use of precedent in Roman law. Tacitus then foreshadows Tiberius' use of the treason law as his personal tool, as he writes,

Tiberius had likewise been incensed by the circulation of anonymous poems (on the subject of his ruthlessness, his arrogance, and his strained relations with his mother) (Tac. *Ann.* 1.72).

This tool, forged by Augustus and sharpened by Tiberius, is one that would cast great fear on the Roman populace for years to come.

Two Preliminary Tests Under Tacitus

The first two *maiestas* proceedings that occur under Tiberius are the cases of two Roman equestrians, Faianius and Rubrius in 15 A.D. Tacitus writes,

The charge that Faianius' accuser brought against him was that he had admitted amongst the votaries of Augustus - these were maintained in all the great houses and resembled priestly colleges - a certain Cassius, who was a mime-actor and notorious catamite; and also that in the sale of his gardens Faianius had disposed of a statue of Augustus. The charge brought against Rubrius was that he had violated Augustus' divinity by perjury (Tac. *Ann.* 1.73).

When Tiberius learned of the charges, he seemed to respond with a cool head and judgment fit for a ruler. He informed the consuls that "his father had not been decreed divine status so that the honour could be turned to the destruction of his fellow citizens" (Tac. *Ann.* 1.73). On the case of perjury, he added that it was no different than committing perjury against Jupiter, and to let matters concerning the gods belong to the

gods, and not to men.⁸⁹ Although the two equestrians were not convicted for their conduct, these two cases serve as a tangible example of how the law of *maiestas* evolved to quell disrespect rather than actions that undermined the safety of the state.

Tacitus realizes that even though the equestrians involved are of “little importance,” (Tac. *Ann.* 1.73) the charges themselves are very significant. This is specifically the case that Tacitus refers to when he explains how Tiberius “reintroduced [*reduxerat*] the treason law” (Tac. *Ann.* 1.72). This “reintroduction” is the significant point, as it could have been seen as a “continuation,” or as an “invention.” However, Tacitus does not claim that Tiberius’ actions fall into either of these camps, and the term “reintroduction” is the best fit. He did not base his enforcement of the law directly on what Augustus did, nor did he come up with it himself. Instead, he saw what Augustus could do with the treason law and enhanced it for his own use.

As Tacitus points out, Tiberius behaves rather calmly during this proceeding, and provides a just verdict for the accused. Tiberius also seems conscious that his ruling in this case would set a precedent, and he did not feel comfortable in that precedent supporting prosecutions of those who committed similar acts. However, Tiberius’ view of the law, and the precedent he sets regarding it will change throughout his tenure. Tacitus provides a general outline of the course the law takes throughout Tiberius’ reign as he writes,

In this way light may be thrown on the origins of the deadly curse and on how Tiberius’ cunning allowed it to creep in, and how it was subsequently suppressed, but then finally flared up to engulf everything. (Tac. *Ann.* 1.73)

⁸⁹ Tacitus, *Annals*, 1.73.

Besides giving a general outline of how this law will affect the next few decades of Roman history, it shows Tacitus' honest opinion on the law. He minces no words in labeling it a "deadly curse," which could be considered a move away from his words in the first chapter of the *Annales* in which he claims to write "without rancour or bias, far removed as I am from motives for these" (Tac. *Ann.* 1.1). On the other hand, Tacitus might have felt that blunt honesty was the best course of action in this case, and that the deaths resulting from this law would back up his claim.

Marcellus

Tacitus provides a subsequent example in the case of Granius Marcellus, which also takes place in 15 A.D. Marcellus was the governor of Bithynia and he was charged under the *maiestas* law by his own quaestor Caepio Crispinus.⁹⁰ The charge against Marcellus was that he had made derogatory remarks about Tiberius. Tacitus does not challenge the legitimacy of the charges or the authenticity of Marcellus' claims, writing,

Crispinus accused Marcellus of making derogatory remarks about Tiberius, a charge impossible to rebut since the accuser selected the foulest characteristics of the emperor, and ascribed the comments to the accused (for, the observations being true, it was believed that they had also been given expression). (Tac. *Ann.* 1.74)

Romanus Hispo then added to the accusations, saying that Marcellus' own statue was placed in a higher position than Caesar's, and that Augustus' statue had been decapitated and replaced with Tiberius' features. Tacitus then goes on to describe how this particular case inflamed the emotions of Tiberius to such a degree that he proposed to vote openly

⁹⁰ Tacitus, *Annals*, 1.74.

and under oath, so that the other men would have to do the same. Gnaeus Piso then asked Tiberius if he was going to go first or last, so that Piso would not vote for the wrong side by mistake. This caused Tiberius to realize his folly, and he voted for acquittal.⁹¹

One aspect of this case that should be observed is the fact that these charges are brought by Caepio Crispinus, and not by Tiberius himself. This trend of charges being brought forward by “informers” is something that will perpetuate the frequency of *maiestas* proceedings under Tiberius. The charges that are brought against Marcellus illustrate the nature of how *maiestas* accusations are developing, providing further evidence that the *maiestas* statute is being increasingly used in cases that do not concern safety, but respect demanded by Tiberius. When one considers that the *maiestas* statute was created to protect the “majesty” of the Roman people, what does this say about Tiberius’ use of the statute in this type of case? Tiberius’ adaptation of the concept of *maiestas* suggests that he, and indeed some other members of the elite, viewed himself, as well as other members of his family, as the embodiment of the Roman state. While he was undoubtedly the most powerful man in the western world alive at that time, this was quite a political leap. In using the *maiestas* law, or allowing its use in this way, Tiberius declared that he and the “majesty” of the Roman state were synonymous, and to disrespect either was one in the same in the application of law.

It should also be noted that Tiberius again shows restraint in this case. He realizes that his emotions had taken control of his actions, and thus changes his decision. Tacitus goes so far as to describe Tiberius as “... shaken by this, remorsefully submissive after his ill-advised outburst” (Tac. *Ann.* 1.74). However, one may not discount Tiberius’ actions

⁹¹ Tacitus, *Annals*, 1.74.

directly before he came to his senses: “Tiberius was so incensed at this that he broke his usual silence and declared that in this case he, too, would vote, openly and under oath, so that the others would have to follow suit” (Tac. *Ann.* 1.74). This comment illustrates the amount of power Tiberius had acquired by this point. He, as well as everyone else, understood that he could cast a vote that all others would have to follow. In this case, he chooses to be merciful. Nevertheless, the precedent remains, and is remembered by all.

Appuleia Varilla

Later, when the law of *maiestas* was “coming into maturity,” it even affected those related to the deified Augustus. Appuleia Varilla was the granddaughter of Augustus’ sister, and in 17 A.D. she was charged with both making defamatory remarks about Augustus, Tiberius, and Tiberius’ mother, and also adultery with Manlius. Because she was a member of the imperial family, the crime of adultery would be prosecuted under the Julian law, so this action would be examined separately of the *maiestas* accusations. When Tiberius was asked about the *maiestas* charges, he replied that she should be condemned if she said anything indecent about Augustus, but not if the remarks were only against himself, or his mother. Appuleia was subsequently acquitted of the *maiestas* charges, but convicted on the charge of adultery. Tiberius argued for her to receive the lesser penalty, so she was cast two hundred miles outside the city.⁹²

It is interesting that Tiberius elected to break the *maiestas* charge down into separate parts, and that he disregarded any potential comments made about him or his

⁹² Tacitus, *Annals*, 2.50.

mother. Tacitus writes that his reasoning for this is that "... he did not want gibes at himself made the subject of an inquiry" (Tac. *Ann.* 2.50). Tiberius did not want the vile words allegedly said about him, or his mother, to be repeated in court. If Appuleia were prosecuted for these words, they would have been discussed in the trial. Since Tiberius excluded them, they were not brought up. Only two years prior to this case, Tiberius became irate in Marcellus' case involving slander, and he may have considered that when deciding to drop the *maiestas* charges based on insult. Perhaps Tiberius felt that someone so closely related to the deified Augustus should not be prosecuted for making lewd statements about the emperor, but that statements against Augustus would always be unacceptable. Therefore, Tiberius still leaves the option for *maiestas* charges to stand for mere words. This case results in another acquittal for the *maiestas* charge, but Tiberius is further allowed to define what constitutes a *maiestas* offense, and what does not.

In addition to the charges, Tiberius also asserts his influence during the sentencing portion of the trial. Tiberius argues against Appuleia receiving the "heavier penalty" (i.e. death), in favor of exiling her at least 200 miles outside the boundaries of the city. He also exiles her lover, albeit more harshly, denying him shelter in all of Italy and Africa.⁹³ Tacitus follows his course in the sentencing as he did with the charges, asking for a more merciful outcome. The fact that this outcome was granted leads to two important conclusions. First, it demonstrates that the trial court listens to Tiberius, and values his opinion very highly. Second, due to their cooperation with his opinion, when Tiberius asks for harsher penalties, they are more likely to provide them.

⁹³ Tacitus, *Annals*, 2.50

Germanicus and Gnaeus Piso - Maiestas Turns Deadly

As Tacitus continues to paint a dreadful picture of Tiberius, by contrast he presents the reader with an excellent character in the form of Germanicus. Tacitus makes this comparison directly when introducing Germanicus, writing, “He was a young man of unassuming character and admirable courtesy, far different from Tiberius with his arrogant and inscrutable talk and looks” (Tac. *Ann.* 1.33). Germanicus was the nephew and adopted son of Tiberius, which placed him in the *gens Iulia* and made him Tiberius’ heir after Augustus’ death. Soon after Augustus died and Tiberius was officially declared *princeps*, Germanicus was forced to handle a mutiny, and although Tacitus describes the event as contentious, Germanicus is able to forge a compromise and once again unify the legions.

Germanicus then waged three campaigns against the Germans, largely motivated by the desire to avenge the slaughter of Varus and his army in the Teutoburg Forest in 9 A.D.⁹⁴ These three campaigns resulted in many victories for Germanicus and his troops, as well as the return of Varus’ legionary standards that were lost. No territory was gained as a result of the conflict, but Germanicus returned to Rome to a triumph on May 26th, 17 A.D.⁹⁵ After this triumph, Germanicus was given command over the Eastern portion of the Empire by Tiberius. While many saw this as a honor, Tacitus felt that Tiberius had become jealous of Germanicus’ rising fame, and that Tiberius sent him away to suppress his ambitions.⁹⁶

⁹⁴ Tacitus, *Annals*, 1.3

⁹⁵ Tacitus, *Annals*, 2.41

⁹⁶ Tacitus, *Annals*, 2.43

Once Germanicus reached Greece on his Eastern tour, Tacitus writes that Gnaeus Piso, the governor of Syria, began conspiring against him.⁹⁷ Open hostility continued between the two men for quite some time, and in 19 A.D., Germanicus sailed for Egypt (without the authorization of Tiberius).⁹⁸ After visiting several Roman provinces, Germanicus returned to find that all of his instructions for his troops in Syria had been cancelled, and Piso had put his own in place. This resulted in a final feud between the two men, shortly before Germanicus fell ill.

The sources differ on how Piso left camp once Germanicus began suffering from bad health. The *Senatus Consultum de Cn. Pisone Patre* states that Piso deserted Syria while Germanicus was alive. However, Tacitus claims that Germanicus ordered Piso to leave the province.⁹⁹ Whatever the case may be, Germanicus believed that he had been poisoned by Piso. However, Tacitus words do not point to poison, but rather to black magic:

And, in fact, disinterred remains of human bodies were found in the soil and walls, along with incantations, curses, and Germanicus' name inscribed on lead tablets; there were also half-burned ashes smeared with some putrid matter, and other black-magic implements by which it is believed souls are consigned to the infernal deities. In addition, accusations were being made that men sent by Piso were closely examining the adverse symptoms of the disease. (Tac. *Ann.* 2.69)

F.R.D. Goodyear writes that Tacitus' words imply that Piso did not actually poison Germanicus, but that Germanicus believed that he was poisoned.¹⁰⁰ Furthermore, Goodyear comments that the Roman public held a strong belief in black magic involving

⁹⁷ Tacitus, *Annals*, 2.55

⁹⁸ Tacitus, *Annals*, 2.60.

⁹⁹ Tacitus, *Annals*, explanatory notes pg. 417.

¹⁰⁰ F.R.D. Goodyear, *The Annals of Tacitus, Volume II: Annals 1.55-81 and Annals 2*, (Cambridge: Cambridge University Press), 1981, 409.

devices that Tacitus describes, such as written curses and animal remains.¹⁰¹ However, Germanicus truly develops some sort of serious illness, which results in his death. Tacitus compares Germanicus' death with Alexander the Great's, and Tacitus remarks that Piso received the news of the death with joy.¹⁰²

When proceedings begin against Piso in 20 A.D., Tacitus portrays Tiberius as calm and promoting Piso's right to a fair proceeding. However, as the trial continues, all involved turn against Piso. Piso's wife Plancina began the trial by claiming their fates were tied together, but begins to distance her own defense from his. Piso realizes that his fate is sealed, and allegedly committed suicide in his home in the middle of the night.¹⁰³ However, Tacitus does not totally discount the possibility that he was murdered.¹⁰⁴

Piso is posthumously punished for violating the *maiestas domus Augustae*.¹⁰⁵ The words "*domus Augustae*" make the connection between *maiestas* and the imperial family. Because Piso damaged the Julio-Claudian family, he damaged the entire state by extension. The *Senatus Consultum de Cn. Pisone Patre* lists six penalties for Piso:

1. Piso was not to be publicly mourned by the women of his family (SCPP 73–75).
2. All statues and portraits of Piso anywhere were to be taken down (75–76).
3. Members of the Calpurnian family by blood or through marriage were urged to exclude the portrait mask of Piso from the parade of imagines at family funerals (76–82).
4. Piso's name was to be erased from a statue of Germanicus near the Ara Providentiae in the Campus Martius (82–84).
5. Piso's property, with the exception of an estate in Illyricum given to him by Augustus, was declared public

¹⁰¹ Goodyear, *The Annals of Tacitus, Volume II*, 409.

¹⁰² Tacitus, *Annals*, 2.75.

¹⁰³ Tacitus, *Annals*, 3.15.

¹⁰⁴ Tacitus, *Annals*, 3.16.

¹⁰⁵ John Bodel, "Punishing Piso", *American Journal of Philology*, 120 : 1, 1999.

property and was then returned, in the name of the Senate and princeps, to his two sons and daughter, in exchange for which the elder son was enjoined to change his praenomen, Gnaeus (84–105).

6. The structures built by Piso over the Porta Fontinalis to connect his private houses were to be torn down (105–8).¹⁰⁶

This was all part of a procedure known as *damnatio memoriae* (condemnation of memory) that was applied to grievous offenses. The Senate wanted all traces of Piso erased from the public record, but Tacitus writes that Tiberius softened many aspects of the original punishments, allowing some to stand.¹⁰⁷

Although Piso would have almost certainly been condemned or committed suicide regardless of the *maiestas* charge, this is the first instance that a person charged with *maiestas* loses their life under Tiberius. It further strengthens the idea that the emperor and the state are merged into one “majestic” body, and the family of the emperor is included in this concept. To insult, injure, or kill one of these people is equal to doing the same to the entire Roman populace, and death is sure to follow. *Maiestas* was only a capital offense in theory before the trial of Piso, but now, it could be considered a capital offense in practice as well. Additionally, the evidence provided by the *Senatus Consultum de Cn. Pisone Patre* provides concrete proof that these proceedings actually occurred, independent of Tacitus’ account. The inscription also gives more credit to Tacitus as a historian, because his account matches rather well with the newly discovered epigraphic evidence.

¹⁰⁶ Numbers 1-6 from *Senatus Consultum de Cn. Pisone Patre*, listed in Bodel, “Punishing Piso”.

¹⁰⁷ Tacitus, *Annals*, 3.18.

The Creep of Maiestas and Informers

In the next year, Tacitus notes that *maiestas* charges started to accompany other accusations, to add an aura of treason to nearly every offense. Also, Tacitus indicates that the prevalence and influence of informers is becoming a large factor in prosecutions.

Tacitus writes,

For Tiberius was not flagging, and neither were the informers. Indeed, Ancharius Priscus accused the proconsul of Crete, Caesius Cordus, of extortion, adding a charge of treason, which at that time accompanied all accusations. (Tac. *Ann.* 3.37)

Following this account, Tacitus describes how Antistius Vetus was acquitted of an adultery charge, but Tiberius brought him back to face charges of *maiestas*.¹⁰⁸ Vetus was accused of plotting with an enemy at a time of war, and upon conviction, he was exiled and “detained on an island inconveniently situated in relation both to Macedonia and Thrace” (Tac. *Ann.* 3.38). *Maiestas* slowly becomes the personal tool that Tiberius is able to use to strengthen accusations, or convict those previously found innocent.

Tacitus slightly backtracks and argues for reason in the face of *maiestas* accusations following the treason trial of Clutorius Priscus in 21 A.D. Priscus had received a monetary award from Tiberius after composing a poem that “lamented the death of Germanicus” (Tac. *Ann.* 3.49). However, an informer revealed that he composed another poem while Tiberius’ son Drusus was ill, hoping that if Drusus died that he might receive a larger award.¹⁰⁹ The prosecution sought the death penalty for Priscus’ actions, but Marcus Lepidus gave a speech which argued that his life ought to be spared.

¹⁰⁸ Tacitus, *Annals*, 3.38

¹⁰⁹ Tacitus, *Annals*, 3.49.

However, only one other senator agreed with Lepidus, and Priscus was promptly led to prison and executed. Tacitus writes about Tiberius' disagreement after the trial with the Senate's actions, stating,

Tiberius complained about this before the Senate with his customary equivocation, praising the loyalty of those who actively avenged wrongs, however, slight, done to their emperor, but disapproving of mere words being punished in so precipitous a manner. He commended Lepidus, but did not criticize Agrippa. (Tac. *Ann.* 3.51)

Tiberius' commentary resulted in a new rule for the Senate that the decrees of the body not be officially deposited for nine days and that prisoners sentenced to death be given a reprieve during that time period.¹¹⁰

In the cases prior to Priscus', Tiberius demonstrated that he held a great deal of influence during the sentencing portion of the trial. Therefore, the idea that Tiberius was totally opposed to Priscus facing the death penalty is unrealistic. If Tiberius truly did not approve of words being punished in this manner, he would have intervened during the sentencing, and made his desire a reality as he did in previous cases. Instead, while he may have wished that Priscus' life had been spared, he was comfortable with him being executed as well. The *maiestas* statute continues its slide into a deeper pit, where mere words are punishable by death, especially when concerning a member of the imperial family.

¹¹⁰ Tacitus, *Annals*, 3.51.

Two Proceedings in 22 A.D., Maiestas Targets the Powerful

Tacitus gives more accounts of trials that occur in 22 A.D. In the first proceeding, Gaius Silanus, the proconsul of Asia, was charged with extortion by a number of men.¹¹¹ The list included: ex-consul Mamercus Scaurus, praetor Junius Otho, aedile Brutteditius Niger, quaestor Gellius Publicola, and a legate of Silanus named Marcus Paconius.¹¹² In addition to the extortion charge, Tacitus writes that Silanus was charged with “dishonouring the divinity of Augustus and being disrespectful of Tiberius’ majesty” (Tac. *Ann.* 3.66).

Tacitus claims that Mamercus attempts to feature the idea of precedent in Silanus’ case. When the charges are first levied, Tacitus writes, “Mamercus also tossed in some ancient precedents - Lucius Cotta’s indictment by Scipio Africanus, Servius Galba’s by Cato the Censor and Publius Rutilius by Marcus Scaurus” (Tac. *Ann.* 3.66). None of these cases involve *maiestas* charges, and as Woodman and Martin point out, these precedents are ironically ill-chosen.¹¹³ It seems that Mamercus chose these three examples to defend his participation in a case that would normally be prosecuted by a man of lower status.¹¹⁴ However, all three cases feature the prosecution losing their case, despite a man of distinction being the prosecutor.¹¹⁵ Tacitus goes on to criticize Scaurus, who was

¹¹¹ Tacitus, *Annals*, 3.66.

¹¹² Tacitus, *Annals*, 3.66-3.67.

¹¹³ R.H. Martin and A.J. Woodman, *The Annals of Tacitus, Book 3*, (Cambridge: Cambridge University Press), 1996, 460.

¹¹⁴ Martin and Woodman, *The Annals of Tacitus, Book 3*, 460.

¹¹⁵ Martin and Woodman, *The Annals of Tacitus, Book 3*, 460.

Mamercus' grandfather, before criticizing the three accusers of Silanus themselves.¹¹⁶

Tacitus understood that the charges were based on politics, and the men believed that they could further their own careers by destroying Silanus. Tacitus reveals that Tiberius specifically added the *maiestas* charges in order to prevent any of Silanus' friends from giving him any aid. Furthermore, Tacitus provides more commentary in respect to precedent, writing,

To make what he was preparing for Silanus seem more excusable by means of a precedent, Tiberius ordered the documentation of the deified Augustus' case against Volesus Messala (who was similarly a proconsul of Asia) to be read out, along with the decree of the Senate against the man (Tac. *Ann.* 3.68).

Lucius Piso then gave the opinion that Silanus should be exiled, and Lentulus stated that all of Silanus' property (with the exception of property derived from his mother Appia) should be confiscated.¹¹⁷ Although Silanus holds onto his life, he loses everything else. Tiberius is continually prepared to use *maiestas* to accomplish his objectives.

Later in the same year, Tacitus seems to display further restraint in a case of disrespect by a man who holds far less power than Silanus. Tacitus writes,

The Roman knight Lucius Ennius was arraigned on a charge of treason [*maiestatis*] for having transformed an effigy of the emperor into silver plate for everyday usage, but Tiberius forbade his case to go to trial. (Tac. *Ann.* 3.70)

The senate openly disagreed with Tiberius' decision in this case, and the opposition was led by Ateius Capito. Capito viewed Tiberius' rejection of charges as stripping power away from the Senate. Additionally, Capito saw Ennius' crime as a very serious one, and while he was pleased with how Tiberius handled the situation personally, he felt that

¹¹⁶ Tacitus, *Annals*, 3.66.

¹¹⁷ Tacitus, *Annals*, 3.68

Ennius' should be punished for his crimes. Tiberius was unmoved by these words, and upheld his veto of the charges. Tacitus does not give us any picture of what occurs after this, but it seems fair to assume that Ennius was never charged. The motive behind Tiberius' mercy in this case remains questionable. However, it is inarguable that Tiberius allowed the powerful Silanus to be punished while prohibiting the prosecution of the less powerful Ennius. This gives more credibility to the idea that *maiestas* was not applied evenly to all offenders, but rather on a case-by-case basis as a political tool. Furthermore, when Tiberius withholds prosecution for *maiestas* for words expressed by a man of low status, he strengthens the validity of his claims when he does indict powerful men for saying similar words. This contrast reveals a major flaw that is present in an autocratic system; when the ruler is greater than the rule of law, two men who have committed the same act may be treated differently based on their political ideology, economic status, or familial ties.

Gaius Silius, Calpurnius Piso, and the Protection of Informers

Tacitus paints a picture of Tiberius in stark contrast to his previous behavior in Book Four of *The Annals*. Early in the book, Tacitus writes,

Consuls and praetors enjoyed the prestige that was appropriate to them; the lesser magistrates also exercised their authority; and the laws - if exception be made for the treason trials - were properly enforced. (Tac. *Ann.* 4.6)

Here Tacitus is foreshadowing of the frequent misuse of the treason law in the years to follow. The first example of this occurring takes place in 24 A.D. with the trial of Gaius

Silius. Silius boasted while in Germania about his men remaining loyal while other Roman soldiers were mutinying.¹¹⁸ According to Tacitus, Silius also commented that if his troops had decided to revolt against the Roman state, then Tiberius would not currently be in power.¹¹⁹ Tiberius felt that Silius' comments were undermining his authority, and Tacitus writes that "hatred replaces gratitude" (Tac. *Ann.* 4.18) when referring to Tiberius' feelings about this situation. Varro, the consul at the time, pursued extortion and *maiestas* charges against Gaius Silius, which also stemmed from his personal hatred of Silius. When Silius requested that the trial be delayed until Varro was no longer consul, Tiberius rejected the proposal. Tacitus writes,

It was normal for magistrates to arraign private citizens in court, he said, and one should not infringe the rights of a consul, for it was on this officer's vigilance that he relied to see that 'the state suffered no harm'. (It was Tiberius' way to cloak recently invented crimes in old-fashioned terminology). (Tac. *Ann.* 4.19)

In this case, Tiberius is referencing the *senatus consultum ultimum* that was passed during the Catiline conspiracy in 63 B.C.¹²⁰ Although Varro is compared to Cicero, and Silius is likened to Catiline, Tiberius holds total authority as emperor.¹²¹ The most recent *senatus consultum ultimum* was passed in 40 B.C., therefore this line reveals that both Tiberius and Tacitus are concerned with precedent and its ramifications. The senate is then convened for trial, which is described by Tacitus as a sham, as he writes,

It was therefore with great earnestness that the senators were convened - as though the case of Silius were based on law, and as if Varro were really a consul and this were the republic! (Tac. *Ann.* 4.19)

¹¹⁸ Tacitus, *Annals*, 4.18

¹¹⁹ Tacitus, *Annals*, 4.18

¹²⁰ R.H. Martin and A.J. Woodman, *Tacitus: Annals IV*, (Cambridge: Cambridge University Press), 1989, 148.

¹²¹ Martin and Woodman, *Tacitus: Annals IV*, 148.

Silius is not able to defend himself during the trial, and Tacitus concedes that Silius and his wife were guilty on the extortion charges [*nec dubie repetundarum criminibus haerebant*].¹²² However, instead of the trial being based on any material findings, it was conducted as a treason trial [*sed cuncta quaestione maiestatis exercita*].¹²³ With a guilty verdict being certain, Silius took his own life.¹²⁴

In this case, the reader is able to feel anger and a desire for vengeance emerging from Tiberius. The time for patience has passed, and he will no longer tolerate insulting comments from others. Although Silius is not technically sentenced to death, he knew that would be the penalty at the conclusion of the show trial. Therefore, Silius takes his own life, and joins the company of Gnaeus Piso and Clutorius Priscus, who also died under Tiberius due to *maiestas* allegations. Additionally, Tacitus provides insight on how Tiberius used precedent to fuel the prosecution in these trials. An insult is no longer merely an insult, but “harmful to the state” (Tac. *Ann.* 4.19). Tacitus explains that Tiberius conveniently used this term in order to provide legitimacy to *maiestas* charges. Just as Tiberius controlled the image that prior precedents furnished, he also possessed the ability to create an illusion of due process through the use of show trials. All involved knew that the trial had no real significance, and that the outcome had already been decided. However, by going through the typical motions, the outcome takes the appearance of being fair and logical. All the while, the power of *maiestas* allegations are further strengthened.

¹²² Martin and Woodman, *Tacitus: Annals IV*, 47.

¹²³ Martin and Woodman, *Tacitus: Annals IV*, 47.

¹²⁴ Tacitus, *Annals*, 4.19

Another case that soon follows in the same year is that of Calpurnius Piso. Tacitus writes that Piso announced to the Senate that he planned to leave the city due to the overwhelming presence of informers.¹²⁵ He then brought the prominent noblewoman Urgulania to court, who was a friend of Livia Augusta. Tiberius openly tolerated these actions, but he was quietly angered by them.¹²⁶ Quintus Veranius accused Piso of violating the *maiestas* law, and brought Piso to court. Tacitus writes,

Piso's accuser was Quintus Veranius, who charged him with holding a private conversation of a treasonable [*maiestatem*] nature, and added that he kept poison at home and would enter the Curia wearing a sword. (Tac. *Ann.* 4.21)

The charge concerning the sword was eventually dropped, but other accusations continued to pile up against Piso. He ended up not being prosecuted due to his “untimely death.”¹²⁷ Tacitus does not specify how Piso died, so it is unclear whether it was a murder, suicide, or accident. If the past cases are any indication, then there is a fair chance that his death was a suicide. Whatever the case may be, this is a rather convenient development for Tiberius, as *maiestas* has claimed its fourth victim.

Later in the same year, a *maiestas* case is brought against a father by his own son, both named Vibius Seneca, for plotting against the emperor, and sending men to Gaul to prepare for war.¹²⁸ During the son's testimony, he mentions that Caecilius Cornutus, an ex-praetor, had financed the operation. Tacitus writes that Cornutus knew that the “...prosecution was seen as tantamount to a death penalty...” (Tac. *Ann.* 4.28) so Cornutus took his own life before being formally charged. Tacitus writes that many

¹²⁵ Tacitus, *Annals*, 4.21.

¹²⁶ Tacitus, *Annals*, 4.21.

¹²⁷ Tacitus, *Annals*, 4.21.

¹²⁸ Tacitus, *Annals*, 4.28.

wanted to see Serenus the elder face the death penalty, but Tiberius sent him back into exile in Amorgos, from whence he was brought to Rome in the first place.¹²⁹ This leaves Tacitus' count at five deaths due to *maiestas* implications.

However, more important than the case itself are the discussions that occur immediately after Serenus the elder is sentenced to exile. Tacitus writes,

Because Cornutus had died by his own hand, there was also discussion of quashing rewards for accusers if anyone prosecuted for treason committed suicide before the conclusion of the case. The voting was going in support of this view, but Tiberius protested, quite forcefully and with uncharacteristic openness, in favour of the informers. The laws would be rendered ineffectual, he said, and the state set on precipitous course - better to destroy legislation than remove its guardians! (Tac. *Ann.* 4.30)

Tiberius was not going to let any sort of legislation discourage the informers from seeking out potential political enemies. If this sort of law happened to be passed, then informers would be heavily discouraged from reporting accusations, because *maiestas* had evolved to the point where death was the expectation, and mercy was only granted in certain circumstances. The fact that this type of legislation is even mentioned is rather telling of the state of the law. The precedent had matured to a level in which the very men who kept the law alive through accusations were in danger of losing their payment for performing their service. This change would have effectively killed the *maiestas* law, and Tiberius instead elected to reinforce the perception that to be accused was to be condemned.

¹²⁹ Tacitus, *Annals*, 4.30

Crementius Cordus, The Apex of Tyranny

In 25 A.D., a *maiestas* case of particular relevance to Tacitus occurs: a historian like himself faces *maiestas* charges in direct consequence of his writing about the end of the Republic. Concerning the charge itself, Tacitus writes,

Crementius Cordus was arraigned on a new charge, then heard of for the first time : publishing a history in which he praised Marcus Brutus and referred to Gaius Cassius as ‘the last of the Romans’. His accusers were Satrius Secundus and Pinarius Natta, both clients of Sejanus. This fact spelled doom for the defendant, as did the severe frown with which Tiberius heard his defence. (Tac. *Ann.* 4.34)

Cordus’ praise of Brutus and Cassius would have obviously been offensive to Tiberius, as they led the assassination of his adoptive grandfather. Tacitus acknowledges that at this point Cordus knew that he would not inhabit this world for much longer. That being the case, he was determined to let Tiberius, the Senate, and all that were present know his true thoughts and feelings.

Cordus begins his last plea by exclaiming, “Senators: it is my words that are being put on trial - so innocent are my actions” (Tac. *Ann.* 4.34). Cordus is making a reference to the old precedent, by which actions were eligible to be punished, but words were not. Unfortunately for him, much had changed since that ideal was laid out in the age of Augustus. Cordus continues his speech by making an appeal to precedent:

It is said that I praised Brutus and Cassius, whose history many have written, and of whom none has spoken unfavourably. Titus Livius, who enjoys an outstanding reputation for his style and reliability, gave such high praise to Gnaeus Pompey that Augustus called him ‘the Pompeian’, and that had no effect on their friendship. Scipio, Afranius, this very Cassius and this Brutus of whom we speak he never called ‘bandits’ and ‘parricides’, terms

applied to them now, and he frequently referred to them as ‘distinguished men’ The writings of Asinius Pollio pass on to us a highly favourable account of those same men, and Messalla Corvinus praised Cassius as his ‘commander’. And both authors kept on living lives of wealth and honour. How did Caesar, when he was dictator, respond to the book of Marcus Cicero in which he praised Cato to the skies? He wrote a speech refuting him, as though he were answering a case in court. (Tac. *Ann.* 4.34)

‘Antonius’ letters and Brutus’ speeches contain material insulting to Augustus, which, though untrue, is very caustic, and the poems of Bibaculus and Catullus, still read today, are full of abuse of the Caesars. The deified Julius and the deified Augustus themselves put up with this, and left the authors alone. Whether that was from self-restraint or wisdom on their part I should find it difficult to say. What is ignored just fades away; resentment looks like acknowledgement of the truth. (Tac. *Ann.* 4.34)

Cordus focuses his entire appeal on precedent, and it is the harshest criticism of Tiberius imaginable in this regard. Much of it demonstrates the difference in the manner that Julius Caesar and Augustus handled matters, and how Tiberius handles them now. Augustus knew that Livy admired Pompey; but he did not criminalize Livy’s written expression of that admiration, and remained friends instead. When Cato praised Caesar’s political opponent, Caesar responded with competing oratory instead of accusations of illegal conduct. He illustrates how Julius and Augustus were men of restraint and wisdom, and causes Tiberius to appear thin-skinned by comparison. He then explains that if he were writing claims that were false, they would be ignored as many other works of fiction are. Tiberius’ anger and resentment of his work is only a verification that it is indeed the truth.

Cordus continues, mentioning how the Greeks would never punish someone for merely writing a history, and that if anyone had an issue with another man’s words, he

would respond in kind with words, and only words.¹³⁰ He then analyzes the absurdity of treason charges being pressed against him for conduct that is in no way inciting any sort of sedition, as Tacitus writes,

For by telling of Cassius and Brutus under arms, and occupying the fields of Philippi, I am not inflaming the people to civil war with public speeches, am I? They were taken from us seventy years ago. They are recognized today in their statues, which even their conqueror did not banish, and do they not likewise also keep their memory alive, in part, in the historians? (Tac. *Ann.* 4.35)

Cordus asserts that the events that occurred at Philippi are merely a history from past generations, and that his writings are in no way meant to inspire people to reenact the deeds of Brutus and Cassius. Once again, he involves Augustus in his comparison, saying that even after Octavian fought and defeated the Liberators, he declined to remove their statues. Cordus believed that it was a historian's obligation to tell these stories, and failure to do so would produce an unsuccessful account of the story of Rome. He finishes his speech with some foreshadowing, claiming that if he is condemned for his tale of Brutus and Cassius, many others will soon follow in his footsteps.¹³¹ After this, he leaves the Senate and proceeds to starve himself to death, and meanwhile the Senate votes that his work should be burned.¹³² However, Tacitus claims that Cordus' written history survived, and this caused the whole proceeding to appear foolish.¹³³

Tacitus inserts some personal commentary after this, declaring that it is unreasonable to believe that a dictator can prevent the spread of speech concerning the stories of the past. This is most certainly tied to Tacitus' experiences under Domitian, but

¹³⁰ Tacitus, *Annals*, 4.35.

¹³¹ Tacitus, *Annals*, 4.35.

¹³² Tacitus, *Annals*, 4.35.

¹³³ Tacitus, *Annals*, 4.35.

the shoe fits Tiberius as well. The prosecution of Cordus, as well as his subsequent suicide in the face of a certain death sentence, shifts the *maiestas* law into a new realm. If a historian is subject to execution for his work, is everyone doomed to forget antiquity? If writers are deemed to be traitors, is anyone safe from harm? The case of Cremutius Cordus seems to serve as an ancient parallel to George Orwell's *1984*, in which he writes, "Who controls the past controls the future. Who controls the present controls the past."¹³⁴ Tiberius attempts to achieve control, but thankfully, Tacitus' history and many others survive to tell the full story of his reign.

The End of the Reign of Tiberius

In 25 A.D., Votienus Montanus faced *maiestas* allegations for "...making insulting comments on the emperor..." (Tac. *Ann.* 4.42). Tacitus does not report Votienus' exact comments, but insinuates that they were severe. He writes that Aemilius, who was a witness in the case, went into great detail about the comments during the trial in the presence of Tiberius.¹³⁵ This caused Tiberius to lash out in frustration, and eventually condemn Votienus, as Tacitus writes,

He [Tiberius] was so shaken that he cried out that he would clear his name, either then and there or in the course of the trial, and it was only after pleas from his friends, and flattery from all present, that he was able - and only with difficulty - to regain his composure. Votienus did, indeed, suffer the penalty for treason; and Tiberius clung all the more tenaciously to his policy of severity towards defendants with which he had been reproached. (Tac. *Ann.* 4.42)

¹³⁴ George Orwell, *1984*, (Signet Classic), 1961, 37.

¹³⁵ Tacitus, *Annals*, 4.42.

Votienus is the seventh death resulting from a *maiestas* trial under Tiberius, but this is the first case in which Tiberius seeks the death penalty, and it is actually applied (i.e., the accused survives the trial and does not take his own life beforehand). Tiberius makes this trial very personal, and it is obvious from the beginning that Votienus' actions have nothing to do with the security of the state. Votienus made rude remarks about the man in power at the time, and Tiberius used the *maiestas* statute to take his life in response.

In Book Six of the *Annales*, Tacitus provides a glimpse of the final years of Tiberius' reign. In regard to *maiestas* proceedings, one interesting aspect is presented in 32 A.D., specifically on what (or to be more precise, who) *maiestas* is not concerned with. Tacitus writes that Cotta Messalinus, a close friend of Tiberius', was hated by many, and that he was accused of making comments concerning Gaius Caesar's "dubious manhood".¹³⁶ Another charge alleged that during a dispute over finances, he said "They will be defended by the Senate, but I shall be defended by my little Tiberius" (Tac. *Ann.* 6.5). However, once these allegations were brought to the emperor, Tiberius responded by saying that Messalinus' words must have been twisted, and in any case dinner conversations were not suitable for criminal charges.¹³⁷ This provides a clear picture of Tiberius' view of the *maiestas* law: its application was not restricted for a certain type of conduct, but it was instead reserved for use against enemies.

In direct contrast to the previous case, Tiberius had not sated his desire to punish those he felt had wronged him. Tacitus writes that in 32 A.D., Tiberius sent a letter to the

¹³⁶ Tacitus, *Annals*, 6.5.

¹³⁷ Tacitus, *Annals*, 6.5.

ex-praetor Sextus Vistilius accusing him of infringing on the emperor's *maiestas*.¹³⁸

Tacitus claims that Vistilius either wrote material that criticized Gaius Caesar for being immoral, or at least Tiberius believed he had done so.¹³⁹ Vistilius unsuccessfully attempted suicide before sending Tiberius a letter begging for mercy. When Tiberius replied disapprovingly, Vistilius took his own life.¹⁴⁰

The following year, Tiberius continued to justify bloodshed through the use of the *maiestas* law. Tacitus writes,

After this, the earlier fears returned, with Considius Proculus being prosecuted for treason. He was celebrating his birthday, fearing nothing, when he was rushed into the Curia and no sooner convicted than executed! (Tac. *Ann.* 6.18)

This makes Proculus the eighth victim of the *maiestas* law in Tacitus' *Annales*.

Furthermore, Tacitus gives another brief account of the destruction caused by *maiestas* in 35 A.D., writing,

During those same days a senator, Granius Marcianus, who had been arraigned for treason by Gaius Gracchus, violently ended his own life, and an ex-praetor, Tarius Gratianus, was condemned to capital punishment under the same law. (Tac. *Ann.* 6.38)

This are the last *maiestas* charges that are mentioned during the Tiberian era of the *Annales*. In the end, at least ten deaths occurred due to this charge during the reign of Tiberius. Tiberius died in 37 A.D., at the age of 78, and was succeeded by Caligula.

¹³⁸ Tacitus, *Annals*, 6.9.

¹³⁹ Tacitus, *Annals*, 6.9.

¹⁴⁰ Tacitus, *Annals*, 6.9.

Epilogue

After close examination, one can see the long winding path that the *maiestas* law wandered on from its unmaterialized form during the regal period, to its statutory power during age of Tiberius. The law was revised and refined many times in-between by those seeking political gain. As time went on, the power of the law became increasingly stronger, fueled by the Roman notion of precedent. Once this precedent was implemented under an imperial system, it snowballed down the mountain of history, becoming even more powerful and impossible to stop. Tacitus does not hide his ill-feelings against Tiberius, but his account is reputable, backed up by ancient sources and evidence that has been discovered in the modern age.

When Livy discusses the law being applied during Horatius' trial, it is obvious that the notion of treason was directly related to the level of respect that was expected by the king. When Saturninus proposed his *maiestas* law, he did it to silence his political enemies, but his intention of empowering the people was authentic. As power transitions from Sulla to Caesar, and eventually to Octavian, Rome's government becomes more autocratic. This affects the status of the *maiestas* law as well, as it increasingly becomes an apparatus belonging to whoever held the most power. Tiberius takes this precedent, and adds lethality to the judicial handling of *maiestas*.

In conclusion, *maiestas* begins with the genuine idea of punishing betrayal. The emotion that betrayal evokes in the human condition is extremely powerful, enough to

give rise to a law in which the betrayal is not direct, but merely a consequence of feeling disrespected. All may agree that Brutus, Cassius, and Judas are traitors. They may suitably reside within Dante's ninth circle. Nevertheless, this is a realm where Cremutius Cordus and his associates do not belong.

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