

**UNTANGLING A HISTORIAN'S MISINTERPRETATION OF ANCIENT ROME'S
TREASON LAWS**

By

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INTRODUCTION

A prominent feature of Rome's political life was the *maiestas* or treason trial, which persisted for many years throughout the Republic.¹ *Maiestas* generally describes either the sovereignty or the dignity of the Roman people,² and thus the *crimen maiestatis* in ancient Rome could include any behavior construed as offensive or otherwise hostile toward the majesty of the State or the emperor. Convictions stemmed from a host of serious acts, such as plotting a rebellion, and even from harmless acts, such as defacing a public image. Indeed, under the broad concept of *maiestas*, prosecutors could convict anyone of a crime so long as their conduct was perceived, in the very least, as a threat to social order.³

The laws that governed these trials, the *lex maiestatis*, provided generally that whoever successfully accused and prosecuted someone on *maiestas* charges would be given part of the victim's estate. And, on top of that, in some cases successful accusers attained their victim's political offices, insignia and seniority status in the community. Although harsh, the laws likely had been intended to

¹ Olga Eveline Tellegen, *A Short History of Roman Law* [hereinafter, "Tellegen"] (1993), 65-67 (referring to the Principate as "the first three centuries of the republic"). According to Tellegen, the transition from the Republic to the Principate "constituted a political revolution accompanied by "changes in the social structure of the Roman empire."

² Clifford Ando, *Aliens, Ambassadors, and the Integrity of the Empire*, 26 LAW & HIST. REV. 491, 499 (2008) (recognizing the importance of *maiestas* in the age of Roman conquest); cf. Patrick McKinley Brennan, *Against Sovereignty: A Cautionary Note on the Normative Power of the Actual*, 82 NOTRE DAME L. REV. 181, 205 (2006) (describing the term "*maiestas*" as a "term of art," through which one serves the common good); Michael J. Kelly, *Pulling At the Treads of Westphalia: "Involuntary Sovereignty Waiver" – Revolutionary International Legal Theory Or Return To Rule By the Great Powers?*, UCLA J. INT'L L. & FOREIGN AFF. 361, 369 (2005) ("Sovereignty is the absolute and perpetual power of a commonwealth, which the Latins call *maiestas* . . .").

³ Nathan K. Cummings, *The Counterfeit Buck Stops Here: National Security Issues In the Redesign of U.S. Currency*, 8 S. CAL. INTERDISC. L.J. 539, 543-44 (1999) (stating that *maiestas* "encompassed a broad range of treasonous activities, from violating civic duties and acts of maladministration by magistrates to the more typical acts against the sovereign or the constitution of the state.") (citing Floyd Seyward Lear, *Treason in Roman and Germanic Law* 119 (1965)).

inspire a patriotic purpose. But given the obvious social advantages for the accuser, they quickly became a vehicle for upward mobility. Using *maiestas* trials, Romans of modest roots could secure wealth and high-rank by subduing their well-to-do opponents through personal attacks and accusations. So much is true; but modest Romans were not the only ones that prospered. Ambitious senators used *maiestas* trials to defeat their political rivals, while emperors used *delatores* – a term that describes both the accuser and the prosecutor⁴ – to eliminate anyone they distrusted, to enrich the treasury, to consolidate power and, generally, to keep Romans in check.⁵

According to Tacitus, the malicious use of *maiestas* proceedings escalated under the rule of Tiberius. At first glance, the historian gives the impression that during Tiberius' reign the use of *delatores* was a unique phenomenon, whose central objective was to spitefully accuse others in the interest of profit, power and personal gain. Taken at his word, Tacitus portrays Tiberius as an oppressive leader who sought to reinstitute the use of *maiestas* in an attempt to control and manipulate the Roman populace. But, on closer inspection from an unbiased position, the text reveals a more complex reality from which the evidence that Tacitus presents calls into doubt his own portrayal of Tiberius.

Citing Tacitus' account of the *maiestas* trials in Books I through IV of the *Annals*, this article posits that Tiberius was not some power-starved monster for whom *maiestas* trials satisfied a lust for seeing people suffer, as Tacitus would have us believe. Rather, Tiberius' disposition during the early *maiestas* trials illustrates an emperor that was, for the most part, detached emotionally from the process and able to intervene when the accusations swelled out of control. Tiberius on many occasions placed limits on the *maiestas* proceedings and exercised a self-restraint that was unexpected in light of the many challenges to his character. It was a tumultuous time, but the facts drawn from the early part of Tiberius' reign simply do not support the cruel and malign portrait of Tiberius that Tacitus describes.

⁴ Steven H. Rutledge, *Imperial Inquisitions: Prosecutors and Informants from Tiberius to Domitian* [hereinafter "Imperial Inquisitions"] (Taylor & Francis, 2002), 9 (stating, "The word delator comes from the phrase *nomen deferre*, meaning either to lay information or to accuse, since the individual who initially denounced another individual before a magistrate could also be the one who conducted the prosecution.").

⁵ Katharina de la Durantaye, *The Origins of the Protection of Literary Authorship in Ancient Rome*, 25 B.U. INT'L L.J. 37, 42 (2007). Durantaye asserts that writers became targets of suppression after Augustus' death, and that "[m]any members of Rome's ruling class were tried for violation of the *maiestas* law – the law concerning high treason – and as a result were banished or sentenced to death." *Id.*

In reaching this conclusion, and in rebutting Tacitus' position, this article will first track the evolution of *maiestas* proceedings, starting with their humble beginnings, leading up to and including Augustus' reign. From there, I describe Tiberius' revival, as it were, of the *lex maiestatis*, focusing on the limitations that he placed on the laws early on. Then, using Tacitus' own historical account, this article will recount the facts and events surrounding the various *maiestas* trials that took place during Tiberius' reign. Each case will exemplify that Tiberius, when the opportunity arose, put in place suitable restrictions on the charges that accusers brought and on the evidence accusers used to prove those charges. Through this assessment, we see that at every turn Tiberius urged Rome's senators to consider the evidence without regard to their preconceived ideas as to the guilt of the accused. Tiberius pled with them to undertake their inquiries from a neutral position. He created, in essence, a contained environment in which senators would not only judge the *maiestas* proceedings, but scrutinize them. Tacitus' own writings make this perfectly clear.

I. *MAIESTAS*: EARLY FORMS AND EVOLUTION

In only a few sentences near the end of the *Annals*' first book, Tacitus provides a cursory definition of treason, while almost parenthetically relating its introduction, or, rather, its reintroduction into Roman law. He does so by describing a conversation between Tiberius and Pompeius Macer. In a short moment, according to Tacitus, the praetor asks Tiberius whether he should revive prosecutions for treason. Tiberius replies rather flippantly that the laws must be enforced.⁶ In light of this brief exchange between the emperor and his praetor, Tacitus explains that the law of treason, through Tiberius' cunning, "crept in among" the community, "burst into flame and consumed everything."⁷

Missing from Tacitus' sinister description is an admission that treason laws existed for several decades prior to Tiberius. Tacitus hints that it was Augustus who first applied treason laws to combat libelous writings, but he offers nothing to explain treason's lengthy origins. Rather, he speaks only of a single set of laws, the *lex maiestatis*, when in fact at least four treason laws existed in the seventy years before Augustus' reign.⁸ Tacitus leaves us, then, with a vague understanding of a complex law so that he, in an attempt to vilify Tiberius, can

⁶ Tacitus, *The Annals & The Histories* [hereinafter "Ann. book, chapters"] (Modern Library, 2003), 41.

⁷ Ann. I, 69-73.

⁸ C.W. Chilton, "The Roman Law of Treason Under the Early Principate [hereinafter "Chilton"]," *The Journal of Roman Studies* 45 (1955): 73.

define and outline the upcoming trials according to his own interests and biases.

To illustrate this point, it will be useful to review in brief the law of treason as it was written and adopted during the Republic and in the early part of the Principate. With this background, we can appreciate that neither the economic incentives for the accuser nor the deep social problems driving the broad and uncertain use of *maiestas* charges had changed substantially after Tiberius obtained power. From this we find that the origins of the treason laws themselves cast a serious doubt over Tacitus' contention that Tiberius re-invoked the *lex maiestatis* maliciously, or even carelessly, in an attempt to suppress his constituents.

A. FROM *PERDUELLIO* TO *MAIESTAS*

In the early years of the Republic, the crime *perduellio* was comprised of any offense against the State and its officers.⁹ Although it appeared in Roman law as early as the establishment of the State itself,¹⁰ *perduellio* reached a high point at the beginning of the Republic. Historians described it as “the crime of acting with malice towards the Roman people.”¹¹ At the time, it was developed as a civil action through which plaintiffs, or *delatores* (who were often ordinary citizens), would come forth and accuse an individual of malicious conduct. They did so in the private courts, acting as the accuser, witness and prosecutor on behalf of the state. It was a simple proceeding in which the *delator* presented evidence proving that the treasonous act had been performed and that it was punishable.¹² If the prosecution was successful, offenders were subject to a variety of sentences, including fines and occasionally death. More importantly, regardless of the sentence imposed, the State sought to ensure that a sufficient number of *delatores* continued to come forward. Thus, authorities instituted the *praemia accusatoria*, or accusers' rewards, which typically allocated part of the

⁹ Ian D. Jablon, *Civil Forfeiture: A Modern Perspective on Roman Custom*, 72 S. CAL. L. REV. 247, 258 (1998) (“The autocratic power of the emperor became more pronounced with time, and the offenses which were classified as *perduellio* became so broad as to include ‘the slightest affront or disrespect to the emperor.’”) (citing William L. Burdick, *The Principles of Roman Law and Their Relation to Modern Law* 60-61 (1938)).

¹⁰ P.M. Schisas, *Offences Against the State In Roman Law* [hereinafter “Schisas”] (London: University of London Press, 1926), 3-5 (“King Romulus – the legendary founder of Rome – according to Dionysius, took measures to protect his newly established kingdom from the treacherous acts of *perduelles*.”).

¹¹ Chilton, 74.

¹² Jablon, *supra* note 9, at 258 (stating that either the emperor or senate adjudicated heard treason trials, though much went on behind the scenes that made them, in all respects, unfair).

offender's fine to the *delator*.¹³ It is important to stress, however, that the *praemia accusatoria* was neither codified nor upheld uniformly; rather, the reward varied greatly, depending on the seriousness of the crime and the trustworthiness of the evidence. And, regardless of the risk that the accuser would receive nothing, prosecutions suddenly became an attractive proposition. With a reward at hand, accusations could provide strong financial gains and give a boost to the accuser's prestige and honor. Now, even for the lowest orders, a successful prosecution could mean freedom, with respect to slaves, or power beyond one's status, as in the case of freedmen.¹⁴

In approximately 100 B.C. treason received a slight shift in focus, as Saturninus passed the *lex Appuleia de maiestate*. This new law established the crime of *maiestas*, which at first co-existed with *perduellio*. The two crimes differed only in scope, though *maiestas*, with its more extensive reach, encompassed *perduellio*. This meant that if an offender committed *perduellio*, he would likely be tried and convicted for *maiestas*. Saturninus designed the *lex Appuleia* to target specifically the conduct of military commanders, magistrates and other high-profile figures that damaged the State's interests because of their alleged incompetence.¹⁵ Their occupations, Saturninus believed, required the utmost care, and thus he left no room for negligent behavior. This shift in focus, as it turned out, was rather significant. It indeed broadened the crime of treason to reach those that acted without any ill-will. In effect, Saturninus transformed treason from a specific-intent crime into one that accusers could potentially establish by presenting evidence of the offender's negligence or recklessness. And, for the first time in its long history, treason could be applied to any individual, including foreigners, without regard to his or her social or official position.

B. MAIESTAS AS ARBITRARY AND ALL-ENCOMPASSING

In 81 B.C. the senate appointed Lucius Cornelius Sulla Felix, or Sulla, as Rome's dictator, thus granting him control of the State and charging him with the duty of establishing its laws and constitution. Drawing from both the *perduellio* and *maiestas*, Sulla passed the *lex Cornelia de maiestate*, which combined the previous two laws into one. This combination cast a wide enough net to ensure that it reached any conduct classified as treasonous. And to determine what conduct fell into this category, Sulla ambitiously established a permanent commission (*quaestio*) comprised of consuls and magistrates to administer the

¹³ Theodor Mommsen, *A History of Rome Under the Emperors* [hereinafter "Mommsen"] (New York: Routledge, 1992), 144-45.

¹⁴ Imperial Inquisitions, 21.

¹⁵ Chilton, 73.

new laws.¹⁶ This commission ran the courts and interpreted the criminal statutes. It was Rome's first attempt to codify the *maiestas* laws, though it is unclear whether the commission was successful in this endeavor. Either way, as a committed and decorated former general, Sulla's primary goal for the *lex Cornelia* was to foster a vigorous discipline in the army. Authorities therefore typically prosecuted soldiers that left the province without permission to start a private war, individuals that tampered with the soldiers' loyalty or soldiers that committed the illegal detention of prisoners.¹⁷

As with the *lex Appuleia*, Sulla's new laws remained broad and arbitrary, despite the new commission. However, one thing was for certain – the penalty for violating the *lex Cornelia* was exile, and nothing more. Several historians note that death remained a possible penalty, but it was never carried out on a citizen. It was generally accepted that if the accused saw conviction as an inevitable outcome, he or she was allowed to escape abroad, never to return to Italian soil.¹⁸ Under Sulla, the self-exiled traitor could choose the place of exile and retain his or her property. Better yet, for high-profile traitors that amassed numerous self-depictions in the form of coins or statues, a conviction did not result in the removal of those depictions from the community – a shameful practice known as *damnatio memoriae* – and thus the traitor's legacy lived on.

Years later, when Julius Caesar obtained control, he did little to amend the *lex Cornelia* or its accompanying statutes, though he did make a significant contribution. Perhaps acknowledging that the death penalty was rarely used, or perhaps using this opportunity to gain political favor, Caesar abolished the death penalty altogether. To appease those senators that favored the death penalty, the official penalty for *maiestas*, exile, now came by order of the State as part of the offender's sentence.¹⁹ This was not to be taken lightly, for Caesar's amendment made exile obligatory even for crimes that previously called for a mere fine. Further, as a State-ordered sentence, Caesar could commute the sentence at his whim and recall an exiled traitor if for some reason he or she could be of use to the State.

¹⁶ Schisas, 73-79 (mentioning the use of *quaestio* and *Senatus Consultum*).

¹⁷ Chilton, 74 (noting that Sulla also made it a crime for a governor not to leave his province on time).

¹⁸ *Id.*

¹⁹ Gordon P. Kelly, *A History of Exile in the Roman Republic* [hereinafter, "Kelly"] (Cambridge: Cambridge University Press, 2006), 95-98.

C. *MAIESTAS* UNDER AUGUSTUS

In the later part of the Republic, Augustus took it upon himself to enlarge the scope of *maiestas* once again. At the time Augustus was growing increasingly intolerant of the verbal abuse that his critics repeatedly hurled at him and his family. So, in response, he sought to expand *maiestas* to account for personal damages in addition to the more traditional damages to the State.²⁰ In doing so he enacted the *lex Julia de maiestate*, which criminalized any slander of the princeps and other prominent men and women, whether they were alive or dead. The law extended to any uttering, writing or publication in verse or in prose, whether it was spoken or written under one's own name, anonymous name or pseudonym.²¹ This was the State's first encounter with the concept of protecting the "deified princep" by means of criminal prosecution. Not only that, but it was the first instance in which persons of distinction could use their official position offensively to turn an ordinary slander into *maiestas*.

In a single sentence, Tacitus relates without detail that the first target of Augustus' new crime was Cassius Severus, who wrote several insulting satires that had apparently defamed a number of prominent members of the community.²² The prosecution was successful, though Tacitus fails to share this fact, and Severus was exiled in 8 A.D. A precedential case, which brought to life Augustus' amendment, finally had been laid down. It was no longer simply *faux pas* to criticize the work of a current or former emperor, or the conduct of a prominent figure in the community, for the risk of prosecution, and death, was much too great.

In approximately 19 or 18 B.C., with his critics in check, Augustus took the additional, more significant step of transferring jurisdiction of the *maiestas* proceedings from the individual courts (*quaestiones*) to the senatorial court.²³ This transfer created a unique strain among the senatorial ranks. For one, senators' votes as to the guilt of the accused were no longer secret, and the senators were compelled to make speeches as to the penalties to be imposed.²⁴ Consequently, since a senator's views would become known either to Augustus or to his appointed leaders, the senators were obliged to demonstrate their

²⁰ Michele Lowrie, *Slander and Horse Law in Horace, Sermones 2.1*, 17 LAW & LITERATURE 405, 420 (2005) (explaining that Augustus extended the crime of *maiestas* to regulate defamatory songs and books, which thereafter limited free speech in Rome).

²¹ Barbara Levick, *Tiberius the Politician* [hereinafter, "Levick"] (New York: Routledge, 1976), 191.

²² Ann. I., 69-73.

²³ Levick, 184 (describing the transfer of jurisdiction to the senatorial court as "momentous").

²⁴ *Id.*, 184-85.

loyalty to the emperor in the hopes that such fawning would bolster their reputations. This of course created a forum comprised of puffery and self-aggrandizing. It was political profiteering of the highest order. What is more, senators were now prosecuting members of their own order for *maiestas* crimes that prosecutors usually handled in the lower courts. This is not to say that senators never prosecuted each other previously, but now there was an element of compulsion, since it was the senators' duty to look after the princeps' interests.²⁵

By the time *maiestas* fell into Tiberius' hands, the precedents above had affixed themselves to the roots of the crime itself. Tiberius knew that Rome's prior emperors enforced these laws vigorously, as criminal procedure in addition to *maiestas* was a respected legacy of the Republic.²⁶ For years the senate revised and amended these laws, sometimes keeping the prior laws intact and sometimes abolishing various parts altogether. Faced with such a dated and complex set of laws, it is unlikely that Tiberius could predict that their subsequent use would get out of control, if indeed it ever did.

Tiberius, at the outset, sought to revitalize an active and functional set of laws that preserved the majesty of the State. Surely these laws were criticized, but there was never any intention on the part of the Senate or the populace to abolish even a trace of *maiestas* once Tiberius assumed power. For the people, *maiestas* proceedings were nothing new, and it was no secret that the *crimen maiestatis* had a scandalous reputation long before the start of the Principate, much less when Tiberius assumed control of the State. According to Tacitus, the revival of the *lex maiestatis* came in the form of a simple statement – to enforce the laws – and it very well could have been accompanied by a wave of the emperor's hand in a manner indicating that he had much more important matters with which to deal. This was indeed an order for his praetor to observe the spirit of the *lex maiestatis*, not necessarily an order to observe its letter, without exception.²⁷ For Tiberius, it was more important to have his authorities enforce the laws in the present, with the understanding that he could limit those laws at the appropriate time in the future, which, eventually, he did.

²⁵ Imperial Inquisitions, 21-22.

²⁶ Mommsen, 144.

²⁷ D.C. Shotter, "The Trial of Clutorius Priscus [hereinafter "Priscus Trial"]," *Greece & Rome* 16 (1969): 14.

II. EARLY MAIESTAS CASES: CIVIL LIBERTIES FROM AN UNLIKELY SOURCE

During the early part of his reign, as Romans praised Germanicus as the father of the country, Tiberius sought to advertise his political platform as one built of patriotism and loyalty to Rome. To do so, he needed something unique. He needed a process by which Romans from all social levels could assert their loyalty to the State and, in turn, reap a life-changing reward. Despite its criticisms, the *lex maiestatis* offered the perfect solution. Moreover, since the *lex maiestatis* was already in place, as we discuss above, all that was required of Tiberius was to revive it. And so he did.

Tiberius' plan was to reinstitute *maiestas* proceedings with several exceptions. Tiberius' primary purpose, as it was in the past, was to allow citizen-accusers the opportunity to prosecute other individuals who committed in their eyes a betrayal to Rome, such as defecting soldiers or spiteful citizens. But Tacitus characterizes Tiberius' intention as something more,²⁸ as he fails to highlight in his hasty accounts the several limitations that Tiberius placed on the *maiestas* proceedings early on. The emperor was surely aware of the potential for these trials to spin out of control if they remained unchecked. As a former prosecutor, the emperor prided himself on his knowledge of Roman law, and, having found himself on the other side of the aisle several times before, he was conscious of the dangers that traitors faced and realized the inherent risks that accompanied their convictions. In this light, Tiberius was committed to strengthening any protections that he could possibly offer. Several examples make this obvious.

A. WORDS CAN BE SPOKEN

Tiberius' first act was to soften one of the blows left over from Augustus. Initially, what differed under Tiberius' plan was that complaints based on mere words were not actionable. As Tacitus put it, "Deeds only were liable to accusation; words went unpunished."²⁹ For example, in one instance an accuser alleged that Appuleia Varilia, Augustus' grand-niece, committed treason as a result of her ridiculing a slew of untouchables. As alleged, Varilia gave several disparaging speeches about her uncle Augustus, the emperor Tiberius and, even worse, Tiberius' mother.³⁰ Then, adding insult to injury, the senators tacked on an additional charge of adultery. Tiberius' reaction was startling. He first

²⁸ Tacitus, *Annals* II. 45-50.

²⁹ *Ann.* I. 69-73

³⁰ Tacitus, *Annals* II. 50-54.

insisted that the treason charge be severed from any other charges against Varilia, who would then submit to two separate trials. This small act was crucial. Tiberius knew that senators on occasion would tack-on to the indictment an additional *maiestas* charge, sometimes without any grounds to do so, in an attempt to conflate the unrelated claim with the treason charge and to garner more concern and attention in the senate. Thus, by separating the *maiestas* charge from the adultery charge in Varilia's case, Tiberius ensured that each crime stood on its own, which inevitably highlighted the weakness of the *maiestas* charge.

Taking it a step further, Tiberius explained that for the senate to rule against Varilia on the treason charge, they would have to find only that she spoke out against Augustus.³¹ In other words, he would not allow the senators to inquire about any statements as to himself. The consuls were stunned, which prompted them to ask whether they should consider Varilia's statements about Tiberius' mother. Tiberius chose not to address their question, at least not immediately.³² The next day Tiberius returned to the senate and "begged in his mother's name" that they not consider any statements made against her. After his pleas, he simply acquitted Varilia of treason and ended the affair before the trial began.³³

This case illustrates that Tiberius was willing to stretch the law in favor of the defendant when the opportunity arose. From here on, treason charges would not issue upon mere words critical of himself or his family. This was more than a limitation; it was a recognition that, because of Tiberius' position, citizens would likely speak out against his conduct, even on a personal level, and that in certain circumstances they should be allowed to do so. Under Tiberius, *maiestas* trials were not meant to become an unwavering cap placed on the individual liberties that his constituents enjoyed. Free speech, without consequences, was available to the people once again. Varilia's acquittal clarifies this point.

Even after Varilia's trial, however, a handful of senators believed that citizens should not be allowed to write insulting satires about the emperor and then argue, to avoid prosecution, that the writing contained mere words. This indeed would leave untouched a swarm of anonymous writers that commented often

³¹ *Id.* ("As to the charge of treason, the emperor insisted that it be taken separately, and that she should be condemned if she had spoken irreverently of Augustus. Her insinuations against himself he did not wish to be the subject of judicial inquiry.")

³² *Id.* ("When asked by the consul what he thought of the unfavourable speeches she was accused of having uttered against his mother, he said nothing.")

³³ *Id.*

on Tiberius' cruelty and arrogance. The act of writing was a physical one – one that could potentially incite public resentment – and thus for these senators it constituted a “deed” for purposes of the *lex maiestatis*. Tiberius disagreed. Eventually, though absent from the trial, his efforts to reform the use of *maiestas* proceedings against libel and slander reached their peak in the trial of Caius Lutorius Priscus.

In 21 A.D. an informer charged Priscus with treason for having authored a disparaging poem about Tiberius' would-be successor, Drusus, who was currently ill.³⁴ Priscus in his vanity read the poem aloud to Publius Petronius' mother-in-law, Vitellia, and several other high-ranking women present at Petronius' house. In this way, Priscus committed both a libel and a slander in one simple act. Making matters worse, Priscus previously authored a similar poem just after the death of Germanicus. The first poem became wildly popular and Priscus received a hefty profit from its subsequent publication. The fear in this case was that if Drusus died, and Priscus published his most recent poem, he would yet again reap a profit at the expense of an individual who was next in line to take the throne.³⁵ For his accusers, this was unacceptable. And, from the brief description that Tacitus provides, we see that the *delatores* grew desperate in their efforts to obtain a conviction.

Glaring from the trial is that Priscus' *maiestas* charge was based on conflicting testimony. Vitellia swore before the senate that she had not heard a word of Priscus' poem. And Tacitus tells us that the remaining witnesses were “frightened into giving evidence.”³⁶ Despite this discrepancy, the senators swiftly convicted Priscus of treason and sentenced him to death.³⁷ Tiberius, meanwhile, took no interest in either the accusations or the trial. It was Marcus Lepidus that took Tiberius' place. Tacitus narrates in splendid detail Lepidus' speech in favor of commuting Priscus' sentence, which was a service that Tiberius often provided the accused when he disagreed with the senate's would-be sentence.³⁸ The senators remained adamant. Just after Lepidus completed his speech, the senators ordered that Priscus be “dragged off to prison and instantly put to death.” Indeed, the senators carried out the post-trial proceedings with such haste it was as though they feared that had Tiberius

³⁴ Tacitus, *Annals* III. 44-49 (recounting the charges).

³⁶ Tacitus, *Annals* III. 49-54

³⁷ *Id.* (“But those who criminated him fatally were rather believed, and on the motion of Haterius Agrippa, the consul-elect, the last penalty was invoked on the accused.”).

³⁸ *Id.* Often have I heard the emperor complain when any one has anticipated his mercy by a self-inflicted death.”).

entered the senate house prior to the order, he surely would have foiled their plans. When Tiberius finally appeared, he could only clean up their mess.

Tacitus tells us that Tiberius complained of the senators' "hasty punishment of mere words," while he praised Lepidus for his attempt to secure a lesser sentence. On his motion, the senate passed a resolution that required authorities to wait nine days until they carried out the senate's decrees. This not only gave the condemned individual additional time to plead his or her case, but it gave the senators additional time to mull over their callous sentences. In response, Tacitus wryly observed that "the Senate had not liberty to alter their purpose, and lapse of time never softened Tiberius."³⁹ But there is nothing to corroborate such a pessimistic outlook. Tiberius often found himself on the back end of the senate's harsh resolutions, left only with a few supporters and little time either to commute a sentence or to remind the senators of their neutral roles. This was yet another example of Tiberius' intent to limit the *maiestas* proceedings, though one for which he arrived too late.

B. SUBVERTING THE DEIFIED PRINCEP

Tiberius' next move was to deemphasize the sacred ideal that surrounded the position of emperor. Recall that under Augustus' *lex Julia*, charges could issue in the event an individual disparaged him or his predecessors in a variety of ways.⁴⁰ Underlying this construct was Augustus' belief that the position of emperor carried with it the sanctity of the gods. This new concept made Tiberius uncomfortable, since he preferred that the emperor's role represent something more reachable and humanistic.⁴¹ He refused to be called *pater patriae* ("father of the country"), a title that Augustus readily accepted, because of its sacral overtones.⁴² Instead he wished to be called, quite simply, "Tiberius Caesar Augustus," dropping the traditional qualifier, "Imperator," likewise because of its pompous implications.

³⁹ Tacitus, *Annals* III. 49-54.

⁴⁰ See generally Cummings, *supra* note 5, at 544 (explaining that counterfeiting, which was considered treasonous, was considered a significant crime "because it was considered to be the desecration of the image of the sovereign (the divine emperor) by making a fraudulent likeness on bogus coins."). Cummings goes on to assert that counterfeiting was not just an economic crime, but an affront to the sovereign himself. *Id.* He says, "[s]uch an attack merited a severe punishment, and Roman counterfeiters were frequently burned." *Id.*

⁴¹ Mommsen, 131 (noting that "[w]hat is more remarkable is that Tiberius sought to shape the principate in as practical a manner as possible and to play down its ideal aspect.").

⁴² *Id.*

In vitiating from his reign the concept of the deified princep, Tiberius allowed treason charges to issue against Falanius and Rubrius, whose trials Tacitus called “the first experiments of [*maiestas*] accusations,”⁴³ which of course is a mistake, as the characterization fails to heed the wealth of *maiestas* trials that took place in the decades before. To support the charge against Falanius, his accuser alleged that Falanius sold a statue of Augustus in conjunction with the sale of his gardens. As to Rubrius, his accuser alleged that he violated the divinity of Augustus by committing perjury. Tiberius responded with a single letter to the consuls. It was not at all what the senate expected. In sharp contrast to how Augustus would have responded, Tiberius explained in terse language that it was not a crime for an individual to sell an emperor’s image along with his gardens or homes. He reasoned that it was quite common for an individual to sell a deity’s image along with his gardens, so why not an emperor’s image? For Rubrius, Tiberius likened his perjury to a deception of Jupiter – the patron deity of the Roman Principate – and thus it was of no concern to the State. He said, according to Tacitus: “Wrongs done to the gods were the gods’ concern.”⁴⁴ With that, Falanius and Rubrius went free. Arguably, Tiberius saved Falanius’ and Rubrius’ lives, although we can only assume this outcome because Tacitus either refused to comment on the trials’ results or simply gave up on the accounts altogether. Either way, these preliminary trials do not corroborate Tacitus’ view that Tiberius instituted a wealth of corrupt proceedings in reviving the *lex maiestatis*.

In another case, an unknown accuser charged Lucius Ennius, a Roman Knight, with *maiestas* upon information that Ennius melted down a statue of Tiberius and had it formed into a silver plate.⁴⁵ Tiberius, as expected, quashed the *maiestas* charge and expressed once again that the alteration of a mere figure of Caesar was not a violation of the majesty of the State.⁴⁶ But despite this ruling, and in a likely attempt to gain the emperor’s favor, Ateius Capito insisted that the charges go forward. He stated, according to Tacitus: “Granted that the emperor might be indifferent to a personal grievance, still he should not be generous in the case of wrongs to the commonwealth.”⁴⁷ Tiberius was unmoved. Tacitus relates that Tiberius “interpreted the remark according to its drift rather than its expression” and thus he confirmed the veto of Ennius’ trial.

⁴³ *Id.* (explaining first that Tiberius sought to revive and enforce prosecutions for treason, and that it would “not be uninteresting if [Tacitus] relate in the cases of Falanius and Rubrius, Roman knights of moderate fortune, the first experiments of such accusations. . .”).

⁴⁴ Ann. I, 73-77 (“As to the oath, the thing ought to be considered as if the man had deceived Jupiter.”).

⁴⁵ Ann. III, 66-70.

⁴⁶ *Id.* (“but the emperor forbade his being put upon his trial.”).

⁴⁷ *Id.*, 70-74.

Sadly, though, Capito had disgraced himself. Tacitus remarks that the senator was well-versed in the law, but after this display, “he had now dishonoured a brilliant public career as well as a virtuous private life.”⁴⁸ Tiberius’ pronouncements as to the rights of the accused were unyielding to say the least.

At this point, *maiestas* trials were rather bland events through which Tiberius limited the broad and arbitrary charges that the prior precedent supported. In other words, these early trials gave Tiberius the opportunity he desired to instill in the populace a sense of patriotism, while at the same time offering them the civil rights that Augustus previously took away. Tacitus’ failure to convey these limitations exemplifies a rhetorical pattern that calls into question the historian’s narrative with respect to these trials.⁴⁹ And, it is one that continues throughout the *Annals*.

III. THE DRUSUS AFFAIR: A LACK OF MALICIOUS MOTIVES

By 16 A.D. *maiestas* proceedings had evolved and, according to Tacitus, *delatores* turned out in record numbers. They were relentless. In one instance Roman authorities charged Libo Drusus with treason after he consulted with astrologers about his pedigree.⁵⁰ Tacitus explained that the Drusus affair marked the first occasion in which accusers conjured up magnificent stories to obtain a conviction. But whether the event actually contributed to the “practices which for so many years [ate] into the heart of the State,”⁵¹ as Tacitus asserts, is a question left unanswered. What we see, perhaps, is an emperor having second thoughts as to his ability to control the proper uses of the *lex maiestatis*. Tiberius was rather languid throughout the Drusus affair, and, to a point, he seemed disinterested. For this, Tacitus depicts Tiberius as heartless and cruel, but the evidence tells a different story.

Libo’s trial, according to Tacitus, was a sham. The account is one in which the evidence against Libo consisted of flimsy accusers and a bundle of equally-

⁴⁸ *Id.*

⁴⁹ *But see* Judith Ginsburg, “Speech and Allusion in Tacitus, *Annals* 3.49-51 and 14.48-49,” *The American Journal of Philology* 107 (1986): 527 (explaining that Tacitus’ portrayal is not unreliable; he simply uses various literary techniques such as allusion, which make the narration seem unreliable).

⁵⁰ Tacitus, *Annals* II. 27-32.

⁵¹ *Id.* (“I will explain, somewhat minutely the beginning process, and end of the affair, since then first were originated those practices which for so many years have eaten into the heart of the State.”).

flimsy documents.⁵² But before Tacitus introduced the evidence, he chose first to induce sympathy for the accused. His first point was to show that Libo did not enter a conspiratorial situation on his own, but rather that he was enticed into the situation by others.⁵³ To make the story more powerful, Tacitus notes that it was Catus, “an intimate friend,” who encouraged the slow-witted Libo to seek out an astrologer and to entangle himself in “extravagance and debt.”⁵⁴ It was a setup from the beginning. Once Libo acted on his childlike temptations, Tacitus explained that Catus concocted a crime and took the story directly to Tiberius.

From there, Tacitus takes the reader to a brief dinner scene in which Tiberius invited Libo to his table and watched him suspiciously while concealing his own resentment.⁵⁵ In this, Tacitus would have us believe that Tiberius took astrology so seriously that he was intensely wary of others that did so as well. Perhaps this was true, but something was missing. As Tacitus recounted this frightening scene, he blatantly excluded one crucial fact – Libo not only consulted with astrologers, but he also possessed a disturbing list of emperor’s and senators’ names with threatening marks written beside them.⁵⁶ As it turned out, Libo was not so innocent. Tiberius certainly had a valid interest in observing citizens that possessed threatening papers regarding the State and its leaders. So, with this in mind, Tacitus concealed the sinister list until he recounted Libo’s trial, thus offering a misleading representation of poor, brainless Libo while at the same time impeaching Tiberius’ character.

At the trial Tiberius remained impartial, for it is likely that after observing Libo up close he considered Libo’s behavior misguided rather than malicious.⁵⁷ Tacitus notes that at the start of Libo’s trial Tiberius read the charges “with such calmness as not to seem to soften or aggravate the accusations.”⁵⁸ This is

⁵² *Id.* (writing that Libo’s accusers “produced an extravagantly absurd accusation,” as they proclaimed that Libo asked the astrologer a number of questions that were “senseless and idle” and even “pitiable.”)

⁵³ Shotter, D.C. *The Trial of M. Scribonius Libo Drusus* [hereinafter *The Trial of Libo Drusus*]. *Historia: Zeitschrift für Alte Geschichte*, Vol. 21, No. 1 (1st Qtr., 1972), pp. 88-89.

⁵⁴ Tacitus, *Annals* II. 27-32 (“Firmius Catus, a senator, and intimate friend of Libo’s, prompted the young man, who was thoughtless and an easy”)

⁵⁵ *Id.* (“Meanwhile he conferred the praetorship on Libo and often invited him to his table, showing no unfriendliness in his looks or anger in his words (so thoroughly had he concealed his resentment”).)

⁵⁶ *Id.* (“But there was one paper in Libo’s handwriting, so the prosecutor alleged, with the names of Caesars and of senators, to which marks were affixed of dreadful or mysterious significance.”).

⁵⁷ *The Trial of Libo Drusus* at 89.

⁵⁸ Tacitus, *Annals* II. 27-32.

in stark contrast to Libo, who Tacitus described as “jaded with fear and mental anguish” and hardly able to stand at his own trial.⁵⁹ By focusing on Libo’s despair, Tacitus portrays Tiberius as a cold, bloodthirsty tyrant. But this is entirely unproven.

Tiberius, as we see later on, believed in correct judicial procedure, and there is simply nothing to show that Tiberius’ behavior masked a vengeful or evil motive. Before the affair ended, Libo took his own life. Afterward Tiberius issued a sworn statement, asserting that had Libo not committed suicide, he would have pleaded with the senators to let him live, “guilty though he was.”⁶⁰ And, after the Drusus affair calmed down Tiberius allowed days of public thanksgiving, during which citizens made several offerings to Roman deities on Libo’s behalf. As a more permanent honor, Tiberius accepted the senate’s proposal that September 13, the day of Libo’s suicide, be observed from then on as a day of festival. Tacitus shares these acts only in passing and mentions them, so he says, to expose an “evil in the State.”⁶¹

IV. REFORM OF THE *LEX MAIESTATIS*

As the number of *maiestas* trials increased, Rome’s hatred of *delatores* increased along with them.⁶² The popular sentiment was that this class of men was comprised of ruthless opportunists who acquired standing and wealth at the expense of others. Upper-crust citizens viewed them as neither statesmen nor officials. Instead they were part of a negative social category⁶³ that the higher ranks perceived as low-born and ill-equipped to wield such power. Aligning himself with popular opinion, Tacitus described Caepio Crispinus, a well-known *delator*, as “needy, obscure, and restless.”⁶⁴ He went on to explain that

⁵⁹ *Id.* (“On the day the Senate met, jaded with fear and mental anguish, or, as some have related, feigning illness, he was carried in a litter to the doors of the Senate House, and leaning on his brother he raised his hands and voice in supplication to Tiberius, who received him with unmoved countenance.”).

⁶⁰ *Id.* (“Yet the prosecution was continued in the Senate with the same persistency, and Tiberius declared on oath that he would have interceded for his life, guilty though he was, but for his hasty suicide.”).

⁶¹ Ann., II. 32-35 (“Days of public thanksgiving were appointed on the suggestion of Pomponius Flaccus. Offerings were given to Jupiter, Mars, and Concord, and the 13th day of September, on which Libo had killed himself, was to be observed as a festival, on the motion of Gallus Asinius, Papius Mutilus, and Lucius Apronius. I have mentioned the proposals and sycophancy of these men, in order to bring to light this old-standing evil in the State.”).

⁶² Levick, 189 (noting that “Delators were hated under the Principate”).

⁶³ Imperial Inquisitions, 11.

⁶⁴ Ann., I. 73-77.

after Crispinus accused the proconsul of Bithynia of *maiestas*, his life became driven by “stealthy informations . . . following which beggars became wealthy, the insignificant, formidable, and brought ruin first on others, [and] finally on themselves.”⁶⁵ Crispinus’ accusation against his superior was likely offensive, but it was nothing unique. We can infer, then, that Tacitus introduces Crispinus merely as an example of how the position of *delator* was particularly vexatious in the eyes of the larger community.⁶⁶

More importantly, Tacitus’ description of Crispinus highlights two essential motivations for a typical *delator*. The first is a strong want of profit, while the second is a desire for political and social advancement. These incentives, according to Tacitus, became engrained in the hearts of every *delator*. The expectation of power and profits was so potent, in fact, that *delatores* on many occasions attempted to secure prosecutions using hearsay testimony, false evidence or coerced witnesses. It was no secret that *delatores* who found themselves in financial trouble would use any means of advancement. In turn, false accusations flourished. And the risk of future false accusations grew even greater at the end of the State’s economic expansion. Tiberius, meanwhile, was aware of this. He understood that the use of unfounded *maiestas* claims and questionable evidence required a response; thus, he accepted various proposals from his closest advisors.

A. CALUMNIA

The most popular suggestion was to abolish the *praemia accusatoria*, though Tiberius, to the dismay of his advisors, refused to do so. Upon reflection, he realized that such a proposal was not a solution at all.⁶⁷ Abolition of the *praemia accusatoria* would only vitiate the incentive for financial gain. It would not, however, reduce the incentive for political advancement. Indeed, even without the *praemia*, enterprising *delatores* still had an incentive to come forth with groundless *maiestas* claims in the hopes of working their way up the senatorial ranks. So, with this in mind, Tiberius wanted a solution that was all-encompassing. He needed a harsh penalty, one that would make the presentation of false *maiestas* charges a criminal act, thus serving not only as a

⁶⁵ *Id.* (noting also that Crispinus “wormed himself by stealthy informations into the confidence of a vindictive prince, and soon imperiled all the most distinguished citizens”).

⁶⁶ Imperial Inquisitions, 206-07 (discussing the *delator* Caepio Crispinus).

⁶⁷ Levick, 190 (noting that in defending the *praemia* Tiberius was “defending a system which could not be replaced.”).

deterrent, but as a punishment.⁶⁸ As it turned out *calumnia*, or malicious prosecution, was a likely consequence.⁶⁹

By 21 A.D., with the death of Germanicus behind him, Tiberius' role as a mediator had become a chore. He kept a close watch on the *delatores* that he empowered and took a keen interest in those trials that offered an opportunity for reform. Two incidents that arose earlier that year were particularly promising.⁷⁰ In the first, Tacitus relates that two Roman knights of equestrian descent, Coelius Cursor and Considius Aequus, brought *maiestas* charges against a popular praetor, Magius Caecilianus.⁷¹ But the trial fell apart in its early stages because the two knights failed entirely to present any concrete evidence in support of their case. After review of the evidence, or lack thereof, the senators determined that the charges were false.

Tiberius was enraged. He insisted that Cursor and Aequus be punished for *calumnia*,⁷² though Tacitus fails to explain the precise punishment that the two men endured. At this point, the punishment is inconsequential. We know that the senate was free to impose sentences for *calumnia* that ranged from loss of senatorial rank to exile from Rome. But for our purposes, the case serves as one of the leading examples of how Tiberius introduced a helpful precedent for cases in which *delatores* offered phony charges against the accused.

In another case, Catus Firmius, a well-known senator, charged his own sister with *maiestas*. Recall that Catus was one of the masterminds behind Libo Drusas' trial,⁷³ the outcome of which Tiberius was yet to forget. The charges that Catus brought turned out to be false and, accordingly, the senate, on Tiberius' motion, convicted Catus of *calumnia* and sentenced him to exile.

⁶⁸ *Id.*, 190 (“The proposal for abolition apparently dealt only with *maiestas*, but the *lex Maiestatis* was not the only statute that offered rewards; . . . ; what was required was a harsher penalty for *calumnia*, malicious prosecution.”).

⁶⁹ Jablon, *supra* note 5, at 252. Jablon comments that the system of rewards for forfeiture proceedings and prosecutions may have been too successful, “as evidenced by the fact that some delicts provided that the defendant would be paid a penalty should the prosecution bring a false case.” *Id.* Jablon also notes the “similarity of the modern charge of malicious prosecution.” *Id.* at n. 25 (citing J.A. Crook, *Law and Life of Rome* 276-77 (1994)).

⁷⁰ *Id.*, 198 (noting that if the Princeps knew the facts of Cursor's and Aequus' trial, he should be lauded for having “discouraged irresponsible delation of *maiestas*.”).

⁷¹ Ann., III. 34-39

⁷² *Id.*

⁷³ Ann. IV, 30-34 (“Catus, as I have related, had drawn Libo into a snare and then destroyed him by an information.”).

Tiberius intervened, however, and surprisingly he vetoed the sentence of exile and sought merely to have Catus expelled from the senate.

In response, Tacitus claims that Tiberius reduced Catus' sentence because of the senator's service in convicting Libo.⁷⁴ But the more likely reason for the reduction was Tiberius' awareness that Catus' detestable conduct in charging his own sister with *maiestas* would exacerbate the community's hostility towards him.⁷⁵ The senators would detest him, and upper-class citizens would loathe him. From then on Catus would be a social outcast, which, in ancient Rome, was just as severe as one's physical expulsion from the State. For Tiberius, such a punishment was sufficiently harsh.

B. A NEUTRAL ENVIRONMENT

Looking beyond his control of the *delatores*, Tiberius also sought to control the senators. In doing so he would transform the procedures through which the senators considered the evidence in support of *maiestas*. It is important that Tiberius' objective did not involve a change to the criminal code or to Rome's written statutes; rather, the emperor set his sights on the senators' abilities to reflect on the evidence. Using various trials Tiberius would impose on the senators a certain vigilance with respect to the charges and the evidence before them. They would learn under Tiberius to be not only mindful, but in many ways skeptical of the accuser and of his intentions in bringing the charges to the senate. In this way, Tiberius would intervene in the senate's judicial affairs, offsetting penalties, giving grace periods⁷⁶ or vetoing sentences,⁷⁷ while at the same time he expressed an ongoing fear that perhaps the senate was neglecting its duty to remain neutral under the circumstances.⁷⁸ He admonished the senate verbally or set an example through his own actions. Whichever method he chose, it was a means to maintain strict judicial impartiality.

For instance, in a case we mention above, Tacitus reports that Caepio Crispinus brought *maiestas* charges against his superior Granius Marcellus, the governor of

⁷⁴ *Id.* ("Tiberius remembering this service, while he alleged other reasons, deprecated a sentence of exile, but did not oppose his expulsion from the Senate.").

⁷⁵ Levick, 197.

⁷⁶ Rutledge, 78 (relating that in one instance Tiberius intervened in a case, giving a grace period to all debtors and creditors to settle their accounts after delatores began prosecuting at an alarming rate those individuals, including senators, that made loans at an excessive rate of interest).

⁷⁷ Ann. IV, 30-34 (deprecating Catus' sentence from exile to expulsion from the senate).

⁷⁸ Levick, 197 (explaining that Tiberius' became more involved in the judicial process because "the relentless pressure of the succession struggle brought several friends to their death.").

Bithynia, for making disparaging remarks about Tiberius. And, although Tacitus offers little detail as to the remarks that Marcellus supposedly made, the historian asserts that the charge of *maiestas* was unavoidable because the accusations involved the “worst features of the emperor’s character.”⁷⁹ Notwithstanding this presumption, the charges against Marcellus only got worse. The senate eventually turned over the case to Romanus Hispo, who acted as *subscriptor* and appended to the original charge an additional accusation that Marcellus had altered the statues in his garden.⁸⁰ According to Tacitus, Marcellus “struck off” the head of Augustus from one statue and placed the bust of Tiberius on the headless sculpture that remained.⁸¹ On top of that, Marcellus then placed his own statue in a position higher than those reserved for the emperors. Even still, the charges never got off the ground.

In Tacitus’ report, as soon as Hispo read the charges to the senate, Tiberius’ “wrath blazed forth, and, breaking through his habitual silence,” he warned the senators that he would openly vote in the case and that the senators would be obliged to vote the same way.⁸² Markedly, however, Tacitus does not tell the reader which way Tiberius would actually vote. Instead, without saying it, Tacitus forces the reader to draw the inference that Tiberius’ “wrath” was spawned by Marcellus’ defamatory statements; thus, of course Tiberius would vote to condemn him. This position, however, is entirely uncorroborated. Tacitus’ portrayal fails to consider that Marcellus’ case came at a time when extortionate proceedings in the provinces, such as Bithynia, roused Tiberius tremendously.⁸³ What is more, as explained previously, by this point Tiberius had declared that the senators could not consider *maiestas* charges based on personal attacks to his character. Tiberius likely asked himself, “Did these senators not remember my ruling in Falanius’ and Rubrius’ trials?” or, perhaps, “Why are we wasting time listening to these trivial charges?” The senators’ brazen ignorance of Tiberius’ earlier pronouncements must have stirred the emperor dearly. This realization cannot be taken lightly, as it further dispels Tacitus’ position with respect to Tiberius’ next reaction.

⁷⁹ Rutledge, 90 (noting that *maiestas* was inescapable because “in this instance, it was based (according to Tacitus) on the princeps’ vices.”).

⁸⁰ Ann. I, 73-77.

⁸¹ *Id.*

⁸² Ann. I, 73-77 (“[Tiberius] exclaimed that in such a case he would himself too give his vote openly on oath, that the rest might be under the same obligation. There lingered even then a few signs of expiring freedom.”).

⁸³ John Charles Tarver, *Tiberius, the Tyrant* [hereinafter “Tarver”] (Archibald Constable and Co., 1902), 307-08.

Following Tiberius' outburst, Cneius Piso asked the emperor, "In what order will you vote, Caesar? If first, I shall know what to follow; if last, I fear that I may differ from you unwillingly." In light of this question, Tiberius regretted his earlier remark.⁸⁴ He realized that had he voted in Marcellus' case, with the expectation that the senators follow his lead, the senate's neutral stance in judicial affairs would be lost. For Tiberius, this was an unworkable consequence. And though we can agree with Tacitus that Tiberius' initial outburst was thoughtless, it was only a momentary lapse in reasoning. Once he listened to Piso's inquiry, Tiberius showed that he was not unyielding. Tacitus acknowledged that Tiberius was "deeply moved" by Piso's question and even somewhat penitent of his statements. In the end, he allowed the senators to vote on the case independently and restored their ability to decide *maiestas* cases from a neutral, unbiased position.⁸⁵ Without Tiberius' input, the senators acquitted Marcellus of treason.

Moving forward, Tacitus relates the trial of Caius Silanus,⁸⁶ which is noteworthy, as it is one of the first cases in which Tiberius put limits on the emperor's involvement in making provincial appointments. The record, according to Tacitus, is as follows. Mamercus Scaurus, an ex-consul, accused Silanus of *repetundae*, a form of extortion through which the accuser seeks restitution for injuries to the State. To boot, seizing the opportunity,⁸⁷ Junius Otho, a praetor, and Brutidius Niger, an aedile, submitted an additional charge of *maiestas*.⁸⁸ With the charges in place, the trio immediately put together an unassailable case. First, they conjured up numerous, high-profile witnesses to testify during the trial. Next, they had Silanus' slaves tortured and forced them to testify on behalf of the prosecution. Finally, they spoke with Silanus' character witnesses and warned them not to help him. It a ruthless performance, one that Tacitus describes as a combination "perilous even to an innocent man."⁸⁹ Even still, during the trial Silanus faced a host of adverse senators, all of whom were trained orators and prosecutors.⁹⁰ And, if this were

⁸⁴ Rutledge, 91.

⁸⁵ Ann. I, 72-73 ("Tiberius was deeply moved, and repenting of the outburst, all the more because of its thoughtlessness, he quietly allowed the accused to be acquitted of the charges of treason.").

⁸⁶ Ann. III., 61-66.

⁸⁷ Richard Bauman, *Human Rights in Ancient Rome* (Routledge, 2000), 63 (indicating that over time the crimes of *repetundae* and *maiestas* were partially fused).

⁸⁸ Ann. III., 61-66 (explaining that Otho and Niger "simultaneously fastened on him and charged him with sacrilege to the divinity of Augustus, and contempt of the majesty of Tiberius. . .").

⁸⁹ Ann. III, 66-70 (Gellius Publicola and Marcus Paconius, . . . , swelled the number of the accusers" so that "[n]o doubt was felt as to the defendant's conviction").

⁹⁰ *Id.*

not enough, Tiberius himself insisted on cross-examining the defendant, without the benefit of rebuttal testimony.⁹¹ According to Tacitus, it was all too much for Silanus to handle, thus he abandoned his own defense. But when it came time for the senate to fashion an appropriate sentence, Tiberius took it upon himself to go beyond what was asked of him and affirm an important “constitutional sentiment.”⁹²

As punishment, the senate banished Silanus to Gyarus and divvied up his property accordingly. Then, to deflect blame for the appointment of Silanus, Cornelius Dolabella pointed out the difficulties in choosing provincial leaders and suggested that no one from a “disgraceful life and notorious infamy” be eligible to lead a province. Thus, he moved the senate to allow the emperor to intervene more often in the senate’s provincial appointments, which, in essence, was an amendment to the existing laws. Tiberius refused and stopped the senators before the motion was carried. He warned them that they ought not decide their appointments through the use of hearsay, referring of course to his own knowledge of the reports with respect to Silanus.⁹³ He explained that the emperor does not know everything, and that he should not be exposed to the “ambitious scheming of others.”⁹⁴ More importantly, he affirmed that the “laws are ordained to meet facts” and that the senate should “not revolutionise a wisely devised and ever approved system.” To conclude, he said, “[r]ights are invariably abridged, as despotism increases; nor ought we fall back on imperial authority, when we can have recourse to the laws.”⁹⁵

Tiberius’ speech is rather influential, though Tacitus merely describes it as a rare sentiment for the emperor. What Tacitus fails to acknowledge, however, is that Tiberius gave extraordinary weight to the rules of law, which provided that the senate, by itself, make provincial appointments. There was no reason, then, for the senate to make these appointments with Tiberius at the helm. The prior laws were in place for a reason. Tiberius therefore stepped back and reminded the senators that imperial authority could not solve their problems. Indeed, Tiberius stressed that his involvement in the process should be limited, and when the senators doubted a decision, they should rely on legal authority, not

⁹¹ *Id.* (“Tiberius did not refrain from pressing him with angry voice and look, himself putting incessant questions, without allowing him to rebut or evade them, and he had often even to make admissions, that the questions might have been asked in vain.”).

⁹² *Id.* (noting that “such constitutional sentiments were so rare with Tiberius, that they were welcomed with all the heartier joy.”).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

an executive decision. This case, we see, is a commendable example of executive restraint.

In another account, Calpurnius Piso, the governor of Syria, was accused of corrupting his soldiers and of poisoning Germanicus, Tiberius' adopted son and a popular commander in the Eastern provinces. Germanicus' companions detested Piso and, according to Tacitus, they would spare nothing in their attempt to obtain a conviction.⁹⁶ In fact, with so many of them insisting that they serve as deponents and witnesses in the trial, it was difficult for Tiberius to name a prosecutor. Piso's accusers therefore requested that Tiberius lead the inquiry, although such an arrangement carried with it an enormous conflict, given Tiberius' relation to Germanicus. Surprisingly, Piso did not fret. He understood, in light of the "bias of the people and of the Senate" against him, that Tiberius was perhaps the only person that would not waver to partiality, notwithstanding that Piso was on trial for the death of Tiberius' adopted son.⁹⁷ This reaction is rather telling.

One could argue that Tiberius' neutral, if not detached attitude toward Germanicus' death, which Piso recognized, supports an inference that Tiberius was somehow involved in the incident. But drawing such an inference, with nothing more, would be unreasonable. It is more likely that Tiberius' approach to Piso's trial confirmed his commitment to cautious, equitable trial procedure. Tiberius of course recognized the severity of the charges against Piso. But more importantly, he understood given Germanicus' popularity that it would be difficult to facilitate a fair trial.⁹⁸ Under the circumstances, he would have to balance two competing forces. On the one hand were Germanicus' supporters, who spilled out into the streets, seething with resentment and encompassing Rome's most influential class. On the other were the rights of the accused, which the emperor could not abandon, for such a choice would illuminate the wickedness for which he was so often criticized. Tiberius was left, then, with

⁹⁶ Ann. III, 7-12 (noting that it was difficult to name a prosecutor because Germanicus' companions insisted that "they themselves meant to report their instructions from Germanicus, not as accusers, but as deponents and witnesses to facts.").

⁹⁷ *Id.* ("This even the accused did not refuse, fearing, as he did, the bias of the people and of the Senate; while Tiberius, he knew, was resolute enough to despise report, and was also entangled in his mother's complicity. Truth too would be more easily distinguished from perverse misrepresentation by a single judge, where a number would be swayed by hatred or ill-will.").

⁹⁸ See *Id.* (explaining that Piso retained counsel to represent him after some difficulty and that his counsel agreed to represent him "amid the excitement of the whole country, which wondered how much fidelity would be shown by friends of Germanicus, on what the accused rested his hopes, and how far Tiberius would repress and hide his feelings.").

the middle of the two, which was an objective position that required him to oversee a trial in which he had a keen personal interest.

Piso, the man accused of killing one of Rome's most popular figures, felt that Tiberius was fit to do so. He indeed knew that Tiberius was "resolute enough" to see beyond the immaterial evidence that his accusers would inevitably present.⁹⁹ In Piso's eyes, Tiberius would not leave unbalanced a scale that weighed his rights with those of his accusers. And if this were not enough to convince those who sat in the "silence of suspicion" outside the senate house,¹⁰⁰ Tiberius' own statements offered further support.

After listening "to the threatening speeches of the prosecutors and to the pleadings of the accused," Tiberius wiped his hands of responsibility and turned over the case to the full senate.¹⁰¹ The next day Tiberius entered the senate house and delivered a moving speech. Tacitus described it as one "of studied moderation." There, Tiberius recounted Piso's accusations and implored the senators to deliberate the charges "with minds unbiased."¹⁰² He urged them to be wary of any falsehoods and exaggerations that Piso's accusers would present, as he himself would be outraged if he faced an overzealous attempt to convict an innocent man.¹⁰³ As to his personal angst, Tiberius pled with the senators to refrain from taking the alleged charges as true simply because the case was so "intimately bound up with [his] affliction."¹⁰⁴ On this point, according to Tacitus, Tiberius explained that "[f]or my part, I sorrow for my son and shall always sorrow for him; still I would not hinder the accused from producing all the evidence which can relieve his innocence or convict Germanicus of any unfairness, if such there was."¹⁰⁵ Tiberius concluded by observing that Piso's case should be tried and judged like all others, without heed to his sorrow.¹⁰⁶

⁹⁹ *Id.*

¹⁰⁰ *Id.* ("Never were people more keenly interested; never did they indulge themselves more freely in secret whispers against the emperor or in the silence of suspicion.").

¹⁰¹ *Id.*

¹⁰² *Id.* ("Whether he there had provoked the young prince by willful opposition and rivalry, and had rejoiced at his death or wickedly destroyed him, is for you to determine with minds unbiased.").

¹⁰³ Tacitus, *Annals* III. 12-15 ("As for [false accusers], I am justly angry with their imtemperate zeal. For to what purpose did they strip the corpse and expose it to the pollution of the vulgar gaze, and circulate a story among foreigners that he was destroyed by poison, if all this is still doubtful and requires investigation?").

¹⁰⁴ *Id.* ("And I implore you not to take as proven charges alleged, merely because the case is intimately bound up with my affliction.").

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

Specifically he said: “In all else let the case be tried as simply as others. Let no one heed the tears of Drusus or my own sorrow, or any stories invented in our credit.” Unfortunately, the next day an unknown assailant murdered Piso before the deliberations ended, which left the senators unable to test the effectiveness of Tiberius’ pleas.

Tiberius was not a man that questioned the rights of those who faced the rule of law. From the start of Piso’s trial, Tiberius was concerned not only with the presentation of the evidence, but with the deliberations that would take place upon its admission. It was clear from Tacitus’ account that the trial’s fairness outweighed Tiberius’ personal feelings. He showed an almost fanatical ability to disconnect himself emotionally from the accusations, while preserving, once again, the sanctity of just trial procedure. This conduct certainly belies the hearsay rumors that Tacitus disclosed, out of nowhere, at the end of the proceedings.¹⁰⁷ With this in mind, it is consistent that, “assuming an air of sadness,” Tiberius acquitted Piso of the treason charge.

CONCLUSION

In the Annals, Tacitus introduces the reader to a world in which Romans hesitated to speak their opinions aloud. On his account, the law of treason was gaining strength, as the risk of accusation, whether false or not, diffused throughout the empire and sprouted like weeds in the wealthy homesteads of Rome’s aristocracy. Tacitus would have us believe that the *maiestas* proceedings exemplified Rome’s civil decline and that it was Tiberius who let them get out of control. In short, it was Tiberius’ means to an end. But while the proceedings may have encouraged surreptitious conduct by poor and wealthy citizens alike, the reinstatement of the *lex maiestatis* by Tiberius was not an evil decision. It was political, and it was one for which Tiberius would exercise extreme caution in reviving. That being the case, the *maiestas* proceedings we encounter in Books I through IV of the Annals show that Tiberius had no intention of allowing citizens to run wild against their would-be victims. In this way, Tiberius put in place a number of restrictions and defenses in favor of the accused. From these accounts, while Tacitus failed to acknowledge the benefits

¹⁰⁷ Tacitus, Annals III. 15-18 (asserting rumors, which he “heard old men say,” with respect to Tiberius’ involvement in Germanicus’ death. Tacitus admits, however, that he could not affirm any of the alleged statements he supposedly overheard).

of Tiberius' progressive stance, it is one for which Tiberius should be praised, not criticized.¹⁰⁸

¹⁰⁸ Donald R. Dudley, *The World of Tacitus* (London: Secker & Warburg, 1968) (acknowledging that Tacitus creates false impressions through unfavorable topic sentences and that Tiberius' interventions in various trials should have been in his favor).