

TIBERIUS AND THE
ROMAN CONSTITUTION

by

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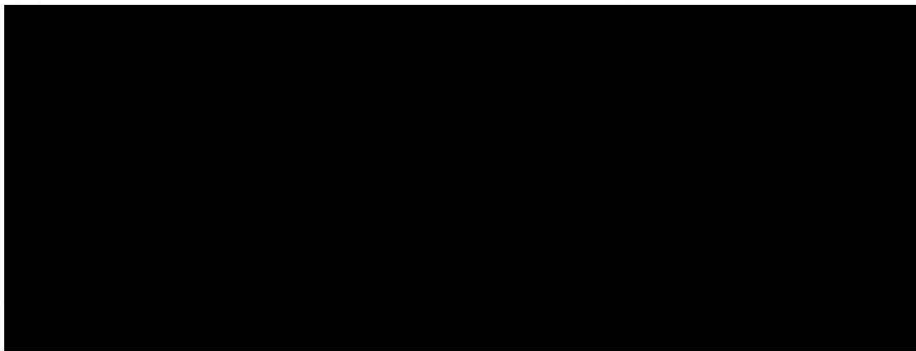
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ABSTRACT

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The thesis attempts to shed light on the ideological, political, electoral, administrative, legislative and legal aspects of the Tiberian constitution, and to demonstrate that Tiberius regarded the state as a functioning, legally sanctioned republic under the princeps' own necessary tutelage.

The first chapter deals with Tiberius' republicanism and his view of the state as an oligarchy under supreme authority. It investigates the accession debate in the senate, the Augustan insurance for the succession, and the consequent senatorial opposition to Tiberius' republican administration.

In the second chapter a study of the political alliances of the period is used to reveal that, while other leaders drew support from revolutionary sectors, Tiberius maintained his control through the old Republican and Augustan families which had the most to gain from a retention of the status quo.

The third chapter, dealing with elections, attempts to show that Tiberius' interference with the senatorial government, although real and to some extent intentional, was necessary for the principate and was exercised in such a way as to ensure good government. Here, as in Chapter I, it may be seen that Tiberius refused to increase his powers at the expense of the senate.

In the fourth chapter Tiberius' interference, in this case in the senatorial provinces, is shown as being of a benign and necessary nature. Tiberius insured good government through the promotion of his *amici* which often must have mitigated overt interference, and therefore, possible senatorial resentment.

The fifth chapter, on legislation, demonstrates Tiberius' conservatism, as well as his general desire for utility and moderation.

The final chapter, on trials, shows Tiberius' exercise of authority on a more personal level. Generally aloof, Tiberius seems to have supported the laws over personal interests. And again, in certain instances, the emperor showed his desire for moderation, utility, and the maintenance of the state.

The thesis set forth is that Tiberius did regard the Roman state as a vestigial republic and treated it as such by moderating and, to some degree, concealing his own necessary interference. Tiberius' ultimate goal must be seen as an attempt to ensure the orderly functioning of government to prevent any recurrence of the military strife which was the very *causa sine qua non* of the principate.

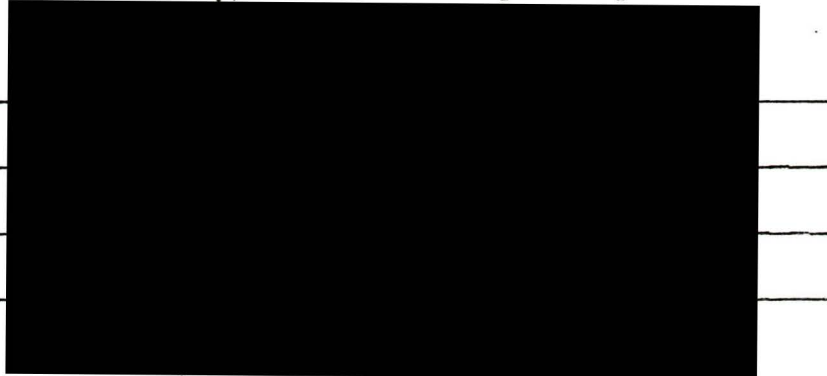


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List of Abbreviations

A.C.	L'Antiquité classique
A.H.R.	American Historical Review
A.J.P.	American Journal of Philology
Ath.	Athenaeum
AeR	Athene e Roma
C.I.L.	Corpus Inscriptionum Latinarum
C.J.	Classical Journal
C.P.	Classical Philology
C.Q.	Classical Quarterly
C.R.	Classical Review
G.R.	Greece and Rome
H.S.C.P.	Harvard Studies in Classical Philology
Hist.	Historia
I.L.S.	Inscriptiones Latinae Selectae
J.R.S.	Journal of Roman Studies
L.E.C.	Les Etudes classiques
Lat.	Latomus
Mnem.	Mnemosyne
P.B.A.	Proceedings of the British Academy
P.B.S.R.	Proceedings of the British School at Rome
P.I.R.	Prosopographia Imperii Romani
R.E.L.	Revue des études Latines
R.H.	Revue historique
T.A.P.A.	Transactions and Proceedings of the American Philological Association
Y.Cl.S.	Yale Classical Studies

The abbreviation SC will be used to refer to a *senatus consultum*, the plural being SCC.

All abbreviations for Tacitus will omit the reference to Annales, and references to Suetonius will be to Tiberius unless otherwise mentioned.

Abbreviations for authors will be their surnames, followed by the first catalogue noun of the title. In the cases of two authors, special abbreviations, listed below, will be used to avoid confusion:

(Rogers): "Lepida" "The Career of Aemilia Lepida and the Roman Constitution."

"Cordus"	"The Case of Cremutius Cordus."
"Agrippina"	"The Conspiracy of Agrippina."
<u>CTLT</u>	<u>Criminal Trials and Criminal Legisla-</u> <u>tion under Tiberius.</u>
"Astrologers"	"The Date of the Banishment of the Astrologers."
"Drusus"	"Drusus Caesar's Tribunician Power."
"Law"	"Ignorance of the Law in Tacitus and Dio."
"Opposition"	"An incident in the Opposition to Ti- berius."
"Arruntius"	"Lucius Arruntius."
"Messallinus"	"Der Prozess des Cotta Messallinus."
"Veranii"	"Quinti Veranii, Pater et Filius."
"Heirs"	"The Roman Emperors as Heirs and Lega- tees."
"Seianus"	"Seianus and Drusus Caesar."
<u>Studies</u>	<u>Studies in the Reign of Tiberius.</u>
"Trials"	"A Tacitean Pattern in Narrating Trea- son Trials."
"Reversal"	"Tiberius' Reversal of an Augustan Policy."
"Treason"	"Treason in the early Empire."
"Two Cases"	"Two Criminal Cases Tried before Drusus Caesar."
(Shotter): "Piso"	"Cnaeus Calpurnius Piso, Legate of Syria."
"Debate"	"The Debate on Augustus."
"Accession"	"Julians, Claudians, and the Accession of Tiberius."
"Problems"	"Three Problems in Tacitus' <u>Annals</u> I."
"Gallus"	"Tiberius and Asinius Gallus."
"Lepida"	"Tiberius' Part in the Trial of Aemilia Lepida."
"Spirit"	"Tiberius and the Spirit of Augustus."

"Silanus"	"The Trial of C. Junius Silanus."
"Priscus"	"The Trial of Clutorius Priscus."
"Silius"	"The Trial of Gaius Silius."
"Labeo"	"The Case of Pomponius Labeo."
"Elections"	"Elections under Tiberius."

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aliquantum expositio commenticia est
de statu imperii Tiberio principe
libellus qui hic adfertur

INTRODUCTION

The following thesis will attempt to shed light on the ideological, political, electoral, administrative, legislative and legal aspects of the Tiberian constitution, and so demonstrate that Tiberius regarded the state as a functioning, legally sanctioned republic under the princeps' own necessary tutelage.

The first chapter will deal with Tiberius' republicanism and his view of the state as an oligarchy under supreme authority. It will investigate the accession debate in the senate, the Augustan insurance for the succession, and the consequent senatorial opposition to Tiberius' republican administration.

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In the fourth chapter, it will be shown that Tiberius' interference, in this case in the senatorial provinces, was also of a benign and necessary nature. Tiberius insured good

government through the promotion of his *amici* which often must have mitigated overt interference, and therefore, possible senatorial resentment.

The fifth chapter, on legislation, will demonstrate Tiberius' conservatism, as well as his general desire for utility and moderation.¹

The final chapter, on trials, will show Tiberius' exercise of authority on a more personal level. Generally aloof, Tiberius seems to have supported the laws over personal interests.² And again, in certain instances, the emperor showed his desire for moderation, utility, and the maintenance of the state.

The thesis set forth will be that Tiberius did regard the Roman state as a vestigial republic and treated it as such by moderating and, to some degree, concealing his own necessary interference. Tiberius' ultimate goal must be seen as an attempt to ensure the orderly functioning of government to prevent any recurrence of the military strife which was the very *causa sine qua non* of the principate.

INTRODUCTION: FOOTNOTES

¹For a full discussion of Tiberius' *moderatio*, see Appendix II (p.127).

²For a detailed view of capital jurisdiction, see Appendix I (p.120).

CHAPTER I: The Accession of Tiberius

Retrospectively, the principate of Tiberius marked the firm establishment of monarchic rule over the Roman empire. All too often this fact is understood to have been engineered. Tacitus, the major source for the reign of Tiberius, denouncing the emperor's dissimulation, is responsible for portraying the accession which was both desired and planned by Augustus and his heir. However, a re-examination of the evidence in Tacitus' own Annals may reveal a second principate which, in its ultimate form, was forced, not by the Julio-Claudian coalition, but by a politically naive and constitutionally subservient senate. At no time prior to 23 was it Tiberius' intention to instigate an autocratic rule over the empire. Rather, it was his wish to oversee, as supreme authority, as princeps, a republican and senatorial administration.

Augustus had planned the accession of Tiberius since 4 A.D.¹ But all of the honors and powers conferred upon Tiberius were granted through the good graces of the senate. It is necessary, then, to understand the position of the senate. Although the fathers had suffered degeneration during the civil wars, and much of the new senate was drawn from elements loyal to Augustus, the autonomy of the senate remained unimpaired. Firmly loyal to Augustus, the senate must not be viewed as subservient, at least before 14. Corresponding to the Roman ideal, the senate was free from oppression, not free to act. That is to say, although it

could not be expected to act arbitrarily, it was free to dispute, to disagree, and to refuse.² And Augustus had gained full constitutional acceptance of Tiberius' accession through the senate's free conferment of both of their magisterial and extraordinary offices.³

Once the pre-eminent powers of *tribunicia potestas* and *imperium proconsulare* had been granted by the senate, there was no need for Tiberius to be invested with the principate. Those offices and powers were the principate in the absence of any equal or superior authority.⁴ Yet, in order to cover any eventuality, the senate, in 13, bestowed upon Tiberius a power equal in every way to that of Augustus over the provinces: 'et senatus populusque Romanus postulante patre eius, ut aequum ei ius in provinciis omnibus exercitibusque esset.'⁵

Added to the constitutional aspects⁶ of Tiberius' powers were elements within the senate which were willing to support the emperor-designate,⁷ and without which none of the constitutional authority would have been granted to Tiberius.⁸

The sentiments of Tacitus,⁹ that the initial actions of Tiberius, the passing of the watchword to the Praetorian cohorts, and the letters dispatched to the armies, were prejudicial to the attitude of the senate, are entirely wrong. Tiberius' accession was already guaranteed, and all of the actions which he took on the passing of Augustus were well within the bounds of common sense and his imperial powers.¹⁰ Tiberius' orders were not directed at influencing the senate, but at maintaining the continuity of government and the peace

of the empire at a time when there was no other consolidated authority capable of exercising such functions. The same is true of the summons to the senate under tribunician authority. The senate's convening was as necessary an adjunct to the smooth conversion to a new principate, as was the oath of allegiance. There need not have been servility on the part of the consuls, senators and the rest; they could see that without their support the possibility of renewed civil war was a very real threat. Of course, there is no reason to assume that there should have been a withdrawal of senatorial support from Tiberius at the death of Augustus, because it had been the senate itself which had elevated Tiberius to the position of princeps-designate. If it had been the senate which had bestowed the rights of princeps on Tiberius, it must have been its expectation that he would act just as he did on the death of Augustus. It was these very expectations which caused the senators to disbelieve any protestations which Tiberius might bring forth in accepting the supreme power.¹¹

It must, at the same time, be admitted that the position of the senate was both open and restricted. It had been with their concurrence that Tiberius had been placed in a position to succeed his father. It was Tiberius alone who possessed the prerequisite powers for the principate. On the other hand, it was well within the power of the senate to refuse the obvious, and to return to a purely republican form of government.¹² In fact, Augustus had engineered both the republican forms and the senate's composition so well

that there could exist no question on the succession.

The first meeting of the senate in September of 14¹³ assured the position of Tiberius. The will of Augustus, which laid down the generous bequests, was a further goad to the senate, should it vacillate in naming Tiberius princeps. It was imperative that the princeps' personal heir also succeed to his official position, since the legacies to be paid to the people and soldiers were void "ad incertam personam", and no one would be likely to pay them unless assured of the principate. Without the combination of public and private heir in the same person, the senate would be unable to pay out the bequests, and Tiberius, with the support of the army, which his existing offices allowed him, would be in a position to seize the principate if he so desired. This is not to say that the senate was in any way desirous of excluding Tiberius from his principate, but that Augustus had added extra safeguards which complemented the constitutional position and personal standing of his successor, should unexpected opposition arise.

The bestowal of the title "Augustus", added to "Iulius" and "Divus Filius", would not allow the senate to pass over Tiberius in favour of one of less exalted nomenclature. Yet all of the titles and honours, the bequests and imperial favors, may also be viewed as coercive on Tiberius, who could not possibly remain a private citizen, abandoning the principate, and at the same time be heir to items which intensified his pre-eminence.

Noteworthy in Tacitus is the absence of Augustus' injunction which appears in Dio:¹⁴ 'τά τε κοινὰ πᾶσι τοῖς δυναμένοις καὶ εἰδέναί καὶ πράττειν ἐπιτρέπειν, καὶ ἐς μηδένα ἕνα ἀναρτᾶν αὐτὰ παρῆνεσέ σφασιν, ὅπως μήτε τυραννίδος τις ἐπιθυμήσῃ, μήτ' αὖ πταίσαντος ἐκείνου τὸ δημόσιον σφαλῆ.' That is to say, Augustus realized the difference between autocracy and tyranny. He wished that, through the employment of many men of ability on whom the empire would depend, there would not result a situation in which a wholly independent emperor would, at some future date, turn the constitutional system of the principate into an autocratic tyranny. This situation seems a reflection upon the conditions which led to civil war, as well as a consideration of future problems which would almost inevitably result from a dynastic system which was based not on merit, but on legal and familial precedent.

It is necessary to turn to Tacitus, who alone contains full and authoritative accounts of the senatorial meetings. Tacitus probably knew of the Augustan caveat contained in Dio, yet either failed to understand its significance, or refused to mention it, as being foreign to his moral and political intent.

It is evident from Tacitus' account of the first meeting of the senate that the conscript fathers were willing to accept both the proposals of Augustus and the accession of Tiberius. The second meeting began with the consuls' motion that Tiberius be made princeps for life.¹⁵ According to Tacitus, Tiberius began by speaking of the greatness of

Augustus, his own inability, and the weight of empire. Then followed a remark of the utmost importance: 'Proinde, in civitate tot illustribus viris subnixa, non ad unum omnia deferrent: plures facilius munia rei publicae sociatis laboribus exsecuturos.'¹⁶

The intention of such a statement was to rouse the senators to their old duties; to share in the administration, if not the authority of the Roman state. But, all too characteristically, Tacitus interprets the words as no more than the inevitable dissimulation. 'Plus in oratione tali dignitatis quam fidei erat; Tiberioque, etiam in rebus quas non occuleret, seu natura sive adsuetudine, suspensa semper et obscura verba; tunc vero nitenti ut sensus suos penitus abderet, in incertum et ambiguum magis implicabantur.' The senators, fearing that they may be discovered to understand the emperor, melt in supplication. Then the *libellus*, recording the resources of the empire, is introduced to the senate. For Tacitus, the introduction of the document, which was not intended for discussion, but simply read to men who must have been aware of its contents, was utilized as a prop for Tiberius, to support his feigned desire not to shoulder the great burden of empire. Dio gives us a clue to the real intention of the document. At the point at which the *libellus* is read, Dio, while omitting mention of the list, inserts Tiberius' suggestion for a tripartite division of the empire.¹⁷ The divisions consist of Italy, the legions, and the provinces. Tacitus, following the reading, inserts the remark of Tiberius that he would be willing to undertake the care of a part of

the government: 'ita quaecumque pars sibi mandaretur, eius tutelam suscepturum.'¹⁸ The close correspondence of the list, as set down by Tacitus, and the three divisions named by Dio seem to indicate a single identity. Therefore, it appears the *libellus* was intended to demonstrate the resources which needed to be divided in order to separate the administration into departments. It was not meant to show the burdensome extent of the empire alone.

It seems likely that the proposals of Augustus had been formulated with Tiberius prior to the *princeps*' death. The *libellus* had been composed with the specific intention of demonstrating the possible divisions of empire. The idea that Augustus could have been totally ignorant of the future policies of Tiberius, that he would not have lent some posthumous aid to his successor is both incredible and unsupported by other measures which Augustus took.

Tacitus' failure to provide the divisions of the empire related by Dio leads to an ambiguity concerning the statement of Tiberius: 'se ut non toti rei publicae parem, ita quaecumque pars sibi mandaretur, eius tutelam suscepturum.' To what *partes* is Tiberius referring? The reply of Asinius Gallus, 'Caesar, quam partem rei publicae mandari tibi velis?' causes even greater confusion. Only the insertion of the divisions of Dio will remedy the otherwise overly vague situation. If the three divisions of Dio are included, the speech of Tiberius becomes less facile and more concrete, understandable and more direct in a senatorial context. The work of Augustus in securing Tiberius' accession, the *libellus*, the speech of

Tiberius, all were directed towards a reorganization of the republican structure of the empire.

According to the wording of Tacitus, Tiberius was willing to share in the administration of the state, in the execution of government, only at the behest of the senate. The impression left is that Tiberius was willing to serve the state only if demanded by the fathers; otherwise he would prefer to revert to the status of a private individual. Tiberius, according to Tacitus, replied to Gallus that it was not the place for him to choose or refuse a part of what he would rather shun. Dio's version is somewhat different. Tiberius states that the same man cannot both make the division and choose the part for himself.¹⁹ Once again Dio is useful as an interpretation of Tacitus. The idea behind Tacitus' statement is that Tiberius would prefer to be wholly excused from the service of the state. Dio's version has Tiberius prefer to be excused from a part of the administration. Tiberius is not saying he would prefer to be excused from the principate. The consuls have already carried the motion for life-long tenure of the principate which Tiberius definitely did not refuse. At this point in the debate Tiberius is already in firm control of the principate. Tiberius is asking to be excused from the routine administration of the empire, not from his executive post. Tiberius' reply to Gallus is that he will not choose a part of the administration. There is no hint in any of the authors, except by way of misunderstanding, that Tiberius was at any time referring to the principate. The discussion, following on the

reading of the *libellus*, which catalogues the resources of the empire, is on the assumption and delegation of those administrative resources, not on the control of the executive functions. No matter which, if any, part of the administrative functions Tiberius might assume, it would be Tiberius, as *princeps*, who will hold the ultimate authority for all the organs of government.

The difficulty for Tiberius seems to have been not so much to persuade the senators of the need for a division of the administration, as to make them understand the distinction between the supreme authority, namely, the principate, and the routine administration. The senators, by their replies, do not seem to have been able to grasp the distinction.

The results of Tiberius' words, the '*patres ... in quaestus, lacrimas, vota effundi*' may be viewed in two ways, other than that expressed by Tacitus. If it is true that what is contained in the passage of the Annals here dealt with is not the entire speech and response in the senate, but a selective précis, then interpretation and suggestion may be employed. If Tiberius had given the senators the impression that they were to be no more than clerical assistants to his principate, there is obvious cause for remarks such as those of Haterius. Many of the senators may have read an affront into the words of the emperor. On the other hand, if the impression conveyed was that the senators were to bear most of the burden of government, the senators, all too aware of the consequences of undermining the authority of the principate, may have been appealing for a maintenance of the central

authority, shunning a weakening and dissipation of Tiberius' power. The fault of misunderstanding seems to rest with both parties. The senators seem to have failed to grasp a fine point in constitutional theory. Tiberius seems to have failed to make the fathers understand, and to have given up the attempt, for the time being, when he saw the futility: 'fessusque clamore omnium, expostulatione singulorum flexit paulatim. non ut fateretur suscipi a se imperius, sed ut negare et rogari desineret.'²⁰

Tacitus' failure to understand the situation is seen in his use of the term *imperium*. There is no question, during the latter half of the debate, whether Tiberius will accept the *imperium*.²¹ The *imperium proconsulare* was already his, prior to the death of Augustus. The passages of Tacitus and Dio²² demonstrate the *imperium* which was granted for life on the motion of the consuls, which Scaurus noted Tiberius did not veto with his tribunician power. The reference of Tacitus in 13.6 indicates not so much the technical *imperium*, which Tiberius held, but the failure of Tacitus to differentiate between the proconsular *imperium*, the praenomen "Imperator", the *imperium* inherent in the principate, and the *imperium* as indicative of the general administrative powers of the emperor.²³ Tacitus, like the senators, could not differentiate between the administrative and executive functions of the emperor.

It may be that the entreaty of Gallus, that the state be considered an organic whole, is indicative of the general sentiments of the senators. Tacitus may not have understood

the partition of functions; men like Gallus and Arruntius may have understood all too well. However, men such as Haterius and Scaurus more probably were in the majority. Haterius' remark, 'quo usque patieris, Caesar, non adesse caput rei publicae?' is obviously made in ignorance of the fact that Tiberius was, even then, head of state. Scaurus' statement regarding the tribunician veto, seemingly indicating that Tiberius should drop either his *imperium* or tribunician power if he will not head the government, is perhaps naïve.

Suetonius²⁴ contains information which seems to reinforce the theory of senatorial misunderstanding. One senator is said to have remarked: 'aut agat aut desistat.' Another taunts the princeps with 'ceteros, quod polliciti sint tarde praestare, sed ipsum, quod praestet tarde polliceri.' The senators could not fathom the difference between refusing the administration and accepting the principate, or the senators refused to take responsibility for that which they believed to be the proper realm of the princeps. As the creation of Augustus the senate had been satisfied with the form of government which had existed up till the death of their patron. There may not have appeared any necessity to return to the republican forms and the accompanying possibility of instability and civil war.

Again it is noteworthy that Tacitus omits the words which Suetonius inserts at 24.2. Speaking of his assumption of rule, Tiberius accepts 'dum veniam ad id tempus, quo vobis aequum possit videri dare aliquam senectuti meae requiem.'

Tiberius will take on the administration of the state until such time as his old age will convince the senate to relieve him of the greater part of his burden. He is suggesting that at some future date his old age will cause him to become ineffective, and some portion of the administration will have to be shifted onto the senate. There is no evidence that at this point he is making reference to the *imperium*. The lessons of the civil war, and Tiberius' general astuteness would not have allowed him to entertain such an idea. It is the administration he is being forced to accept; it will be the administration he will lay down in future. The principate was his and had been since 10 A.D..²⁵ When Tiberius effectively did lay down the administration, on his retirement to Capri, there was never any hint, from himself or from the senate, that he should resign the principate. It was his retirement to Capri which proved the viability of the separation of administrative and executive functions.

There is excellent proof for the thesis of a separation of functions in the senate meeting of 23, following the death of Drusus. Tiberius, commending the sons of Germanicus to the conscript fathers, addresses Nero and Drusus. 'Ita nati estis, ut bona malaque vestra ad rem publicam pertineant.'²⁶ It would seem that Tiberius is intimating that the two boys, as future rulers of the state, will burden the commonwealth with their faults and raise it with their virtues. In context there can exist little doubt that Tiberius was commending them as emperors. Then, 'magno ea fletu et mox precationibus faustis audita' from the senators, Tiberius adds, 'de reddenda

re publica utque consules seu quis alius regimen suscipere-
rent.'

At first reading, this passage appears to be an attempt to abandon the principate, and return the government to the care of the consuls. Yet, a closer examination reveals the impossibility of such an assumption. The similarities to the accession debate of 14 are striking. Hoping in 14 to persuade the senate to adopt his proposed reforms, Tiberius employed the *libellus* of Augustus. This time he uses the death of Drusus as his pretext, with the hope that, with no viable heir to the imperial dignity, the senate will think twice before refusing to consider some shift in the burdens of the administration. With no heir, or at least no heir capable of shouldering the government as Tiberius had for the past nine years, there would need to be some reappraisal of the senate's position in relation to the principate.

The theory fits well with the structure of Tiberius' speech. The princeps was not about to recommend the two princes to the senate in order to dash their hopes by immediately referring to the senate a motion to abolish the very office to which Nero and Drusus were to succeed.

Whether or not the reforms of Tiberius were effected upon the constitution at this time is uncertain. Tacitus refuses to inform his reader of the outcome, as he did in 14. However, there are certain indications which point to alterations in the existing forms of government. Tacitus marks the ninth year as the turning point in the character of Tiberius. The year 23 also ushers in the era of malicious and

capricious rule, marks the rise of Seianus, and seems to lead to the retirement to Capri a few years later. Nothing can be certain on the transfer of power to the senate, yet the possibility exists that at this juncture there occurred some change in the affairs at Rome.

Senatorial meetings related by the historians are not the only support for the republican 'restoration' of Tiberius. Of greatest importance is the use of the title *princeps senatus*.²⁷ Tiberius, unlike Augustus, did not fill that position. Rather, in order to divide the functions of the senate as much as possible from those of the *princeps*, another, perhaps Gnaeus Piso, was chosen to fill the primacy of the senate. It is possible that the words of Augustus to Tiberius in Tacitus I.13, concerning possible contenders for the principate, are actually a confusion of two ideas. Tacitus may have confused possible aspirants to the supreme authority with contenders for the *principem locum*, or position of *princeps senatus*. Notice both the substitution of the name of Piso in I.13, and I.75 where Piso offers to Tiberius the privilege of voting first, a right which normally belonged to the *princeps senatus*.

The actual title of *princeps* was employed by Tiberius, not in relation to the senate, but the people.²⁸ Under Augustus the title had been combined with that of *princeps senatus*, *Pater patriae*, the *praenomen imperatoris*, the worship of the imperial *genius*, and above all the title "Augustus". The idea of the principate had been the combination, under one man, of ordinary and extraordinary offices, and

the adulatory titles listed above.

Tiberius refused the other titles, with the exception of "Augustus". Not only was the title accepted, but it is evident that it was adopted before the death of Augustus. An inscription from Aemona in Pannonia,²⁹ dating from 13 A.D. reads as follows: (reconstruction in lower case)

imp. caes. divi f. AUGUSTUs pont. max.
 imp. xxi. trib. pot. XXXVII. PATER patriae
 et ti. caesar au GUSTI F. AUGustus pont. max.
 cos. ii. imp. VI. TRIB. POTEST. XV.

Sanctioned or not, the title "Augustus" was one of the implements which could allow Tiberius to retain the principate, without actually entering into the administration of the empire. It allowed the emperor to rule from a plane above that of mortal men, to shun the world's vicissitudes.

Tiberius realized the need for supreme power, without which the state had proven its inability to function smoothly. Yet, as we shall see, Tiberius not only desired to maintain certain Augustan precedents, but certain Republican models, which together were intended to form the nucleus of a conservative, almost reactionary government. Unwittingly, Tacitus may be correct when he states: 'Tiberius cuncta per consules incipiebat, tamquam vetere re publica.'

FOOTNOTES: CHAPTER I

1. Although Augustus' preparations for the succession are generally accepted, an interesting facet may be evidenced by Ehrenberg, "Legatus Augusti et Tiberii?". A dual loyalty for the *legati* would have made the succession much simpler.
2. Hammond, "Res Olim Dissociabiles, Principatus ac Libertas. Liberty under the Early Roman Empire"; cf. Marsh, Reign, p.16.
3. Kampff, "Three Senate Meetings in the Early Principate", p.26. We may easily assume that Rome desired a Republican constitution coupled with imperial control of the army since Actium. The one criterion was that such a system be legally and traditionally correct; v. Marsh, Reign, p.16.
4. Levick, Tiberius the Politician, p.75; Syme, Roman Revolution, p.337.
5. Vell. II 121.
6. V. Beranger, "Diognostic du principat". However, this is primarily a philosophical approach.
7. Syme, Roman Revolution, p.437.
8. Kampff, "Meetings", p.26.
9. Tac. I 7.
10. Charlesworth, "Tiberius and the Death of Augustus".
11. Kampff, "Meetings", p.27; Levick, Tiberius, p.76ff..
12. Furneaux, Annals, vol. I, p.99.
13. For the dates of Tiberius' accession, and of the first senate meetings, v. Wellesley, "The Dies Imperii of Tiberius".
14. Dio LVI 33.4.
15. Tac. I 13.4.
16. Tac. I 11.
17. Dio LVII 2.4.
18. Tac. I 12.
19. Dio LVII 2.6.

20. Tac. I 13.
21. V. Syme, "History or Biography. The Case of Tiberius Caesar", p.485ff..
22. Tac. I 13; Dio LVII 24.1.
23. Lesuisse, "La Nomination de l'empereur et le titre d'imperator".
24. Suet. 24.
25. Garzetti, From Tiberius to the Antonines, p.13.
26. Tac. IV 8.
27. Kuntz, Tiberius and the Roman Constitution, p.44 and n.149.
28. Dio LVII 8.2.
29. CIL III sup. Fasc. 3.10768. v. Kuntz, Tiberius, p.42 for an interpretation.

CHAPTER II: Political Parties

Although there may be considerable objection to the theory of 'party' politics under Tiberius,¹ there is undeniable value in any investigation of the political followings of the chief individuals of the state. In the assessment of senatorial activity, to know the backgrounds and influences of the supporters of Germanicus, Tiberius,² or Seianus will make their attitudes all the clearer.

Marsh,³ in attempting to indicate party compositions, lists the following figures:

	<u>years</u>	<u>consular families</u>	<u>old praetorian families</u>	<u>lesser nobles</u>	<u>/year</u>
9 B.C.-3 A.D.	12	23	2	6	2.58
4-9	6	9	2	11	3.6
10-15	6	13	-	2	2.5
16-19	4	5	2	10	4.25
20-27	8	16	-	4	2.5
28-31	4	11	1	7	4.25
32-37	6	7	1	6	2.3
Totals	46	84	8	46	

Table I. Consular Family Origins, 9 B.C. - A.D.37.

In addition he notes that in 16, while Germanicus was absent from Rome, there were three higher, and three lower nobles attaining the consulship. In 17, while Germanicus was in Rome, there were four lesser nobles raised to the consulship, and in 18, when Germanicus and Tiberius were eponymous consuls, there were again four lesser men elevated to the chief magistracy. However, in 19, when Germanicus had again departed, this time for the East, two higher nobles, and only one lesser were elected. Marsh explains that the figures

indicate that Germanicus drew his support from the lesser nobility whom he promoted, or was allowed to promote while in Rome. Further evidence may be seen in the composition of Germanicus' suite in the East. Three of the foremost companions, Q. Veranius, Q. Servaeus, and P. Vitellius participated in the trial of Piso.⁴ All three were lesser nobles if not new men.⁵

On the other hand, Piso looked for and received help from a much different quarter. He requested aid from L. Arruntius, P. Vinicius, Asinius Gallus, Marcellus Aeserninus, and Sextus Pompeius. All refused. Asinius Gallus and Sextus Pompeius may be connected with Germanicus as possible friends, but not, judging from Piso's request, as political supporters. Piso did find assistance in Manius Lepidus, L. Piso, and Livineius Regulus. Of the first group, which refused Piso's requests, all were of consular families, and only Marcellus must be excepted since he was not a consular himself. Of the group which did lend aid, the first two were consular in descent, the last praetorian. Piso, as a close friend of Tiberius, and an ardent opponent of Germanicus, would have been expected to draw support from the imperial party supporting the princeps, although perhaps not Tiberius personally. Thus, it is noteworthy that those supporters of Germanicus who refrained from active participation in the trial of Piso were either close friends of Tiberius as well, such as Seius Tubero (cos. 18)⁶, or in some way met with disaster, as did P. Suillius Rufus and Titius Sabinus.

It seems natural to associate Germanicus with both lesser nobles and frontier activity. Both were compatible, with warfare offering opportunities for advancement based upon merit rather than family prestige. Ultimately provincial commands went to consulars: Aelius Lamia (cos 3), Nonius Asperenas (cos 6), L. Apronius (cos 8), Poppaeus Sabinus (cos 9), Vibius Postumus (cos 5), Junius Blaesus (cos 10), all of whom owed their advancement to the needs of the imperial service rather than to the standing of their families. All were chosen for merit, elected to the consulship, and immediately following their term, or shortly thereafter, dispatched to their provinces.⁷ All of these individuals were elevated during the most active period of warfare on the Rhine-Danube frontier (4-16) and are part of a brief trend begun by Augustus to advance lesser nobles of worth necessary for the service of the state. So it was this same sort of non-consular, non-elite group which strove for the promotion of Germanicus to further its own ends. It would, on the other hand, be of interest to those who had already attained the consulship, or to those of more illustrious family, to preserve their superior political, administrative, and social status against the incursions of the lesser nobility and new men.⁸

It is of great interest to note that the prosecutors of Piso, P. Vitellius, Q. Servaeus, and Fulcinius Trio, were all involved in the downfall of Seianus as his friends.⁹ This tends to suggest that after the demise of Germanicus, his followers turned to Seianus as best representing the aspira-

tions of lesser nobles, as opposed to the aristocracy of the self-interested status quo.

Thus, during Seianus' zenith (28-31) the number of lesser nobles attaining the consulship rose in proportion with the higher nobility to 7:12, whereas in the preceding eight years the ratio had been only 1:4. As Marsh points out,¹⁰ of the seven lesser men in those later years, Seianus may have had some influence in the elevation of five or six. The words of Tacitus on the consulship, 'ad quem non nisi per Seianum aditus',¹¹ may not have universal application. However, in context, it may well be true that the lesser nobles, such as, in this specific instance, Latinus Latianus or Petilius Rufus, could only entertain realistic hopes for the consulship when they were in some way ingratiated to Seianus.

But who were Seianus' associates? Marsh¹² connects Mam. Aemilius Scaurus¹³ and Cn. Cornelius Lentulus Gaetulicus.¹⁴ Gaetulicus can certainly be ruled out in view of Tiberius' attitude towards him.¹⁵ Ap. Junius Silanus and Calvisius Sabinus were both tried for complicity with Seianus, but were promptly acquitted.¹⁶ Both were of Republican consular families, as were Scaurus and Gaetulicus. L. Apronius, whose son was a friend of Seianus¹⁷ and Fufius Geminus, whose wife was involved with Seianus,¹⁸ have a tenuous connection. Q. Junius Blaesus was the prefect's uncle. We may also connect Tarius Gratianus and Annius Pollio as well as his son Annius Vinicianus, indicted in 32 but never brought to trial.¹⁹

Marsh notes that the extremely high survival rate of the greater nobles after the fall of Seianus (twenty-one consulars, eleven later consulars in 31-41, and at least twenty-two consulars of uncertain decease). Those who did come to trial were acquitted (v. Table 1), with the greatest number of acquittals and suspensions taking place in 32. Gaetulicus and Apronius retained their commands in Germany²⁰ in spite of their close connections with Tiberius' minister.

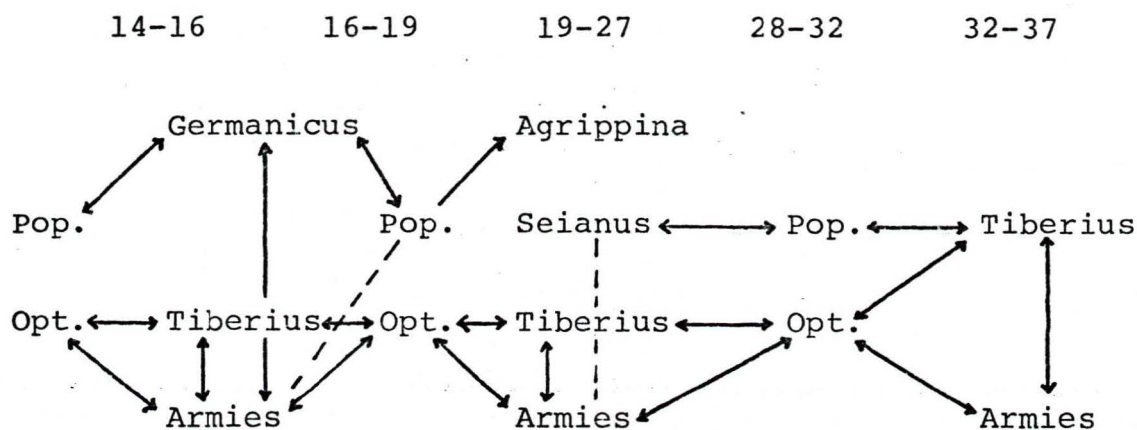
The deaths of Scaurus and Gallus may be linked with the fall of Seianus, but there is sufficient reason to believe that Seianus' fall was more the occasion of their deaths, than it was the cause.²¹ Geminus, Trio, and the Blaesi were intimately involved with Seianus, and cannot be connected either with the general trend of prosecutions, nor with any great consequence.

Therefore, few, if any, pre-eminent men met their ends with Seianus. The most significant of those who did were men such as Latiaris and Servaeus who were only of praetorian classification.

This argument is not in any way intended to support or refute the theory that there was a conspiracy of Seianus, which is not the thesis here put forward. It is intended to indicate briefly who were his real supporters, and where he derived his support. It is clearly evident that a prosecution or persecution of adherents does not have to follow a conspiracy, as with the annihilation of the followers of Germanicus.²²

Marsh, on the basis of his own theories, traces the old

Republican parties, the Optimates and the Populares, through the reign of Tiberius: (my interpretation with additions).



Allen's criticism of Marsh's use of the terms Optimates and Populares²³ is based on the old Republican definitions. However, Marsh seems more to employ the terms to denote the interests of the two groups, rather than to indicate the maintenance of old party rivalries. We might profitably equate the Optimates with self-interest and governmental support; those who had the most to gain by a maintenance of the status quo.²⁴ The Populares may be seen as those who had the most to gain by some shift in the political balance.²⁵ Nor is it excessively useful to refer to 'parties' as personal followings or vice versa. Allen has found it a simple matter to dismiss the party of Seianus as no more than a private effort.²⁶ It is true the 'private effort' disappeared after the death of Seianus, but so did that of Germanicus after his demise. If the ultimate goal of the party was the elevation of its leader to the principate, and the interim benefit the enjoyment of his patronage, surely the only foundation of the party was its leader. The only reason to be-

lieve in continuity was the easy transference of party members from one figure head to another who represented much the same objective. So the party of Germanicus changed to that of Agrippina and her sons, and then to that of Seianus, finally evolving into the party of Gaius.²⁷ But it was necessary for the party to find a suitable leader who might realistically be able to satisfy the members' demands. If there was no likely candidate, or none capable of bestowing the required largesses necessary to keep the party alive, then the party must subside into obscurity until one might be found. The parties of Germanicus, Agrippina, and Seianus were not based upon political philosophy, but upon opposition arising from exclusion. Those who had been disappointed by the princeps, and could not realistically hope for future promotion, were likely to look elsewhere for remuneration. If there were no alternative, there could still be an opposition, inactive or otherwise, but, under the early Imperial system, they were incapable of forwarding their claims or electing representatives. Individuals, once promoted to office, seldom tended to look back to any previous lack of illustriousness. The age of the Gracchi was not to return under Tiberius, who seems to have had some form of tight control over elections.

Thus, it may be incorrect to consider 'followings' as 'parties', or to consider them 'personal followings' of individuals; but rather consider them as 'political followings' of individuals, based not on merit or personality, but on the position of the leader in the imperial hierarchy whether real

or potential.²⁸ We can regard the followings of those directly in the line of succession, or those so close to the imperial family as to exert an equal influence, as being the political 'parties' of the day. Political philosophy, or governmental policy only entered into their ideologies as they affected the self-interests of the membership, as the supporters of Germanicus also supported an aggressive frontier policy.²⁹

Most noteworthy is the hostility between Seianus and Agrippina. In fact, after 19, there was very little which Agrippina had to offer to supporters. Yet, at the same time, as mother of one or other supposed successor to Tiberius, following the death of Drusus, she could be regarded as holding considerable potential power³⁰ which hinged upon the health of an old man. As such, she was one to be courted, if somewhat cautiously. On the other hand, few may have entertained the possibility of Seianus ever reaching the principate. But as long as Tiberius lived, he was most capable of bestowing sufficient benefits to maintain a considerable following of lesser men. In such a way the party of Germanicus could be divided into the party of Agrippina, and that of Seianus, no doubt with some overlap, in order to meet with two different aspirations.

The Optimates were not revolutionaries, but republican aristocrats and imperial *nobiles* drawn to the principate by mutual interest.³¹ The Populares were neither a 'popular' party, nor a reactionary republican force, but a group rallying around a center of power which was conscious of their

disaffection arising from disappointment.³²

If the outside leaders, such as Germanicus or Seianus, derived their support from the lesser nobles and new men, we can easily assume, from our information on the composition of Piso's defence, from the imperial *commendati*, from the prosopographical lists, that the emperor firmly based his power on the conservative, 'Republican' senators. Augustus had created a new elite. That elite, together with the surviving Republican families, became the party of the status quo. It would be that group which, no matter how much it disliked Tiberius as a man, was willing to retain the principate, in order to retain its social and political hold on the empire.³³

The loss of many Republican families during the Civil Wars had forced Augustus to recruit new blood for his aristocracy. There was no such need evident during the reign of Tiberius. By 14 there existed a new aristocracy, composed of Republican and Augustan elements, on which Tiberius could base his power, and did, with only minor deviations, until the end of his reign.

FOOTNOTES: CHAPTER II

1. Allen, "The Political Atmosphere of the Reign of Tiberius".
2. For the most trusted members of the court, v. Crook, Consilium Principis. Imperial Councils and Counsellors from Augustus to Diocletian, esp. his prosopographical lists, and Syme, "Some Friends of the Caesars". In searching for 'friends' of Tiberius, we must take into consideration the time when they could be called such. For example, Gaetulicus (Tac. IV 44; Boddington, "Seianus, Whose Conspiracy?") or Sextus Marius (Tac. IV 36.1; VI 19). The supporters of Tiberius may be correctly seen as those who did not oppose him, or support others. Thus they need not have been *amici* in the general sense.
3. Marsh, "Roman Parties in the Reign of Tiberius", p.235ff..
4. Tac. III 10; 13.
5. Marsh, "Parties", p.238.
6. PIR Seius Strabo.
7. V. relevant entries, PIR.
8. Newbold, "Social Tension at Rome in the Early Years of Tiberius' Reign", p.130ff..
9. Tac. VI 7; V 8; 11; VI 4; 38; Dio LVIII 9 and 25.
10. Marsh, "Parties", p.242.
11. Tac. IV 68.
12. Marsh, "Parties", p.242f..
13. Tac. VI 29.
14. Tac. VI 30.
15. V. esp. Tac. IV 44.
16. VI 9.
17. Dio LVIII 19; PIR Apronius Caesianus.
18. Tac. V 2; IV 12; Dio LVIII 4.
19. Tac. VI 9.
20. Boddington ("Seianus, Whose Conspiracy?"), feels the

downfall of Seianus was more a conspiracy of the higher aristocracy intended to force Tiberius to relinquish his *praefectus*, due to fears of his succession. The commanders of the German legions were in a most advantageous position to realize the threat of Seianus, and to bring about his fall, while generally maintaining their own inviolability. For other works on Seianus, v. the chapter on trials, n.111.

21. Tac. VI 29; IV 71.
22. Which is to say that the prosecutions instituted by Seianus were also, in part, the responsibility of Tiberius.
23. Allen, "Atmosphere", p.3f..
24. Syme, Roman Revolution, p.419f., 514-519; H.S. Jones, CAH X, p.178f.; Allen, "Atmosphere", p.12.
25. Germanicus only incidentally held popular support; v. Yavetz, Plebs and Princeps, p.109f..
26. Allen, "Atmosphere", p.2.
27. Marsh, "Parties", p.241.
28. Allen, "Atmosphere", p.13.
29. Marsh, "Parties", p.240.
30. Cf. Livia.
31. Allen, "Atmosphere", p.13.
32. Perhaps most curious of all the Tiberian parties was that of Agrippa Postumus, and consequently, of Clemens (Tac. II 40.6). A substantial number of works can be mentioned: Shotter, "Julians"; Detweiler, "Historical Perspectives on the Death of Agrippa Postumus"; Jameson, "Augustus and Agrippa Postumus"; Charlesworth, "Tiberius and the Death of Augustus"; Newbold, Tension, p.126ff.; Allen, "The Death of Agrippa Postumus"; etc. If, as Tacitus says, the matter of Clemens' death, and that of Agrippa were kept secret, how can he write so fully on the matter? Cf. Rybert, "Tacitus and the Art of Innuendo", p.384f.. N.B. Dio LVII 3.6: ἀλλ' εἴα τοὺς ἀνθρώπους λογοποιεῖν κτλ. for the story of the murder. V. Mendell, "Dramatic Construction in Tacitus", p.11 for the term *facinus*. Also Marsh, Reign, p.280; Furneaux, Annals, p.21, n.1; Hohl, "Primum Facinus Novi Principatus", pp.350-355; Pappano, "Agrippa Postumus"; and Mogenet, "La Conjuration de Clemens".
33. Syme's statement (Roman Revolution, p.383) that Tiberius

promoted many *novi homines* after A.D.4 does not affect our view of Tiberius' base of support. As mentioned earlier, this was part of an effort to raise men of merit to high position due to the needs of the state. But it was this group of *novi homines* which later became the primary support of the principate. It would seem that once Tiberius had firmly established his base of support, promotion of *novi homines* was reduced to a minimum. For a discussion of the families surrounding the imperial house, v. Syme, Roman Revolution, pp.420-425, 433ff. and p.345 for Tiberius' ability to see merit in individuals.

CHAPTER III: Elections

There is little doubt that Tiberius transferred the elections from the assemblies to the senate.¹ In fact, from the words of Velleius, 'summota e foro seditio, ambitio campo', we know that both elections of greater and lesser magistrates, the *comitia centuriata* meeting in the Campus, the *comitia tributa* in the forum,² were transferred to the fathers.

But did the emperors, and specifically Tiberius, simply appoint (ἀποδεικνύειν) as Dio seems to suggest, without the usual references to the senate (or *comitiae*)? Did Tiberius make reference, informally, to the desires of others? Does the nomination of all the candidates for an office signify control; was the senate allowed to refuse and replace, or even leave an office vacant?

Ultimately, as under the Republic, the election of magistrates depended upon the *auctoritas* of the individuals supporting or opposing the candidate. In retrospect, the emperor's *auctoritas*, allowing him certain privileges, through gradual application, came to be regarded as an extra-legal right of appointment. But the over-riding control of the emperor's *auctoritas* did not interfere with the normal *de iure* process. Rather it was the inevitable result of an observation of the social and remunerative forces which were bound to influence electoral decisions. That is to say, there were rarely, if ever, elections based solely on the merits of the individuals standing for election, or their

patrons. External influences, such as *auctoritas*, bribery, donatives, and political prestige, not to mention physical violence, were considered normal electoral fare.³ The transfer of elections, both major and minor, to the senate, had, or would have had the effect of narrowing and perhaps elevating the base of electoral activity simply by decreasing numbers and increasing the relative wealth and standards of the electorate. The new electorate became a peer group on a par with those who were standing for election.

On the other hand, the statement of Velleius, that Tiberius removed discord from the senate ('*summota discordia curia*') would not seem to fit well with the idea that the senate was allowed freedom to elect. Internal rivalry between powerful factions and individuals would hardly create a tranquil senate. One would therefore be led to assume that, while law provided the senate with the electoral franchise, the right of choosing the candidates to stand for election must, to some degree, have rested elsewhere. Possibly with the *auctoritas* of the emperor.

On the question of vocabulary, there exists a need to define the powers inherent in the words *commendatio*, *suffragatio*, and *nominatio*. It has been suggested that the term *commendatio* came to denote the binding issuance of candidates' names for elections⁴ under Tiberius. Certainly the *Lex de Imperio Vespasiani* differentiates⁵ between *commendatio* and *suffragatio*, the former being the more potent.

If *suffragatio* can be defined as 'canvassing', a demonstration of personal support for a candidate, then there is

perhaps some reason to believe that the transition to a written list of candidates by Augustus, starting in 8, formed the nucleus of *commendatio*.⁶ *Suffragatio* was an egalitarian procedure, as it could be opposed; *commendatio* was superior, being neither arguable, nor open to the ordinary *suffragator*. *Commendatio* was not dependent upon influence, personality, or presence, only upon the *auctoritas* of the *commendator*.⁷

However, that *commendatio* was far from legally binding is supported by a complete lack of evidence of a contrary nature. Rather, any duress placed on the senate to vote for the emperor's candidates formed a *de facto* necessary choice. Levick questions the relative validity of such a proposition by viewing Annals II 51 as an example of the possible opposition which an imperial candidate could encounter. But Haterius Agrippa was not an imperial candidate, and it is certain that Tiberius did not voice support for his praetorship. It had been the sons of Tiberius, Germanicus and Drusus, who supported him. There is no mention of *commendatio*, but an intimation of *suffragatio*. In light of the senate's attitude to Tiberius, and the emperor's attitude towards the laws, it appears that the senate was torn more between Tiberius and the legal right, and Tiberius' sons, rather than between the law and Tiberius' *commendatio*. A much different result could have been expected from the senate's vote if there had been specific imperial support in the form of *commendatio* or *suffragatio*. However, it shows well Levick's contention that the *auctoritas* of the emperor

was not automatically conferred on, or inherent in, his supposed successors.

The real and evident discrepancy seems to lie in time and *auctoritas*. With time, when sufficient *auctoritas* had been gained by the emperor, there could no longer be maintained a distinction between *suffragatio* and *commendatio*. The forces which allowed the pre-eminence of imperial support militated against a differentiation between the two, at least in final effect. The activities of the emperor necessitated *commendatio* as a simpler alternative. Why should the emperor appear personally to speak for a candidate when a brief note read to the senate by the quaestor would suffice? The brief and extended absences of Tiberius, or for that matter Augustus, would also tend to reinforce the benefits of *commendatio*.

Yet, the notion of *commendatio* must not be regarded as a deliberate attempt to remove power from the senate. Because of the fact that the emperor was pre-eminent, and that there were candidates for magistracies who were of a more acceptable nature to the emperor, election was assured certain individuals.

There seems in reality to have been no specific existence of *nominatio*. It would instead be best understood as a presentation of names, at any point in the electoral procedure,⁸ which did not actually denote a particular act.⁹ Levick, through examples, demonstrates that the use of the word *nominatio* and its variants alter in the sources in accor-

dance with the context, and unlike *commendatio* and *suffragatio*, did not have sufficient independence or legal distinction to stand alone.

This would tend to indicate that the senate was not legally bound to follow the nominator's advice, although we may easily assume that either *nominatio* is a weaker literary form substituted for one or other of the alternatives, or that, while it was an extra-legal term, it nonetheless was backed by the emperor's *auctoritas*.¹⁰

As Levick admits, whether or not the emperor possessed any legally binding rights in the prior selection of candidates, his own selection was regarded as undeniable. Dio asserts¹¹ that Tiberius selected as many candidates for non-consular offices as there were vacancies, and referred them to the senate. The use of the term ἐξελέγετο indicates that it was the emperor who selected, rather than the hopeful candidates who canvassed. In effect, there was no need, or benefit, in the hopeful candidate making known his desire to the emperor, who chose only those whom he decided were suited to the task. Tacitus seems to be somewhat uncertain as to the methods employed by Tiberius in selecting candidates for nomination¹² but is referring to the consular elections, which may have differed somewhat from the choice of lesser magistrates.

It would seem obvious that the emperor's assistance was invaluable to those standing for election, and indeed very possible that all those who were candidates were so only with the princeps' approval. What is uncertain is how many of

those desiring offices were refused support, and therefore effectively denied the ability to compete. If candidates made supplication to the emperor, how many were declined? Did the emperor approve the candidacies of more than the number necessary to fill all the vacancies, but actually support or commend a number corresponding to the places to be filled?

Often, one learns, there were disappointed candidates¹³ under Augustus, but there are no such examples under Tiberius, when none of those running for office was defeated.¹⁴ It would seem that one is to follow Dio's statement concerning the lesser magistracies, and believe that Tiberius did indeed appoint (ἐξελέγετο) these lesser magistrates.

Concerning the consular elections, Tacitus provides the only source when he states, 'speciosa verbis, re inania aut subdola, quantoque maiore libertatis imagine tegebantur, tanto eruptura ad infensus servitium'.¹⁵ This expression of the methods which Tiberius employed in governing the elections tends to give the final line of Annals I a cynicism indicating indirect, yet incomplete control on the emperor's part. The separation which Levick¹⁶ views in the descriptions of the elections accorded by Tacitus and Dio does not, however, indicate a separation or differentiation in their final effect. There may never have been consular *candidati Caesaris*, nor may *commendatio* or *suffragatio* have been employed, yet it is evident from the sources and from the consular lists, that, when there was some imperial interest, the choice of consuls belonged to Tiberius. There is definite evidence for the interference of Tiberius and his minister Seianus.¹⁷ The tone of the

sources indicates *commendatio* and *suffragatio*, even if there was as yet no clearly defined legal distinction as mentioned in the *Lex de Imperio*.¹⁸

In lieu of any competition for the consulship, if Tiberius nominated both the candidates, the need for *suffragatio* or *commendatio* was vitiated. If Tiberius chose to support or allow more than the desired number, it was in order to allow the senate some prerogative in circumstances where he could not himself decide, or did not wish to offend any of the candidates. But in this instance also, no *commendatio* or *suffragatio* was demanded: it was not Tiberius' own choice which was to be exercised. If Tiberius had no particular interest, it would again be safe to assume that he would refrain from commending only one candidate. ILS 944 will not necessarily imply *commendatio* over another individual, but simply implied *commendatio* in conjunction with all others.

The ultimate point to be made is that, whether or not Tiberius employed processes known as *commendatio*, *suffragatio*, or even *nominatio*, if these did exist as separable legal or quasi-legal terms, nonetheless, the emperor's *auctoritas* was such that, if he chose to interfere with the electoral process at any point, the evidence assumes that his advice was unquestionable and invariably followed.¹⁹

The only facet in which the senate exercised any control, and that very indirectly, was in the 'due' paid by the emperor to the nobles, who, with the practical abolition of the *cursus*, had to be appeased.

Contrary to Marsh,²⁰ who believes Tiberius was warning

candidates not to canvass 'ne ambitu comitia turbarent',²¹ and that he promised that they would have a chance to express their desires in the senate, Shotter²² holds that Tiberius was promising his own help, by intimating his own preferences to the most influential senators. Arguing mostly on linguistic grounds, Shotter states that the senate was truly allowed some freedom in voting because, 'posse et alios profiteri, si gratiae aut meritis confiderent', an opportunity in which his opinion was utilized.²³ After all, Tacitus follows this statement with 'speciosa' or 'plausible'. Shotter chooses to ignore the statements that the consular elections were 're inania aut subdola', no matter how we translate it, and were elections 'libertatis imagine'. Tacitus is speaking here as if he possesses some internal knowledge based upon his research: he knows that behind seemingly free elections, the facts and the results indicate a false confidence. Perhaps this is because Tiberius only controlled elections when he wished, or that at any time the elections were bound to run in favor of the princeps.

As Marsh notes, although it would seem that at other times the senate was left free to elect the consuls from among the candidates, Tiberius' attempts to avoid party factionalism would severely dampen any struggles within the *curia*. The elections generally were indicated as calm and orderly affairs.²⁴ On the one hand, Tiberius attempted to make it clear whom he favored, either by regulating those standing for elections, or by indicating his choice informally, and on the other hand, he tried to make his interference as subtle

and inoffensive as possible.

That the senate itself was aware of the futility of the electoral process, both in the *comitia* and the *curia*, is evident from the proposal of Asinius Gallus²⁵ that the magistrates be elected for five years in advance, that Tiberius nominate the twelve praetors for each year, and that *legati legionum* who were not yet praetors should be elected forthwith. Certainly the suggestion hints at a loss of prestige for the senate, including a complete loss of control over praetorian elections. Presumably the consulship was also to hinge on the emperor's whims, as the following speech of Tiberius based upon the powers of the consul-designate indicates. Such a proposal would cause the senate to cease any pretence of free elections, a point against which Tiberius raised no objection. Whether or not it would cause a greater independence of the magistrates is a matter of conjecture. It well might be regarded as giving great affront to the higher families of the state, who saw their opportunities fading further and further into the future. Together, independent consuls-designate and disillusioned families might well be more apt to scheme against the emperor. Knowingly, Tiberius refused Gallus' offer.

Concerning the praetorian elections, one is left with the difficulty of interpreting the words of Tacitus: 'candidatos praeturae duodecim nominavit, numerum ab Augusto traditum et hortante senatu ut augetet, iure iurando obstrinxit se non excessurum',²⁶ and 'moderante Tiberio ne plures quam quattuor candidatos commendaret sine repulsa et ambitu designandos'.²⁷

The questions that arise from such a pair of statements are three-fold: was the senate asking for more nominees or more praetorships; were there more than twelve praetorships, and were the *commendati* synonymous with four of the *nominati*? Without entering into a considerable discussion, here are a few hypotheses. Firstly, we know from Dio²⁸ that the number of praetors under Tiberius could exceed twelve; one must therefore assume that Tiberius was not necessarily referring to the offices when he swore an oath by Augustus not to exceed the magical number twelve. It would make more sense to see Tiberius' refusal as an attempt to maintain the number of nominees handed down by Augustus; a number which would not necessarily correspond to the number of offices. But we know from passages in Velleius²⁹ and Tacitus³⁰ that there was some degree of competition involved in the elections. At the same time, if we consider the extreme servility of the senate at this moment,³¹ then it is perhaps impossible to think of any of Tiberius' candidates being rejected. The *commendati* are then best thought of as part of the *nominati*; that there were four *commendati*, and eight uncommended *nominati*. If we assume that there may have been more than twelve praetorships, but only twelve *candidati Caesaris*, then the senate was free to nominate and elect some *privati* to the remaining seats. Thus there existed two forms of competition: the senate's candidates competed among themselves for the remaining seats, and in appearance, with the *nominati*. If this is the case, then the senate, in its servility, was asking

for more imperial nominees, to avoid having to take responsibility for their own candidates. In this instance, as in others,³² the senate wished Tiberius to take all the credit, and itself none of the blame. We may then very tentatively assume that Tiberius did leave some freedom of election to the senate.

Gallus' proposal³³ that Tiberius select magistrates five years in advance, can be understood as a direct trespass on the *arcana imperii*.³⁴ If Tiberius had been forced to nominate magistrates five years in advance, the *arcenum*, which was the grooming of unwitting youths for future high office through the vigintivirate, would have either met with a dead end, or have ceased to be an *arcenum*.³⁵ With a five-year interval, there would have been sufficient time to play on the loyalties of candidates, which was just what the *arcana* were intended to prevent.

Gallus' second proposal, that the legionary *legati* be made praetors seems a direct criticism of Tiberius' employment of that position. Tiberius had refused to nominate more than twelve for the praetorship;³⁶ if he were forced to appoint all of the *legati* to praetorian status, he would be severely restricted in his choice of representatives, and it would then be public knowledge that every legate would be praetor. Again magistrates would be open to interference.

It is possible that Shotter is right³⁷ in assuming that the senate was in no way enthusiastic about Gallus' last suggestion. If the *legati*, often men advanced in an extraordinary way, were automatically to become praetors, many of the

positions expected from an already confounded *cursus*^{37a} would become the sole prerogative of men who lacked the experience and refinement of previous office: the hopes of many would be shattered.

With some discernment, Lacey³⁸ sees the attempts at reform and the attitude of Tiberius towards the elections as another attempt to give the senate a greater share in responsibility, although both Lacey's and Tiberius' arguments are somewhat vague. There was an attempt by Tiberius to improve the argumentative, conflicting attitude of the senate, to maintain his own *arcana* and patron-benefits, and above all to provide for a workable, honest, amicable, and skilled government, far removed from any possibility of civil strife. Yet this was a position which could be maintained only by his own direct control of the greater portion of the elected officials.

Astin³⁹ posits the other alternative: that the twelve referred to in Annales I 4 concerns the number of praetorships, and that the twelve were those selected by the senate. The senate was making protestation for more praetorships, not more candidates: but at what point do the four *commendati* enter? Were the *commendati* to go to the *comitia* for ratification? Evidence is that the *comitia* had no real say, so why would Tiberius bother commending candidates to so weak a body? If the *commendati* were named with the *nominati* or after, then we must assume that commendation preceded election. Thus as Tacitus has it: 1st. nomination

2nd. commendation

3rd. election

4th. ratification by *comitia*.

Nominatio may not be a precise term, but there is no reason to translate it as 'named as having been chosen' any more than as 'named as candidates' or simply 'nominated'. To Astin, the emperor elected four, the senate eight praetors without direct interference. But neither Augustus, nor Tiberius was about to leave the elections to chance when the transition from one *princeps* to another was being tried for the first time. Even if Tiberius was sincere in his refusal of the principate, his desire to have magistrates in sympathy would have been sufficient reason for him to intervene in the election to a greater extent than Astin suggests. Although there may be reason to accept Astin's suggestion, his very lack of support, from either the primary or secondary sources leaves one in doubt. Certainly the words of Velleius⁴⁰ do not seem to support overly free elections, nor do those of Tacitus mentioned above; only the semblance of freedom, or some freedom coupled with considerable restriction can be at all accepted.

The emperor himself seems to have exercised a minimal interference through patronage and influence. Yet the elections, even if Tiberius had no direct stake, always produced magistrates who do not seem to have been in conflict with the emperor. The elections, by their outcomes, indicate a desire on the part of the emperor to maintain a working relationship with the magistrates in law and government which Tiberius' position as *princeps* demanded.

Tiberius, by his consistent refusal to increase his own power at the expense of the senate and the electoral process, showed his unwillingness to interfere in the normal operations which the Republic had bequeathed. The transfer of elections may be regarded as a part of Tiberius' intention both to retain the Republican system, and yet to remove the consequent popular and party rivalries, factionalism, and violence which had been the standard result since the Sullan restoration. Nor does Tiberius' interference have a true aura of autocracy. Tiberius, unlike Caesar, was not granted an extraordinary right of appointment. Rather, seeing the consistently favorable results of elections, one must ascribe Tiberius' interference to his supreme *auctoritas*. Republican models were followed throughout the reign, but those models demanded that the princeps possess the ability to influence, directly or indirectly, the outcome of all electoral activity.

FOOTNOTES: CHAPTER III

1. Tac. I 15.1; Vell. II 126.2; Dio LVIII 20.3-4.
2. V. Woodman, "Questions of Date, Genre, and Style in Velleius: Some Literary Answers", p.293ff.; Tac. I 15.1; Shotter, "Elections", p.323 and n.3; Lacey, "*Nominatio* and the Elections under Tiberius", p.172.
3. Vell. II 126.2.
4. Levick, "*Commendatio, Suffragatio, and Nominatio*", p.210; Lesuisse, "Tacite et la lex de imperio des premiers empereurs romains".
5. ILS 244, a lex rogata.
6. v. Dio LV 34.2; for *suffragatio* Tac. III 19.
7. Note the precedent of Caesar who, in 44 B.C., was given the right to nominate one-half of the magistrates. He wrote to the tribes saying *commendo*, not *suffragor*, for he was not present to canvass. V. BG VIII 50.
8. V. Astin, "'Nominare' in Accounts of Elections in the Early Principate"; Lacey, "*Nominatio*"; Shotter, "Elections", p.328ff..
9. Levick, "*Commendatio*", p.221.
10. Tac. VI 45; IV 16; III 35; I 19; II 36; I 81; Plin. Ep. iii 20.5; Suet. Claud. 22.
11. Dio LVIII 20.3.
12. Tac. I 81.
13. Jones, "Elections under Augustus", p.19f..
14. Tac. XIV 28; Plin. Ep. ii 9; iv 6; Suet. Vesp. 2; Plin. Ep. vi 19.4; ii 20; iv 25. On bribery, cf. Dio LVIII 20.3; LIX 20.4.
15. Tac. I 71 fin.
16. Levick, "*Commendatio*", p.226.
17. ILS 944; Tac. III 48; 75; VI 39; 68.
18. ILS 944.
19. V. Dio LIII 21.6 which refers to the reign of Augustus, but seems to be indicative of Tiberius' reign.

20. Marsh, Reign, p.301.
21. Tac. I 81.
22. Shotter, "Elections", p.331.
23. ibid., p.332.
24. Vell. II 126.2; cf. Dio LVIII 20.4.
25. Tac. II 36; Marsh, Reign, p.302f..
26. Tac. I 14f..
27. Tac. I 15.2
28. Dio LVIII 20.4f.; cf. Dig. I 2.32; Shotter, "Elections", p.325; Tac. II 36.
29. Vell. II 126.2.
30. Tac. I 15.2.
31. Tac. I 12; 7; Shotter, "Elections", p.323.
32. The election of Junius Blaesus, etc..
33. Tac. II 36.
34. Cf. the *arcana domus* thought best hidden by Sallustius Crispus (Tac. I.6).
35. Birley, "Senators in the Emperor's Service", p.201.
36. Tac. I 15.2.
37. Shotter, "Elections", p.328.
- 37a. On the imperial *cursus*, v. Birley, "Senators"; McAlindon, "Entry to the Senate in the Early Empire"; Walton, "Oriental Senators in the Service of Rome"; and also White, "Procurator Augusti", for the alternatives to the senatorial *cursus* (esp. pp.11ff.).
38. Lacey, "*Nominatio*", p.175.
39. Astin, "'Nominare'".
40. Vell. II 124.4.

CHAPTER IV: The Provinces

Syme states that Tiberius encroached alarmingly upon the senate's sphere of authority in the public provinces,¹ citing as evidence² the refusal of the emperor to permit the replacement of proconsuls in Asia and Africa,³ and the ceding of Achaia and Macedonia to the imperial province of Moesia.⁴ But it must be asked whether Tiberius truly did usurp the functions of the senate, and perhaps more importantly whether Tiberius had the authority to function within the senatorial provinces.

In general, the most frequent criticism of Tiberius' provincial policy is his consistent objection to touring the provinces.⁵ Yet we know from his early history that the emperor was not unfamiliar with the composition of the empire, having visited nearly all the provinces in his early military and diplomatic careers.

The most curious problem is involved in Tiberius' detention in Rome of the *legati*, L. Arruntius,⁶ destined for Spain, and L. Aelius Lamia,⁷ headed for Syria. If Tiberius held them in Rome, as the critics postulate, simply because of imperial suspicions, how can we explain why they were appointed by the emperor in the first instance, and, if they were such a burden, why had they been appointed to such powerful provinces, and retained in office until their 'decumum annum'? There may not be a rational explanation for their detention, but simple suspicion on Tiberius' part, uncomplicated by any other cause, cannot justify the emperor's actions as they are reported.

Tacitus has found fault with Tiberius for his refusal to

involve the senate in the wars against the mountain tribes of Thrace, and in the revolt of Julius Florus and Julius Sacrovir.⁸ But the army was an imperial responsibility,⁹ Gaul an imperial province, and Thrace a pair of client kingdoms.¹⁰ The senate did not need to be involved, and even had it been, it did not have the prerequisite authority to act within imperial spheres.

On the legal side of provincial administration, Tiberius made it possible to charge officials returning from their provinces under the Lex Iulia and Lex Fabia, both of which encompassed adultery.¹¹ Although this may be seen as a further opportunity for informers, there was actually very little use made of the expanded law.

It would appear that the penalties of exile stipulated by the Lex Cincia¹² for *repetundae* continued into the reign of Tiberius, although there do not seem to be any sentences which correspond to the Augustan precedent.¹³ The penalty of *infamia*, including the forfeiture of senatorial and priestly dignity,¹⁴ was not employed in cases of maladministration until the trial of Cadius Rufus,¹⁵ proconsul of Bithynia in 49. Because, however, a loss of the source material, especially in Tacitus, may hide cases the details of which will never be known, there is no justification in denying the existence of *infamia* in earlier years. Perhaps there is a suggestion that Tiberius did not think it a suitable penalty for maladministration: perhaps there was never a chance to employ it.¹⁶ Of nine known results for such trials, four ended in suicide, one was acquitted, and only two have definite sentences: *relegatio* through *aquae et ignis interdictio* for Silanus in 22, and *deportatio* for

Serenus in 23, both sentences being harsher than *infamia*. In fact, *infamia*, unlike the varied forms of exile, seems to have been a reversible process,¹⁷ allowing for a complete restoration of the convicted individual.

Brunt notes¹⁸ that the charges of *repetundae* against Granius Marcellus were referred to the *recuperatores*,¹⁹ but it is possible that because of the lack of a criminal sentence in the sources, there was no condemnation.²⁰ These *recuperatores* constituted a new court involved in the civil aspects of malversation of funds, but there is no evidence of a substantial nature to support proof of a definite capacity as either an established constitutional court, or as a collection/distribution agency under Tiberius. Indeed, the *recuperatores* may not have acted after 22 because of the senate's activity in all provincial cases.²¹ Again, as Brunt points out, the type of individuals brought before the senate, and the senate and emperor's discretion in sentencing caused some natural distortion of the law governing provincial offences. But that variation should be the case is itself provided for by the law: 'mitigare vel intendere leges'.²²

With regard to the rights of the provinces, the SC Calvisianum of 4 B.C. established the right of provincials to prefer capital charges against ex-governors. Yet, no provincial administrator was ever convicted of a capital charge under Tiberius, or put to death. Whether or not the number of suicides or unknown cases has any bearing on the known results is a matter of some speculation. It is known that few executions were ordered under Tiberius, and that the greatest number fol-

lowed the fall of Seianus. From 14 until 29 there are only two executions on record, the one of Clutorius Priscus and the other of Sabinus. The latter may involve some confusion between the sources, where the execution of Sabinus' slave, referred to by Pliny, may be mistaken as that of the master.²³

The known cases against provincial administrators are consistent with the trend to pass sentences of exile in its three forms: *relegatio*, i.e., banishment from a place - relegation to a place - and *deportatio* to an island. But the distinction of *deportatio* as involving necessary confiscation²⁴ does not appear to have been consistently employed. The later jurists state that *deportatio* developed from *aquae et ignis interdictio*, yet Silanus was put under interdict and relegated to an island.²⁵ There may be an imprecise use of terminology, or the conviction and resulting sentence may have been based on uncertain charges. The only other example, that of Serenus, correctly ended in deportation to an island, but did not involve confiscation. But again the charge was probably not *repetundae*, but *vis publica*.²⁶ In many cases the charge of mismanagement does not seem to have been the real gravamen of the prosecution.²⁷

Whether or not the provincial administration of Tiberius was beneficial, as Tacitus concedes, certainly the emperor was not willing for a great number of individuals to enjoy the status of *legati*, and the ensuing control of the armed forces. Of nine governors appointed, there is a total tenure of 105 years, with an average of eleven and one-half years.²⁸ This procedure went far in restricting the jurisdiction of the senate, insofar as it effectively excluded the senate from any

direct or indirect contact with the armed forces. Similarly, Tiberius interfered with the tenure of senatorial governors: P. Petronius was retained as proconsul in Asia *extra sortem* for five years, and M. Silanus, governor of Africa, was held over from 32 until 38.

If one grants that Tiberius held a superior power in Rome, and in his own imperial provinces, then one is left with the matter of his extension of control to the senatorial provinces. What, if any, was the legal justification for his direct interference in those territories? Did Tiberius in fact possess a *maius imperium* as some would have one believe?²⁹

Dio, speaking of Augustus' grant from the senate in 23 B.C., states: ἐν τῷ βηηκόῳ τὸ πλεῖον τῶν ἐκασταχόθι ἀρχόντων ἐέτρεψεν,³⁰ and elsewhere: ἐντολὰς τέ τινας καὶ τοῖς ἐπιτρόποις καὶ τοῖς ἀνθυπάτοις τοῖς τε ἀντιστρατήγοις δίδωσιν, ὅπως ἐπὶ ῥητοῖς ἰσχύειν ἐπέτρεψεν,³¹ and that the governors chose their *legati* subject to the emperor's approval.³² Ulpian adds weight to the argument by stating that '*maius imperium in ea provincia habet omnibus post principem*'.³³

But Ulpian was writing during the reign of the Severi, as was Dio, and after the formulation of the *Lex de imperio Vespasiani*.³⁴ Moreover, Dio has been charged with stretching the truth, or perhaps even inventing laws for the early empire in order to explain later fact, and to fill out his own lack of information.³⁵

McFayden argues that in practice the rule of Tiberius rested less on the laws than on *auctoritas* and the servility

of the senate and magistrates, as well as the realization that the emperor was too powerful to oppose even if the legal possibility existed.³⁶ While the Senate was servile, even in opposition to Tiberius' wishes, it is difficult to imagine any independence at all within the public provinces, even if he had had a legal right and had held a *maius imperium*.³⁷

Most indicative of the powers of Augustus and Tiberius in relation to the public provinces are two points, one positive, the other negative. In the *Res Gestae* Augustus specifically states: 'potestas autem nihilo amplius habui quam qui fuerunt mihi quoque in magistratu conlegae',³⁸ and there is the fact that only Ulpian and Dio support a *maius imperium*, while no other author argues for its existence. In fact, other authors, and Dio himself, seem to exclude the existence of any sort of legal *maius imperium* by implication,³⁹ by demonstrating the way in which the emperor 'mandated' control of the public provinces to the senate.

Instances of imperial interference are at best weak examples of a use of higher *imperium*. Especially noteworthy is the fact that, while Augustus appropriated the salutations of Tiberius, C. Caesar, and Germanicus, who operated within imperial provinces, he did not do so for African proconsuls.⁴⁰ Nor did Tiberius appropriate the salutation of Blaesus, taking only that last which he received in Germany in 16 B.C.⁴¹ For the reign of Tiberius, the salutation of Blaesus was the only one to be awarded.

Reinforcing the *imperium* of the proconsul over the emperor is the dispatch of Sempronius Gracchus in exile on an African

island. The execution was carried out through the proconsul, not directly through the emperor.⁴²

Perhaps most indicative of all is the passage in Tacitus: 'Caesar post res a Blaeso gestas, quasi nullis iam in Africa hostibus, reportari nonam legionem iusserat nec pro consule eius anni P. Dolabella retinere ausus erat, iussa principis magis quam incerta belli metuens'.⁴³ Tacitus' understanding is clearly that the proconsul had the right to exercise his authority within his province contrary or superior to that of the princeps. Tacitus correctly assesses the situation: Dolabella may have had the legal right, but Tiberius had all the practical ability. Dolabella, like the senate, was governed more by servility and apprehension than by legal procedure.

However, Tiberius did not interfere directly in the senate's management of Africa, using instead his power of *relatio*, to call to the senate's attention the incursions of Tacfarinas.⁴⁴ McFayden points out that when the senate's servility is taken into account it is most surprising the senators did not entrust the African war to the emperor.⁴⁵ Rather it must be assumed that Tiberius lacked the legal right to conduct a war within a public province, especially when that province was itself armed.⁴⁶

The advice of Tiberius to Blaesus on his way to Africa⁴⁷ cannot be reliably viewed as imperial interference. It is possible to suggest that the episode, although placed in the year 22, may be referred back to 21, when Blaesus was still in Italy preparing his expedition. If this is the case, then

Tiberius, as consul for the year, had every right to suggest, or even dictate to the proconsul.⁴⁸ Marsh seems reasonable in ignoring the point, feeling that it is 'doubtful if we can attribute to him [Tiberius], except indirectly, any share in the internal affairs of the province [Africa]'.⁴⁹

Another event often quoted as an example of imperial intervention is the award by Tiberius of the civic crown to one of Apronius' soldiers. Apronius himself had seen fit to grant only the collar and spear.⁵⁰ Certainly Apronius had the right to reward a soldier of the African legion, but otherwise all honors were conferred by the emperor, as commander of the armed provinces.⁵¹ Yet, if the IX Hispana, from the imperial province of Pannonia had been en route to Africa in 20⁵² and had perhaps reached Africa in the same year, there exists the possibility that the soldier in question, Helvius Rufus, was of that legion, and perhaps more under the command of the emperor than the proconsul. Tiberius may have possessed no right within the province, but there may have been some overlap in the command of the army.⁵³ Even so, if Rufus were not of the ninth legion, then the emperor's grant of the *corona civica* may be seen as an extension of his right to assign major awards to all the legions, not excepting the African. It is at most a minor case of infringement.⁵⁴

To a great extent one must rule out overt acts of interference on the part of the princeps. Four of the governors of Africa were proven *amici principis*: Dolabella, Blaesus, Apronius, and Marsus.⁵⁵ One must allow for what must, to a great extent, have been a personal level of communication, and

one which would have escaped general attention.⁵⁶ Much the same situation existed in Asia with the *amici* Lepidus, Petronius, and Secundus.⁵⁷

In general, the interference of Tiberius in the senatorial provinces was of a benign or necessary nature, such as the money and exemptions given to the devastated cities of Asia,⁵⁸ or the residence of the procurator for the management of the imperial estates and collection of taxes for the imperial *fiscus*.⁵⁹

Although information of an essential nature is missing for the reign of Tiberius, later events may be taken to refer back to his rule. So one may view Claudius' reorganization of Cyrenaica. Because of increasing infringement of private estates on public land, Claudius sent out a commissioner to investigate.⁶⁰ But the commissioner, for dispossessing many of land which they had held for generations, was prosecuted under Nero, on a charge of abuse of power. The court, in this case the senate, refused the case, arguing that it had no means of knowing what had been Claudius' instructions.⁶¹ In this relegation of the emperor's *cognitio*, there is perhaps argument that he had no right to pass judgement in such a case, for Cyrenaica was a public province. Yet both the senate and Nero agreed that the princeps' agent cannot be prosecuted if he is following the emperor's instructions, and that, although there may have been some illegal interference by Claudius' agent in adjudicating within a senatorial province, the fact that he was operating under imperial auspices was sufficient to sanction his actions. Even though the emperor

lacked the constitutional right to interfere in Cyrenaica, his position as semi-divine mentor of the empire, his *auctoritas*, was justification for his presence.⁶²

Tiberius may not have had a legal right of interference in the public provinces. He did not need it. He had the provinces well under the control of his *amici*, he had the armed force, and he had the servility of the senate. In fact, there is no certain instance of a proconsul opposing the princeps, no test case, as it were. It is impossible to state how Tiberius would have dealt with blatant opposition. His options were these: assertion of his authority through precedent, legal right, or a constitutional show of force; or reliance more on his own *auctoritas* and *potestas*.⁶³

FOOTNOTES: CHAPTER IV

1. I would direct the reader to Church and Broadribb's 1877 edition of the Annals, pp.380-383 for a quick and simple summary of the provinces in the reign of Tiberius. Although somewhat outdated, it appears to be the only inventory of its kind which offers such ready access.
2. Syme, Tacitus vol. I, p.441. For a more lenient view, v. Alföldy, "La Politique provinciale de Tibère".
3. Dio, LVIII 23.5. M. Junius Silanus (cos 19) in Af. ILS 6236, and P. Petronius (suff 19) in Asia PIR¹, p.198.
4. Tac. I 76.2; 80.1.
5. Tac. IV 4.2.
6. Dio LVIII 8.3; Tac. VI 27.3.
7. Tac. VI 27.1.
8. Respectively IV 46-51 and III 40-47.
9. I tend to oppose Roger's thesis of imperial-senatorial co-operation in military affairs. V. "Tiberius' Reversal of an Augustan Policy".
10. Note the senate's position in foreign affairs: Armenia and Parthia; Tac. VI 31-37; 41-44; Suet. 41, 66; Dio LVIII 26.1ff.; Plin. NH xv 183; Jos. Ant. XVIII 96-105; the trial of Rescuporis; Tac. II 67. The great majority of foreign contacts were carried out by imperial agents, such as the *legati* or *praefecti*, because the imperial provinces ringed the empire.
11. Dig. XLVIII 5.39.10.
12. A fourfold penalty: Dio LIV 18. The SC Calvisianum of 4 B.C. set up senatorial jurisdiction for *repetundae* with simple condemnation.
13. There exists insufficient evidence to support any alteration. Cf. Rogers, CTLT p.64 for Tiberius' adherence to the dictates of Augustus. It is of note that for eleven maladministration trials during the reign, three were for *legati*, two for *procuratores*, and five were for proconsuls. This excludes the dubious trials of Julius Sabinus and Turdus (Sen. Controv. IX 4.19-21). Thus five out of eleven were for the emperor's own appointees, of which all five were convicted. V. Brunt, "Charges of Provincial Maladministration under the Early Principate".
14. Dig. I 9.2; XXII 5.15 (contra 13); Plin. Ep. ii 2.12.

15. Tac. XII 22; Hist. I 77.
16. *Infamia* was employed in the case of Gallio in 32. Tac. VI. 3.1-3; Dio LVIII 8.3f..
17. Cf. Rufus' restoration in 69 and Varus' during the reign of Nero.
18. Brunt, "Maladministration", p.199.
19. Tac. I 74.
20. Jones, The Criminal Courts of the Roman Republic and Principate, p.92; Strachan-Davidson, Problems of the Roman Criminal Law, pp.216-224; Rogers, CTLT, p.10f..
21. Including not only the senators, but the *equites* as well; cf. Lucius Capito, *procurator* of Asia in 23, and Mela: Tac. IV 15, and Pliny, NH xix 110. Also Suet. 30 for the case of the *praefectus alae* forced to plead before the senate *de vi et rapinis*.
22. Plin. Ep. iv 9.17; Tac. III 68.
23. Cf. Tac. IV 17.4; 18.1; 19.1; 68-70; VI 4; Dio LVIII 1.1b-3; Plin. NH viii 145.
24. v. Mommsen, Strafrecht V ch. 5, 7, 10.
25. Tac. III 66-69.
26. Tac. IV 13; 28-30.
27. Brunt, "Maladministration", p.203.
28. Sabinus 25 years, Dollabella 7, Gaetulicus 10, Gratus 11, Labeo 8, Pilate 10, Apronius 10, Silius 8, and in Egypt Galerius 16.
29. Jones, "The Imperium of Augustus", p.117; "Imperial and Senatorial Jurisdiction in the Early Principate", p.78; McFayden, "The Princeps and the Senatorial Provinces", p.34, n.1.
30. Dio LIII 32.5.
31. Dio LIII 15.4.
32. Dio LIII 14.7.
33. Dig. I 16.8.
34. v. Lesuisse, "Tacite et la Lex de Imperio des premiers empereurs romains", pp.157-165, who argues for an investiture 'multiplicity' evolving into the 'unity' of the Lex de imperio.

35. McFayden, "Princeps", p.35, n.4.
36. In referring to servility, it is interesting to note that opposition to Tiberius was always of a trifling nature; v. Rogers, "An Incident of the Opposition to Tiberius" p.114f., and Allen, "A Minor Type of Opposition to Tiberius", pp.203-206.
37. The origins of Dio's notion of a permanent *maius imperium* may be seen in the temporary grant over Sicily and the East in 22 B.C. which Dio interpreted as permanent, and vested in the office of princeps. McFayden, "Princeps", p.37.
38. Res Gestae 34.
39. E.g. Tac. XIII 4.3; Dio LIII 4.3; 12.1; LVI 40.2; LVII 2.4, etc.
40. CIL VIII 16456; Vell. II 116.2; Dio LV 28.4.
41. Tac. II 18.2.
42. Tac. I 43.9.
43. Tac. IV 23.2.
44. Tac. III 32.1; 35.
45. McFayden, "Princeps", p.40.
46. The withdrawal of the ninth legion from Africa may be seen as a reclamation of imperial property and not interference. McFayden notes that, where it seems that the emperor acted independently of the senate in the public provinces, a comparison with parallel sources indicates he acted through the senate: compare Dio LIII 14.2 with Suet. Aug. 36; Dio LII 42.4 with Tac. XII 23.1; Suet. 37.3 and Dio LVII 24.6 with Tac. IV 36.2f..
47. Tac. III 73.4.
48. McFayden, "Princeps", p.35. There is no indication that the advice was given before or after Blaesus' departure for Africa. Only placement indicates a later date. It might in fact be that the advice is directed towards the 'legatos ad Tiberium' from Tacfarinas, in which case there is not an example of interference.
49. Marsh. Reign, p.147f..
50. Tac. III 21.4.
51. L.C.L. Tac. Ann. III, p.544f., n.4.

52. Tac. III 9.
53. V. Boak, "The Extraordinary Commands from 80-48 B.C.: a Study in the Origins of the Principate", who posits that the *maius imperium* was primarily an extraordinary command over all Roman troops.
54. There is no necessity for the belief that Rufus received his reward in Africa, nor is there any explanation how Tiberius came to know of the award.
55. V. Grant, Aspects of the Principate of Tiberius, p.55f..
56. Dolabella: Vell. II 125.5; cf. PIR² II p.319, no. 1348. Blaesus: Vell. II 127; cf. Syme, Roman Revolution, p.473; PIR II 234, 497. Apronius: Vell. II 116, cf. PIR² I p.118, no. 971. Marsus: Tac. II 79; cf. Marsh, Reign, p.217. v. n.28 above.
57. Lepidus, father-in-law of Drusus (Germanici f.), and grand-nephew of Augustus, Tac. VI 40; Petronius, who had extended tenure, as did Apronius and Marsus, Grant, Aspects, p.56; and Secundus, brother of C. Poppaeus who held office for twenty-five years.
58. Tac. II 47.3.
59. The procurator was still a private individual and had to resort to the court of the proconsul to assert the rights of the emperor. Tac. IV 15.3; Dio LVII 23.4-5.
60. There may be precedent for Claudius' commission in Tiberius' deputation of Germanicus in the East, for Germanicus was said to have held court there. Whether he adjudicated on cases properly belonging to the senate is mere speculation: certainly there were no objections to his actions which have been recorded. V. Rogers, CTLT, p.30. The senatorial commission on temple sanctuary may also bear a similarity to Claudius' commission. Also, cf. the African centuriation which took place under Tiberius (O.A.W. Dilke, The Roman Land Surveyors. An Introduction to the Agrimensores, pp.40, 135, 156f.).
61. Tac. XIV 18.2f..
62. Note the emphasis in provincial coinage of *auctoritas* rather than *potestas* or *imperium*. I.e. personal prestige and not legal right. V. Grant, Aspects, p.41.
63. N.B. that under Tiberius the Misene and Ravennate fleets were not entrusted to senators, but to *equites*; v. Starr, The Roman Imperial Navy, p.31ff..

CHAPTER V: Legislation

The field of legislation, even more than the field of law, was left unchanged by the principate of Tiberius. Holding to the precepts of Augustus, Tiberius was loath to carry legislation which might in any way alter either the traditional Roman character of the law, or the social status quo.

Regulation of the conduct of actors had been a recurring problem in the early years of the principate and was the cause of repeated legislation under Tiberius. The deaths resulting from the riots of 15 prompted the senate to propose a motion that the praetors inflict summary punishment on actors. The motion was defeated by a tribune. For Tiberius stated that he wished the edicts of Augustus, which forbade the flogging of actors, to be followed. However, while Tiberius had an obvious interest in preserving the Augustan statutes, the senate had his concurrence in limiting the remuneration of actors and regulating their conduct, as well as in imposing certain restrictions on their association with the populace. The emperor was not bent on preserving the precepts of Augustus at the expense of civil order.

In 23 Tiberius again raised the problem of unruly actors before the senate after complaints by the praetors of their inability to regulate conduct. The result was the theoretical banishment of actors from Italy for the entire duration of the reign.¹

On a similar line, the grain shortage of 32 resulted in rioting, evidenced most conspicuously in the theater. Tiberius,

objecting to the inability of the magistrates to control the people, forced a decree from the senate and edicts from the magistrates which imposed harsh penalties. No further explanation exists.

The edict issued by Tiberius in 29 was directed against popular demonstrations favoring Agrippina and Nero, and partially reflects the edict issued on the funeral of Augustus.² One must note that, while in the first three instances, although Tiberius played a major role, it had been either the senate or the magistrates who promulgated the legislation, for they had been reacting to public disturbances over public affairs. However, in the last case, it was Tiberius insuring the peace for the conduct of his own business. As has been shown, in the first chapter, Tiberius was willing to allow the division of governmental concerns between senate and princeps with few exceptions. This is perhaps one more example of the separation of function which the emperor intended. Certainly the division between the sources of the legislation was characteristically Tiberian.

Following the investigation resulting from the trial of Libo, the senate decreed that astrologers, if citizens, should have their property confiscated and fall under the interdict of fire and water. Aliens were to die, should they persist in their practices. Banishment was moved by Tiberius and Drusus, and Piso moved that citizens be exempt. The senate accepted Piso's motion which was in turn vetoed by a tribune, perhaps at Tiberius' prompting.³ Whatever the motive of the senate, there was little possibility that it would be able to carry

through any open opposition to the emperor.

There also exists a decree in Suetonius, undated, which prohibited the consulting of soothsayers in private and without witnesses;⁴ this decree may probably be placed before 16 and may reflect the measures against *mathematici* in 11 A.D..

With seeming independence, the senate prohibited the use of solid gold vessels at private tables, and forbade men to wear silk. Measures proposed by Fronto to regulate the use of silver plate, furniture, and the number of slaves were vetoed by a self-interested senate, although there is evidence that Tiberius supported Fronto's motion.⁵ Tiberius was not willing to press the issue and the senate's veto remained in force. The general attitude of the emperor towards sumptuary legislation was later expressed in his speech delivered to the senate in 22.⁶ He obviously recognized the futility of opposing a trait manifested by so many of the first men in the state. The limitations on furniture and prices mentioned by Suetonius, but again undated, may be an echo of the attempts of Fronto, or of much later date, intended as a re-inforcement of existing Augustan legislation.⁷

One of the more important pieces of legislation during the reign was the extension of the Lex Cornelia de Falsis. Previously the law had dealt with:

1. The illegal destruction of wills.
2. Substitution of false wills, or representation of a false will as genuine.
3. Sealing of a false will.
4. Illegal breaking of a seal on a genuine will.

The SC Libonianum, thought by Mommsen⁸ to belong to this year (16), extended the application to those who, in writing a will, inserted a forged legacy for themselves or members of their families or households. A further extension covered forgery of any document besides a will, and was listed in the *Collatio* dated 'Statilio et Tauro conss.'.

In 20 still further application, listed in the *Collatio* 'Cotta et Messalla (coss.)'⁹ extended the liability for forgery to suborned witnesses, and another extension, dated 'duobus Geminis conss.', included the offence of giving or taking bribes to institute or prevent an indictment, or to introduce or refuse to introduce, or give or withhold testimony.¹⁰

Under Tiberius, the law of adultery, the Lex Iulia de adulteriis coercendis of 18 B.C., took cognizance of the adultery of a man.¹¹ The extension of the Lex Iulia was the direct result of the registration of Vistilia as a prostitute. The senate directed that women or young men of equestrian rank engaging in prostitution or stage performances or arena spectacles, would be considered as guilty under the law of adultery.¹²

The complex cases arising from the expulsion of the Jews and the cult of Isis, as well as the conviction of Mundus,¹³ indicate that the SCC may have been urged by Tiberius.

The SC for the responsibility of governors for the delicts of their wives resulted from the trial of Piso and was passed in 20.¹⁴ An SC on the criminal trial of slaves and freedmen equated the two,¹⁵ and deprived the master of the right to

inflict punishment.¹⁶ The SC of 21, allowing for a ten-day interval between conviction and execution of sentence, was no more than an imperial censure on a hasty senate.¹⁷

Most lengthy of all senatorial investigations during the reign was the inquiry into the rights of asylum. There is some probability that an SC was passed in 21 regarding the use of the emperor's image as asylum following the conviction of Annia Rufilla.¹⁸ The investigation of all temple rights of sanctuary was then embarked upon, but the senate, early tiring of the endless embassies, handed the matter over to the consuls. They, in turn, reported back to the senate, and the rights of asylum, and the limitations prescribed, were ordered inscribed in bronze on the various temples.¹⁹

The Lex Visellia of 24 effectually extended the Lex Iuniani Latini by granting citizenship to members of the *vigiles* who had served six years and by debarring all who were not *ingenui* from municipal magistracies unless supported by the princeps. It also granted freedmen the right to petition the emperor for the privilege of wearing the gold ring representative of free birth.²⁰ This seems a direct contravention of the SC of 23, granting the gold ring only to those of free birth. Whether the later legislation of 24 was intended as a repeal or an addition is questionable, since it redefines and supplements, but does not substitute for the SC of 23.

The SC on speculative building was a partial preventative for recurring disasters such as the one which struck the amphitheater at Fidenae. The legislation was the result of a senatorial investigation, and an attempt to formulate law for a

new offence. If Atilius, the sponsor of the Fidenae games, was tried before the SC was promulgated, he was indeed tried extralegally.²¹

The SC on the indictment of *legati* was also the result of unforeseen legal activity. When L. Arruntius was indicted, Lentulus, at the insistence of Tiberius, put forward a motion explicitly forbidding such a prosecution reoccurring: 'hos accusare non licet: legatum imperatoris, ex sententia Lentuli dicta Sulla et Trione consulibus'.²² The year 31 is also notable for the SC inveighing against sacrifices to human beings, in which the instigation of Tiberius is clearly evident, although once again he acted through the senate.²³

In 33 there was a reaffirmation of Caesar's investment law, the *Lex de modo credendi possidendique intra Italiam*,²⁴ which was induced by the prosecutions arising from the financial panic of the same year.²⁵ Also in this year was the SC granting Tiberius an armed escort in the senate as well as the attendance of Macro.²⁶ This contrasts greatly with the attempt of the senate to provide the emperor with a guard of honor, and indicates just how unwilling Tiberius was to entrust his person to the senators. However, the legislation was a dead letter, for the emperor never returned to the city.²⁷

Under the heading of undated legislation comes the SC on convicts' wills, which forbade the execution of wills by those sentenced to *interdictio*,²⁸ and further afield, the SC suppressing the Druidical priesthood, which extended the decree of Augustus forbidding Roman citizens from participating in the cult.²⁹

It is evident from the descriptions of senatorial action during Tiberius' principate that, for the most part, the conscript fathers were left free to legislate on matters directly related to their sphere of activity. While the emperor maintained a watchful eye on his colleagues, he rarely seems to have usurped their functions. Tiberius' primary concerns were to maintain the dignity of that august body, and to ensure the general usefulness of legislation. And in all cases moderation was observed.³⁰

FOOTNOTES: CHAPTER V

1. Tac. IV 14.4; Dio LVII 21.3; Suet. 37.2. For 15, Tac. I 77; for 32, Tac. VI 13.
2. Tac. V 5; cf. I 8.
3. Tac. II 32.5; Dio LVII 15.8f.; Suet. 36; Plin. NH xxx 4; Mos. et Rom. Coll. 15.2; Rogers, "The Date of the Banishment of the Astrologers" p.203f..
4. Suet. 63.
5. Tac. II 33; Suet. 34.1; Dio LVII 15.1.
6. Tac. III 52ff..
7. Suet. 34.1.
8. Mommsen, Strafrecht, p.670ff..
9. Coll. 8.7.2.
10. Dig. XLVII 13.2 (Macer); XLVIII 10.1.2 (Marcianus); Coll. 8.7 (Ulpian).
11. Cf. Manlius, 17 A.D.; Pontius Fregellanus, 37; Antistius Vetus, 21.
12. Tac. II 85.1; Suet. 35.2; Dig. XLVIII 5.11(10).2.
13. Jos. Ant. XVIII 3.4f.; Tac. II 85.5; Suet. 36; Dio LVII 18.5a V. Heidel, "Why were the Jews Banished from Italy in 19 A.D." and Newbold, Social Tension in Rome in the Early Years of Tiberius' Reign, p.124ff..
14. Dig. I 16.4.2 (Ulpian), which was wrongly dated by Tacitus to 24. Cf. Tac. IV 20.6.
15. Dig. XLVIII 2.12.3 (Venuleius Saturninus).
16. This follows a tendency to have all matters of judicial or governmental interest fall to the state. Cf. the trend towards the indictments coming from either the praetorian praefect or the emperor.
17. Tac. III 51; cf. Suet. 75.2; Dio LVII 20.4; LVIII 27.5.
18. Dig. XLVII 10.38; XLVIII 19.28.7.
19. Tac. III 60-63; IV 14.1-3.
20. Cod. Iust. IX 31.1; Cod. Theod. IX 20.1; Gai. I 33;

Ulpian, Lib. Reg. 3.5. V. Duff, Freedmen in the Early Roman Empire, p.83ff..

21. Tac. IV 63.3.
22. Dig. XLVIII 2.12, pr.; Dio LVIII 8.3; Tac. VI 7.
23. Dio LVIII 8.4.
24. Tac. VI 16.1; 17.2.
25. V. Frank, "The Financial Crisis of 33 A.D."
26. Tac. VI 15.5; Dio LVIII 18.5.
27. Cf. Tac. VI 3.5.
28. Dio LVII 22.5.
29. Plin. NH xxx, 13; cf. xxix, 53f.; Suet. Claud. 25.5.
30. The reader is directed to Appendix II for observations of Tiberius' moderation. The reader is again invited to read Appendix I on capital jurisdiction before progressing with the chapter on trials which follows.

CHAPTER VI: Trials

The trials of the reign of Tiberius are significant, above all else, for the light they shed on the attitude of the emperor towards the laws and their application. Of approximately one hundred and forty recorded cases from 14 to 37, very few met with imperial intervention: fewer still can be adequately substantiated. Yet all into which Tiberius entered affect the view of imperial policy.

Three of the major trials of the reign, those of Libo Drusus, Gnaeus Calpurnius Piso, and Aemilia Lepida saw Tiberius supporting neither defence nor prosecution. All three may be cited as examples of Tiberius' own stringent adherence to the dictates of the law.

The trial of Libo Drusus in 15 on a charge of conspiracy stands apart as one of the most unusual of the reign.¹ Not unnaturally there is some question of the existence of a plot which never came to fruition: certainly there was a possibility that a man of such standing, with such influential friends,² would have been capable of conspiracy. On the other hand, the calibre of the accusers was not such as would be expected in a case where the very safety of emperor and empire had been at stake.³

Was there senatorial support behind Clemens, and therefore a reticence to prosecute? Marsh rejects the idea,⁴ while Rogers suggests that there may have been a turn of disaffected elements from support of Agrippa/Clemens to support of Libo.⁵

Be that as it may, Libo was arrested by the *delator*

Fulcinius Trio, and with information laid before the consuls, a trial was demanded before the senate. In this case it was Tiberius who read the charges, at the same time remaining aloof from the proceedings: 'ita moderans ne lenire neve asperare crimina videretur'.⁶

A *senatus consultum* was formulated, transferring Libo's slaves to a treasury agent, so that they might be put under torture.⁷ Here is evidence that even in a case of such gravity Tiberius was not willing to overstep the law.⁸ A supplication to the emperor by one of Libo's relatives, Publius Quirinus, encountered a stern formality: the matter must be addressed to the senate which held full cognizance over the trial.

Libo chose suicide in what appeared a hopeless affair, yet the trial was carried to its conclusion.⁹ Tiberius asserted that, guilty or not, Libo would have been spared the ultimate penalty by imperial intervention. The senate proceeded to vote rewards to the accusers: Tiberius forbade *damnatio memoriae*.¹⁰ Perhaps Libo's close connections with the imperial family made Tiberius view such a course as unwise.

The second trial in which Tiberius displayed his independence was that of Gnaeus Calpurnius Piso. This trial exceeded in importance that of Libo in demonstrating Tiberius' attitude towards friendship as opposed to political and governmental concerns.

From the start the death of Germanicus created legal irregularities. The preparation of the case against Piso by members of Germanicus' suite followed a most unusual course.¹¹

While still in the East, Gaius Vibius Marsus, legate to the prince, cited Piso to appear at Rome. Piso correctly replied that he would present himself on the day appointed by the praetor having charge over the *quaestio de sicariis et veneficis*. Presumably, as Rogers points out, he expected to be tried by the regular courts, the *quaestiones perpetuae*.¹²

But, at the same time, Rogers proposes that Piso's plans in the East were of a revolutionary nature, and that he was as much guilty of *maiestas/perduellio* as of poisoning.¹³

Piso, either because he wanted to have greater time to prepare his case, or because he felt the charges would not be supported by a well disposed princeps, made a leisurely voyage to Rome, stopping in Illyricum, hoping to win Drusus over to his side, and sending his son Marcus to Rome to plead his case before the emperor. Both Pisos met with unusually formal and distant receptions.¹⁴

On Piso's arrival in Rome, Fulcinius Trio approached the consuls, again demanding trial for Piso before the senate.¹⁵ Publius Vitellius, Quintus Veranius, and Quintus Servaeus, members of Germanicus' suite, argued that Trio had no connection with the case of poisoning, and Trio altered his charge to *repetundae*, based on Piso's administration of Spain some years previously.¹⁶

Once the charges had been settled, Germanicus' entourage pressed for trial before Tiberius, with the full consent of Piso, who feared the possible effects of popular antipathy on either a praetorian or senatorial court. But Tiberius, after only a cursory investigation, handed the trial over to the

senate. Certainly the emperor could not try the case himself because of the attitude of the people.¹⁷ Freedom for Piso might mean the end of Tiberius, or even the principate, while conviction would cause Piso to appear as Tiberius' scapegoat for a murder which had actually been an act of the princeps. But why was the affair handed to the senate rather than the praetorian court? Both Piso and Tiberius recognized the forum as the correct legal medium.¹⁸ Perhaps the senate offered the most acceptable and unbiased choice once Tiberius had chosen to remain independent of the matter.¹⁹

Piso's attempts to enlist support for his defence met with preliminary disappointment.²⁰ Certainly those who refused requests for assistance had more to gain by so doing than by aiding Tiberius' unpopular deputy. Piso's eventual advocates were an odd group:²¹ of Livineius Regulus almost nothing is known at this time; Lucius Piso was a brother of the defendant, and as such, obliged to assist his kin. But why a man of such standing as Lepidus should have joined in what was even then regarded as a lost cause is a mystery. Perhaps he had been requested by the emperor in order to ensure a proper defence. Piso had long been a close friend of the emperor.

It seems evident that the senate as a whole was hostile to the cause of Piso.²² Again, Tiberius must have been aware of their antipathy, so why did he entrust the trial to their care? Obviously, Tiberius' only concern at this point was to remove any suspicion of personal interference from himself, and thus from the principate. Perhaps also because he held a firm belief that some of the charges had sufficient justification

to demand Piso's conviction. Piso may or may not have been legally deposed from Syria,²³ but his subsequent actions left him open to indisputable charges of *perduellio*.

Piso realized the futility of his defence, and having been cleared of murder, but facing certain conviction for *maiestas*, returned home and took his own life. He left a note which, while professing loyalty to the emperor, implied guilt with the intention of exonerating his sons Gnaeus and Marcus. Tiberius then spoke in court, absolving Marcus of any wrongdoing, and reporting Livia's desire that Piso's wife Plancina be delivered from the court.²⁴ The consul, Aurelius Cotta, in a rare fit of independence, motioned for *damnatio*, exile for Marcus for ten years, deprived of senatorial dignity but with a grant of five million *sestertii*, and for Gnaeus, one-half of his father's estate and a change of praenomen. The remainder of Piso's estate was to be confiscated. Tiberius vetoed *damnatio* and confiscation, and moved for restoration of Marcus with acquittal. The emperor's motion was carried. The law had been satisfied with Piso's death, and now Tiberius would not allow his friend's house to be destroyed.

The last case is somewhat more complex, and one in which Tiberius himself played a greater part. In 20 Aemilia Lepida was indicted before the senate on three charges:²⁵ *falsum*, for the fraudulent claim of Publius Quirinius as father of her child, attempted poisoning against the same, and *maiestas* for the consultation of astrologers regarding the imperial family, and perhaps the succession. Quirinius, a *novus homo*, consul in 12 B.C., had been married to Aemilia some twenty

years before but was now divorced. Aemilia, a member of the illustrious Lepidi, and married to Mamercus Aemilius Scaurus (cos. 21 A.D.) was greatly favored by the people.²⁶ But Tiberius' friendship with Quirinius was the determining factor.²⁷ It seems for this reason alone that the trial was held before the senate rather than the pertinent *quaestiones*. Rogers suggests this was the case,²⁸ based upon an interpretation of Suetonius:²⁹ a reading of Tacitus makes it possible Tiberius favored the cause of Aemilia.³⁰ A *de facto* examination leaves room for a complete lack of imperial preference one way or the other.³¹

Regardless of the emperor's attitude, the senate was forced into voting. Drusus, the consul-designate, who would normally initiate the procedure, was exempted by Tiberius. Whether this was because Drusus might vote for acquittal, and Tiberius favored conviction, or vice versa because the emperor wished to spare his son the odium which would result, is uncertain. Perhaps Tiberius only desired that the senate be allowed to cast a free vote. Imperial impartiality is a very real possibility. Whatever the intent, conviction was the result.

Tiberius, awaiting the senate's decree, added that he had examined Aemilia's slaves and gleaned certain evidence of poisoning.³² If this is the case, it is doubtful that there was a charge of poisoning in the senate.³³ Perhaps that particular charge was left to the praetor or to Tiberius himself. Nevertheless, Tiberius appended his own findings to those of the senate, by way either of support or addition.

In all three of the preceding cases Tiberius showed his ability to place the law before personal desire. All three indicate a moderation and neglect of friendship which ultimately underlay the majority of cases handled by the senate.

Perhaps Tiberius' hardest line was taken towards libel and slander, and general affronts to himself. Yet the results are such, when seen from afar, as to cause some confusion. To appreciate Tiberius' stance, one must view each case separately, and keep in mind that these are only the trials into which the emperor personally entered.

The last trial of the year 21 was perhaps also the most important for the development of the criminal procedure, and for the crystallization of Tiberius' attitude towards charges of slander and libel.³⁴ Clutorius Priscus, once honored by Tiberius for a poem commemorating the death of Germanicus, was now indicted for *maiestas*, having tried to repeat his previous success with a poem on the death of Drusus. But Drusus obstinately lived on in spite of Priscus' literary endeavors.

Once guilt had been established to the satisfaction of the senate, the consul-designate, Haterius Agrippa, proposed the ultimate penalty for the unhappy equestrian. Manius Aemilius Lepidus spoke at some length in favor of moderation: Tiberius was absent, and the senate, perhaps under the leadership of Drusus,³⁵ supported Haterius with the impression that they were thereby supporting Tiberius.³⁶

The emperor's attitude to the condemnation and the resulting execution seems to have been one of honest indignation. The senate was reprimanded and Lepidus praised, but not a word

of Haterius.³⁷ However, the emperor forced the *senatus consultum* stipulating an interval of ten days between conviction and execution of sentence. This was Tiberius' sole innovation in the criminal procedure.³⁸ Although the legal interval elicited only two cases of clemency,³⁹ Tiberius realized that there must be some sort of rein on the enthusiasm of the fathers' defence of the imperial dignity.

The case of Aelius Saturninus,⁴⁰ his conviction, and the resulting execution at the Tarpeian rock do not fit well with our knowledge of Tiberius' attitude towards libel.⁴¹ This may, considering the spectacular form of execution, be one of Dio's less trustworthy accounts.

The indictment of C. Cominius Macer for libel,⁴² and the imperial acquittal are more indicative of a consistent attitude towards the composition of scandalous verses on the emperor.

The case of the provincial Votienus Montanus, rhetorician and orator of Narbo, is one of the few in which Tiberius seems to have lost all self-control. Charged with *maiestas* in the form of slander,⁴³ he was called before the senate to answer for his actions. Testimony from Paullus Aemilius, tribune of the fourth praetorian cohort, so aroused Tiberius by its frankness that the emperor swore he would refute the scurrilous remarks. Montanus was banished to the Balearic islands.

Marsh⁴⁴ feels the charge was the spreading of slanderous remarks among the troops, or the officers, based upon the testimony of Aemilius, an interpretation which would go far in explaining Tiberius breaking with what is regarded as his

traditional attitude towards slander and libel. This is also the only true case of slander under Tiberius as opposed to libel.

Perhaps the most severe of all the well documented cases of Tiberius' reign was the indictment and trial of the *eques illustris* and devotee of Agrippina, Titius Sabinus.⁴⁵ Sabinus was charged by a host of Seianus' clients⁴⁶ who forwarded evidence to the princeps. Although the charge was *maiestas* in the form of slander, Tiberius replied with charges of his own, demanding conviction: 'ultionemque haud obscure poscebat'.⁴⁷ The senate decreed death on the basis of Tiberius' charges and execution duly followed on the first of January, 28: 'sic inchoari annum'. What charges Tiberius forwarded, and their effect on the sentence must remain a mystery.

The equestrian Lucius Ennius may be added to cases of libel and slander. Charged with *maiestas* for his transformation of a statuette of Tiberius into silver plate, he was cleared by the princeps. Ateius Capito, the eminent jurist, protested that this sort of action by the emperor of allowing those who had been charged before the senate to be acquitted by an outside authority was interference in exclusively senatorial business. Tiberius himself objected, perhaps on the ground that offences to himself or the imperial family were not to be taken as offences against the state.⁴⁸

Tiberius' attitude towards offences *contra religiones*, a recurring charge, was more consistent. Tiberius always held that affronts to the state religion, whether it be established practice, or Augustan precedent, must be dealt with as crimes

against the dignity of the state.

The trial of Appuleia Varilla on counts of *maiestas* and adultery arose from her connection with the imperial house.⁴⁹ The emperor, opposing what we may assume to have been the senate's intention, ordered the two charges tried separately.⁵⁰ *Maiestas*, charged as having occurred against Augustus, Tiberius, and Livia, was unsupported by either Tiberius or Livia. The emperor demanded, however, that the court convict if it should be established that Appuleia had spoken irreverently of Augustus. In fact, the charge was more *contra religiones* than *maiestas*.⁵¹ The defendant was acquitted on the first charge. The second, adultery, was proven, for which the penalty was *relegatio* to an island, confiscation of one-half of the dowry, and loss of one-third of her property.⁵² Tiberius, continuing his interference, modified the statutory requirements, and passed a motion allowing her family to banish her not less than two hundred miles from Rome.⁵³ No opposition to the actions of the princeps is recorded.

In the senate indignation had arisen from the increasing use of the emperor's image as sanctuary, and the possibility of prosecution through *maiestas* for violation of that sanctuary. Gaius Cestius Gallus voiced his concern to the senate, employing the affronts of Annia Rufilla by way of illustration. Although she had been liable under the *Lex de iniuria*,⁵⁴ Gallus could not proceed with the charges against her, for she confronted him with Caesar's image and the threat of *maiestas*.⁵⁵ With Tiberius absent in Campania and Drusus leading the senate, the speech of Gallus was remarkably moderate. Other examples

of the emperor's image employed as sanctuary followed from the *patres*.⁵⁶

While the *Lex de iniuria* normally referred to civil offences, in cases where the crime was *atrox*, exceptions were made *extraordinem*,⁵⁷ and Annia was brought before the senate at Drusus' request, and following her conviction, incarcerated.⁵⁸ The indignation of the senate was enshrined in Digest XLVII and XLVIII.⁵⁹

The charges against Sextus Marius, lodged by Calpurnius Silvanus, met with particular difficulty. For Silvanus laid his charges before Drusus while the latter was *praefectus urbi feriarum Latinarum*, and as a result Silvanus' eagerness earned him an indictment. The charges against Marius were rebuffed. The accuser's mistake was to commit an act of evil omen, for only '*tralaticiae et breves postulationes*'⁶⁰ were to be directed to the prefect of the Latin festival. The culprit was duly reprimanded by the emperor and exiled for an offence against the state religion.⁶¹

The expunging of the name of Apidius Merula from the senatorial list seems to have been caused by an offence against the state religion, as Merula failed to swear allegiance '*in acta divi Augusti*'.⁶² Whether he was removed by Tiberius or the senate is uncertain.

In all of the four cases where offences were *contra religiones* Tiberius seems to have ensured that guilt should be punished, yet with a sensible and corresponding moderation. Once again the law must be met, but with a watchful view to utility.

As we have seen, Tiberius could alleviate sentences or even acquit individuals. This type of case may be divided into two groups: those which appear to be justified, and less certainly, those in which the law and justice have been sacrificed for personal interest.

The case of Granius Marcellus, proconsul of Bithynia, charged with *maiestas* and *repetundae* by his *quaestor*, Caepio Crispinus, and the *delator*, Romanus Hispo,⁶³ was the first to be tried and completed before the senate during the reign of Tiberius. In this instance the emperor chose to vote under oath. But Piso, recognizing imperial displeasure, enquired, 'quo loco censebis, Caesar? si primus, habeo quod sequar; se post omnis, vereor ne imprudens dissentiam'. Tiberius cast his vote before the rest. It must be assumed that the defendant was acquitted in accordance with the emperor's lead.

The senate appears to have wished to forward the charges in order to satisfy the princeps: the result of the case meant that, unless the emperor personally pressed for indictment, the senate could not be sure of the course desired for the trial.⁶⁴ In fact, there is reason to believe that Tiberius was angered by the prosecution rather than by the defendant's actions.⁶⁵

In 31 Lucius Arruntius was charged by Seianus with what we may probably understand as *maiestas*. At the insistence of Tiberius, Lentulus⁶⁶ moved for the quashing of the indictment by decree.⁶⁷ The accusers were correspondingly indicted for

calumnia, tried by the senate, and convicted.⁶⁸ The penalty⁶⁹ was probably some form of loss of rank coupled with exile and *infamia*.⁷⁰ Because neither the charges nor the causes for acquittal are directly known, there is some difficulty in discerning the justice of Arruntius' release. But, since Arruntius was no friend of Tiberius, we may perhaps assume the charges were indeed fraudulent.

An interesting approach to friendship with Seianus was put forward by the knight Terentius. Charged after the prefect's death, he argued in court that the favorite of the emperor must be courted by lesser folk, since what pleased the emperor must of necessity be of value to the people as a whole. His reasoning won him an acquittal and the prosecution an indictment. Dio notes that Tiberius approved of the court's action, although he had not himself intervened.⁷¹

In the case of the praetor, Magius Caecilianus, the charge of *maiestas* forwarded by two knights was proven false.⁷² The equestrians were indicted for *calumnia* specifically at the insistence of Tiberius⁷³ and convicted by the senate under the leadership of Drusus.

The emperor's gratitude played a major role in the trial of the senator Firmius Catus. Charged with *calumnia* following the failure of his suit against his sister for *maiestas*,⁷⁴ Catus' sentence of exile was commuted by the emperor for services rendered during the trial of Libo Drusus. Catus was, however, expelled from the senate. Although only a secondary case, it shows Tiberius willing to sacrifice justice, in the interests of the state.

But not all acquittals were in the interests of the state. A charge of *maiestas* was brought against M. Aurelius Cotta Maximus Messalinus, who had moved *damnatio* against Libo and Piso, responsibility of governors for the delicts of their wives, and the indictments of Agrippina and Nero. The charges, raised by the senator Caecilianus,⁷⁵ were reportedly accusing Gaius of sodomy, slandering Livia, and remarking on the influence of Manius Lepidus and Lucius Arruntius, and his own power with Tiberius. All charges were proven to the satisfaction of the court. Messalinus appealed to Tiberius, and the senate cowered under the subsequent imperial outburst. However, Tiberius did admit, rather unrealistically, that the senate could proceed with the charges if they should desire. Cotta was acquitted⁷⁶ and an indictment for *calumnia* brought against Caecilianus.

Can we realistically refer to this as a case of slander, inasmuch as the emperor advocated a loose trend of acquittal? Was the charge fraudulent? Since such questions must go unanswered, none must be too quick to judge Tiberius. In those cases where justification for acquittal seems lacking, it would be very easy to accuse the sources of omitting the essential details, and thereby creating doubt. In the majority of cases, it is possible to say that alleviation of the preceding sort did no harm to the idea of justice, even if it did not serve justice as we now see it.

The example of the sumptuary legislation is most illuminating. Gaius Bibulus and his fellow aedile set before the senate the impossibility of enforcing the sumptuary legisla-

tion, probably the Lex Iulia of 22 B.C.⁷⁷ The senate, without debate, referred the matter to Tiberius, who, with some tact, ordered the issue dropped 'quod non obtinerit vel retentum ignominiam et infamiam virorum inlustrium posceret'.⁷⁸ Tiberius could well see the foolishness in pressing for indictments which could not be justified by utilitarian results.

Tiberius could also aggravate charges or increase punishments. And here again there are varying degrees of interference. Lucius Capito, procurator of Asia, was indicted for *repetundae*, the charge being lodged by the province itself.⁷⁹ Tiberius intervened in order to clarify for the senate the direction which the court was to follow. The princeps made sure to point out that Capito, a procurator, had charge over only the imperial domains within the province, and should not in any way have interfered with the proconsul or the senatorial government. Capito was not to be considered a *legatus* and therefore any use of military force by the procurator was to be considered as an offence. Capito was convicted and deported, and Asia, now with two successful court actions in as many years, was granted the right to erect a temple to Tiberius, Livia, and the senate.⁸⁰ Tiberius had clarified the law much to the pleasure and benefit of senate and province.

The case of Marcus Plautius Silvanus, the incumbent urban praetor, demonstrates Tiberius' personal interest in the judicial process. Charged, by his father-in-law with the murder of his wife, Silvanus was interrogated by Tiberius, who made a personal inspection of the accused's home, where signs of a struggle contradicted Silvanus' tale of his wife's suicide.

Tiberius, having satisfied himself of Silvanus' guilt,⁸¹ referred the matter to the senate, which in turn referred it to the pertinent *quaestio*.⁸²

In 19 Vistilia, wife of the praetorian Titedius Labeo, registered herself with the aediles as a prostitute.⁸³ The senate seems to have pressed Titedius to lay charges against his errant wife,⁸⁴ and she was duly removed to exile on an island.⁸⁵ There is certainly room to believe that Tiberius, with his stern observance of the law, forced the senate to promote the charges against Vistilia in accordance with the precepts of the Lex Iulia.

Under the same law fell the trial of Mundus, which resulted from the scandals involving the Jewish and Isis cults.⁸⁶ Pressure for indictment may also have sprung from Tiberius.

The charges of bribery against Publius Suillius Rufus, quaestor in Germany, who had supposedly erred in his capacity as *iudex*, the trial under the Lex Iulia repetundarum,⁸⁷ and his subsequent exile were urged by Tiberius. The senate had moved simple banishment from Italy, but the emperor ordered a heavier punishment, swearing under oath that his actions were in the best interests of the state, a position which was fully justified by Rufus' later actions.

Still more severe was Tiberius' interference in the case of Varius Ligus, charged with adultery. Tiberius overrode the motion of the senate for *relegatio* and partial confiscation stipulated by the Lex Iulia, which had been urged by the consul-designate, Lentulus Gaetulicus. Instead the emperor ordered interdiction with its consequent loss of citizenship

and total confiscation.⁸⁸ Tiberius' motives must remain a mystery.

Tiberius caustically refused Togonius Gallus' proposal that the emperor be provided with a senatorial bodyguard.⁸⁹ Junius Gallio then motioned that the seats of the equestrians in the theater be given to discharged praetorians and earned himself an indictment. Tiberius seems to have taken the proposal as a seditious attempt to tamper with the loyalty of his personal bodyguard.⁹⁰ The senate voted simple expulsion from the senate: Tiberius demanded banishment while Gallio took up residence on the pleasant island of Lesbos. Gallio was returned to Rome and committed to the magistrates. No more is known.

Vibius Serenus met his second charge of the reign, this time in exile.⁹¹ The charge, *maiestas*, was laid by his own son, Numerius, and encompassed a plot against Tiberius and an attempt to incite a Gallic revolt. Cornutus, an ex-praetor, was also named in the indictment.

Protesting Cornutus' innocence, Serenus urged his son to name the other conspirators. Numerius singled out Gnaeus Cornelius Lentulus Gaetulicus and Lucius Seius Tubero.⁹² Both accusations met with laughter from senate and emperor.

Following adverse testimony from slaves and a popular outcry against the prosecution, Numerius fled, was returned, and forced to complete the case. Although evidence against Serenus was submitted by the emperor and conviction followed, Tiberius vetoed execution. Serenus was returned to his island of Amorgas.

Cornutus took his own life prior to his trial, an act which resulted in a senatorial motion to deny rewards to accusers when the defendant committed suicide prior to conviction. Tiberius vetoed the motion as contrary to the Roman method of prosecution.⁹³

The year 29 began with the indictment of Agrippina who faced charges of an unprecedented nature: overbearing conduct and insolent temper ('adrogantiam oris et contumacem animum'). Her son Nero was charged with unnatural vice and insulting language ('amores iuvenum et impudicitiam').⁹⁴ Both charges were forced by Tiberius, and took their form as substitutes for conspiracy in the form of *maiestas*. The latter charge was not employed, perhaps from a fear of the power behind Agrippina, perhaps from a fear of senatorial opposition.

The senate, somewhat shocked at the charges, was uncertain how to proceed, lacking any specifics from the emperor. Cotta Messalinus pressed for indictment: Iunius Rusticus, Tiberius' *ab actis senatus*, warned the vacillating consuls not to act. The people demonstrated, calling the letter of Tiberius a forgery, and propaganda was circulated denouncing Seianus. The praetorian prefect then reported events to the emperor, who in turn decreed against the people, censured the senate, and ordered the transfer of the case to his own court.

That the imperial trial did indeed occur is evidenced by Pliny, who refers to Sabinus' indictment as 'ex causa Neronis',⁹⁵ and Philo, who states that Avillius Flaccus was Agrippina's chief prosecutor.⁹⁶ The two were condemned and removed under heavy guard to forestall attempts at rescue. Agrippina was

exiled to Pandateria, Nero to Pontia.⁹⁷

Once more Tiberius had proof that he could not trust the senate to act in his own interests. For the first time the fathers had refused to pursue a course laid out by the emperor. Perhaps they had only been overly cautious, perhaps uncertain how to proceed. Nevertheless, Tiberius refused to allow the senate to continue with the trial. The senate, in a last attempt to mend its bridges, or to retain some control over the proceedings, outlawed Nero. A possibility exists in fact that the senate was unwilling to participate in the direct condemnation of Agrippina, but was willing to follow a foregone conclusion.

There followed the expected denunciation of Drusus to the emperor and the usual conviction. However, this time the convict was stored away 'in ima parte Palatii' for future use, as evidenced by his possible role in the overthrow of Seianus.⁹⁸

The final group of trials during the reign of Tiberius were those which resulted in what may be loosely referred to as political executions. This type of case was furthest removed from the normal legal process, and in all but one case there may be some question whether a proper trial was conducted.

Early in the reign Clemens was apprehended impersonating his former master, Agrippa Postumus, and gathering about himself a 'non contemnendam manum'.⁹⁹ As the sources inform one, one must gather that Tiberius first tried Clemens through an informal inquiry, and then, in fear of some form of external support for the impostor, executed him privately within the

palace. The impression conveyed is that Tiberius was reluctant to have Clemens tried before the senate, or publicly executed, perhaps because, as Tacitus says of Clemens' operations:

'multi e domo principis equitesque ac senatores sustentasse opibus'.¹⁰⁰ As in the case of Agrippina, Tiberius had something to fear from both senate and people. How real his fears were, whether revolt or removal of the princeps could have been a realistic possibility, is not possible to judge.

Fears of revolution may also have guided the case of Gaius Silius Aulus Caecina Largus and his wife Sosia Galla.¹⁰¹ Silius had been consul in 13 with Plancus, and until 21 had commanded the legions in Upper Germany. He had helped suppress the revolt of Sacrovir, and had been a friend of Germanicus and Agrippina. The charges were *maiestas* and *repetundae*.

Maiestas was the result of a possible connection with Sacrovir; *repetundae* was the result of extortion following the Gallic defeat.¹⁰² Rogers believes in three possible causes for the first charge, all intimating that *maiestas* was a substitute for conspiracy. Silius seems to have been disliked by both Tiberius and Seianus, and the implications of Tacitus suggest that his destruction was prompted by fears of civil war aroused by Agrippina and her followers.¹⁰³

Perhaps the fear emanated from Seianus rather than Tiberius, for the emperor may have acted impartially and, as Shotter has noticed,¹⁰⁴ was legally correct, in spite of the defence's objections, in forcing the trial while Varro, the prosecutor, retained his consulship. The charges may have been just,¹⁰⁵ but there is reason to believe with Tacitus that

Silius was the victim of a tyranny.¹⁰⁶ Throughout Seianus seems the most likely of tyrants.

The result was Silius' suicide and confiscation followed, necessitated by the amount of property given to Silius by Augustus as well as the effects of a charge resembling *perduellio*.¹⁰⁷ Sosia was convicted and sentenced to exile, with the necessary confiscation reduced to a minimum quarter for the accusers, three-quarters for her children.

The charges contained in Tiberius' indictment of Asinius Gallus are uncertain. Dio states jealousy of Seianus' friendship with Tiberius, 'τά τε ἄλλα'. The senate ordered Gallus' death while he dined with the princeps.¹⁰⁸ Tiberius countered by ordering Asinius' imprisonment, his fate to await the emperor's return to Rome. Tacitus adds that after his death in 33 there was some doubt whether the cause had been suicide, but that Tiberius did regret his death before he had time to hear the case, and granted permission for burial. The consequent erasure of his name, and the need to request burial indicate a charge of *perduellio*.¹⁰⁹ The facts may indicate a complicity with the schemes of Agrippina, if from no more than the proximity of the two trials. From the account of Dio¹¹⁰ it would seem that there was no trial if there was no charge 'οὐτ' ἀδικήσας τι οὐτ' αἰτιαθεῖς' for Asinius' friend, Syriacus, who was put to death.

While willing to admit that there was a conspiracy on Seianus' part, the writer will not delve into divergent theories.¹¹¹ Nor will he admit who initiated the plot, nor who was the intended victim.¹¹² Following the facts, Seianus

was the one to bear the brunt of the charges, accompanied by a number of lesser figures in later years.¹¹³

It is of note that, whoever was behind the conspiracy, the emperor was still willing to entrust to the senate the condemnation of his minister and followers, even though the praetorians were suspect and Seianus' power was such as to cause Tiberius to meditate flight and the elevation of Drusus. What is more, the senate proved the emperor's trust by ordering the arrest and hurried execution of Seianus in contravention of their own *senatus consultum* regarding the ten-day interval between conviction and execution of sentence. Indeed, it would seem that the senate did not order a trial in the Curia, allowing the arrest of Seianus on the concurrence of only one senator.¹¹⁴ Nor does there appear to have been a trial held later in the day in the temple of Concordia.¹¹⁵ To complete their work, the senate voted *damnatio memoriae* and rewards and honors to Laco, Macro and Tiberius. All such honors were refused.

The prosecutions of the relatives of Seianus,¹¹⁶ for example, Capito Aelianus and Junilla, were certainly held before the consuls, but their tender ages indicate a blind persecution rather than a reasoned judicial prosecution. In 32 Seianus' property, probably derived in great part from Tiberius, was passed to the *fiscus*. The precedent was the confiscation of Silius' property in 24.¹¹⁷

Throughout Tiberius' years as emperor there was a legal conservatism, directed to both the judicial and political

spheres. No new titles or powers were to be granted to the princeps: no new laws were to be enacted, nor legislation passed. The constitutional basis of the principate and its relation to the state and to the individuals who formed the state was to remain as it had been in 14. These were the principal tenets to which Tiberius adhered.

Because so little is known of the guilt or innocence of defendants, it is not possible, for the most part, to judge whether acquittals, or even convictions, prompted by Tiberius were justified. But, from the favorable attitudes of the sources, and the fuller accounts of some of the trials, one may safely believe that the emperor acted in the interests of the state. While cases in the second half of the reign tend to become more political, and seemingly more unjust, there is a possible cause in the undoubted increase in external influences and the immediate absence of the princeps. It must also be kept in mind that the emperor was responsible for some twenty acquittals from 23 until 37. Many of the later cases may be legitimate convictions arising from governmental interests, such as the executions of Clemens and Seianus. There are very few cases, if any, where an imperial vendetta may legitimately be assumed.

Although Tiberius seldom tried cases on his own, when he did, as in the case of Agrippina, there exists evidence that such trials were no mere 'star-chamber' affairs. Those cases, supposed or real, in which Tiberius ordered the death penalty, as in the cases of Agrippa Postumus or Clemens, appear as decisions more political than legal. The

emperor's intent was to remove those who could be connected with factions within the senate, and thus to avoid the possibility of covert support becoming overt, and consequently hostile activity directed against the established order and the principate. Although Tiberius felt himself bound by the law and was not willing to see the laws taken lightly, his primary concern was to ensure the continued existence of the state, and therefore, of the principate. Thus, where necessary, the law could be sacrificed to the exigencies of the state. Retrospect proves Tiberius acted wisely.

Year	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	Totals
Senators	1	1				3	1	2	1	6	2					2	5	5	1	2	2			34
Equites	2				1		3	1		1				1		1		5	1	1				17
Others*			2	1	1	2	1		2	4	4	1			2	3	7	1	3	1				35
Unknown origin			1						2	2		1					2	2	1	2				13
<hr/>																								
in senatu	3	1	3	1	2	5	4	3	5	12	4	2		1	2	6	7	10	5	6	2			84
in quaestione							1			1														2
apud Tiberium											1						3							4
incertus											1						4	3	1					9
<hr/>																								
Totals	3	1	3	1	2	5	5	3	5	13	6	2	0	1	2	6	14	13	6	6	2	5	6	99

(* Includes kings, foreigners, and women.)

Table II: A List of Trials by Rank of Defendant, and Place of Trial.

Year	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	Totals	
Quashed ?	2						1						1				2	5							9 3
Acquitted ?	1		1			3		1	2	3	1							4							15 1
Banished ?			1	1	2	1		1	2	3	3				2			1		3			3		23 4
Suicide ?		1				1				4	1					2	2	2	2	3	3	3	1		25 4
Execution ?							1							1			5	4	23			2			36 4
Uncertain			1				2	1				2				2	3					1	1		13
Totals	3	1	3	1	2	5	5	3	5	11	6	2	1	1	2	5	15	19	26	6	5	5	6		138
Acquittals	3	0	1	0	0	3	1	1	2	3	1	0	1	0	0	0	2	11	0	0	0	0	0	0	29
Convictions	0	1	2	1	2	2	4	2	3	8	5	2	0	1	2	5	13	8	26	6	5	5	6		109

Table III: Results of Trials.

FOOTNOTES: CHAPTER VI

1. Tac. II 27-32; Sen. Ep. 70, 10; Suet. 25, 1 & 3; Dio LVII 15.4f.; Vell. II 130.3; 129.2; Fasti Amitenini, C.I.L. I² p.244. On Tacitus' validity v. Marsh, "Tacitus and the Aristocratic Tradition", pp.291-304; Reign, p.58ff.; Rogers, CTLT, p.12ff.; Syme, Tacitus, p.399f.; Seager, Tiberius, p.90ff.; Smith, Tiberius, p.171f..
2. Weinrib, "The Family Connections of M. Livius Drusus Libo", esp. pp.249 and 263.
3. Rogers, CTLT, p.13. Two prosecutors, Fulcinius Trio and Fonteius Agrippa were all but unknown.
4. Marsh, "Tacitus", p.298, n.1.
5. Rogers, CTLT, p.14.
6. Tac. II 29 fin.
7. Tac. II 30.
8. On the matter of slaves v. Dio LV 5.4; Rogers, CTLT p. 16f.; "Law", p.22ff..
9. Ulpian, Dig. XLVIII 4.11; For Tacitus' attitude towards the suicide and the remainder of the trial, v. Marsh, "Tiberius and the Development of the Early Empire", p. 24ff.; for the effects of suicide on the penalty of confiscation, v. Rogers, "Law".
10. Rogers, CTLT, p.19. Notice the reputations of those who offer thanks: p.20, n.62.
11. Tac. II 74.2; III 12.6; Rogers, "Veranii", pp.172-174.
12. Rogers, CTLT p.37.
13. Ibid. p.41, n.139.
14. Tac. III 7; Rog. CTLT p.41; Marsh, Reign, p.98.
15. Tac. III 10.1.
16. Tac. III 10-18; VI 26.4; Dio LVII 18.10; Suet. 52.3; Calig. 2; Vit. 2.3; Marsh, Reign, p.98ff.; Rogers, CTLT, p.42ff.; Garnsey, Social Status and Legal Privilege in the Roman Empire, pp.24-27; Rogers, Studies, pp.76, 84, 124, and n.98; Smith, Tiberius, pp.108-115; Syme, Tacitus, p.401; Brunt, "Charges of Provincial Maladministration under the Early Principate", p.210.
17. Yavetz, Plebs and Princeps, p.148.

18. Tac. II 79; III 12.
19. The matter of Piso's guilt is questionable, but less so than that of Tiberius. Note the similarity between the trial of Piso and others of the reign, such as that of Livilla and Rhescuporis. The senate seems to have tried murder, although *maiestas* was involved. (Garnsey, Status, p.25ff..) There seems to have been no attempt to separate the charges, as happened in the trial of Appuleia Varilla in 17. The charges of *repetundae* and *maiestas* allowed the senate to investigate through precedent: murder should have been handed over to the pertinent *quaestio perpetua*. However, the interpretation of *maiestas* can be sufficiently stretched to include murders such as those of Drusus, Cotys, and Germanicus, which were also offences against the state. v. Shotter, "Piso", pp.229-245.
20. Rogers, "Arruntius", p.33ff. for the prosopographical views on the supporters of Piso.
21. Tac. III 11.
22. Tac. III 15.4.
23. Tac. II 74.1; C.I.L. III 6703. Sentius was confirmed as governor, which may say much about the legality of the methods employed in his appointment.
24. Tac. III 17.
25. Rogers, "Lepida", p.xiv.; Shotter, "Lepida", pp.312-316; Townend, "The Trial of Aemilia Lepida in A.D. 20", pp.484-493; Tac. III 22ff.; Suet. 49.1.
26. Rogers, CTLT, p.53f.; Tac. III 23. Aemilia was the great-granddaughter of Sulla and Pompey, granddaughter of the triumvir, and sister of Manius Aemilius Lepidus.
27. Tac. III 48.
28. Rogers, CTLT, p.53.
29. Suet. 49.
30. Townend, "Aemilia Lepida", pp.491-492; Tac. IV 20. Note the consulship of Scaurus in 21 A.D..
31. Rogers, CTLT, p.56; Shotter, "Lepida" demonstrates Tiberius' hesitation and arbitrary behavior. Seager, Tiberius, p.156 is well balanced on the subject.
32. Tac. III 23.5.
33. Furneaux, Annals, n. on III 23.5.

34. With the exception of attacks on Augustus *contra religiones*.
35. Rogers, "Two Cases"; Seager, Tiberius, p.158, n.3.
36. There is no intimation that the senate was cowed by Haterius as Rogers would have us believe (CTLT, p.63), nor any indication that 'serviles cruciatus' was in such cases common to any class of men (Garnsey, Status, p.143f.). On the question of the charge and the penalty, v. Jackson, Tac. Ann. III 50 n.3.
37. One might believe that, had Priscus been a senator, the trial might have had a different result. Gansey, Status, p.34. The sources for the trial are: Flint, "Delatores in the reign of Tiberius" p.37ff.; Shotter, "Priscus"; Rogers, CTLT, p.62ff.; Tac. III 49ff.; Dio LVII 20.3f.; Scott, "The Diritas of Tiberius"; Rogers, "Two Cases", p.75ff.; Koestermann, "Die Maiestätsprozesse unter Tiberius", pp.72-106; Marsh, Reign, p.293f.; 111 and n.1; 112, n.4; Seager, Tiberius, p.158f..
38. Suet. 75.2; Dio LVII 20.4; LVIII 27.5.
39. Vibius Serenus: Tac. IV 28; Cominius Proculus: Tac. IV 31.
40. Dio LVII 22.5.
41. Cf. Suet. 28, and the case of Clutorius Priscus in 21.
42. Tac. IV 31.
43. Tac. IV 42.
44. Marsh, Reign, pp.173, 61 and n.1, 115, n.1.
45. Tac. IV 17.4; 18.1; 19.1; 68-70; VI 4; Dio LVIII 1; 1b-3.
46. Lucius Lucanius Latiaris, Marcus Opsius, Petilius Rufus, and Marcus Porcius Cato.
47. Tac. IV 70.1.
48. Cf. the trial of Appuleia, Tac. II 50.
49. Tac. II 50.1-3.
50. Tac. III 24.2ff..
51. Rogers, CTLT, p.28.
52. Paul. Sent. II 26.14.

53. Suet. 35.1.
54. Dig. XLVII 10.
55. Tac. III 36.
56. v. Philostr. Vit. Ap. I 15; Suet. 58.
57. Paul. Sent. V 4.10: 'atrox iniuria aestimatur aut loco aut tempore aut persona: ... persona, quotiens senatori vel equiti Romano'.
58. It should be noted that, while Tiberius was loath to convict when there was a supposed insult to himself, as in the cases of Faianius and Rubrius in 15, he demanded conviction for insults to the memory of Augustus, which is to say, insults to the state religion. Thus, while on the one hand an insult to the image of Tiberius would be small cause for a charge of *maiestas*, on the other hand if the insult were directed against the image employed as asylum, it could be considered as an offence '*contra religiones*'.
59. 10.38; 19.28, 7. Both are rescripts of the enactments of 21.
60. Suet. Nero 7.
61. V. 21 A.D. under the rights of Asylum.
62. Cf. the Case of Thrasea in 66 (Tac. XVI 22). How Merula was removed is uncertain.
63. Tac. I 74.
64. Cf. the modification of the charges against Appuleia Varilla in 17, the quashing of the charges against L. Arruntius in 31, and Gn. Lentulus in 24 as examples.
65. Marsh, Reign, p.110; Rogers, CTLT, p.10; Shotter, "Spirit", p.207f.; Katzoff, "Tacitus, Annales I, 74: The Case of Granius Marcellus", pp.680-684.
66. A close friend of Tiberius of whom Seneca says: 'huic tamen multa Tiberius manu sua scripsit neque Cosso aut privatum secretum aut publicum elapsum est'. (Ep. 83. 15.)
67. Cf. the SC on the indictment of legati in 31 (Dig. XLVIII 2.12; Dio LVIII 8.3).
68. Tac. VI 7.1; Fasti Arv. C.I.L. I² p.71; Fasti Nolani C.I.L. X, 1233.v. Rogers, "Arruntius" p.37-41.
69. Rogers, CTLT, p.109.

70. Dio LVIII 8.4; Suet. 54.2 for starvation as the cause; 64.1 for Tiberius as the cause.
71. Tac. VI 9.1; Dio LVIII 19.5.
72. v. Rogers, "Two Cases".
73. Tac. III 37.1.
74. Tac. IV 31.
75. Tac. VI 5-7.
76. For an appraisal of Tiberius' stance on acquittals, especially in the later years, v. Marsh, "Tiberius and the Development of the Early Empire", pp.26f. and 17; Chilton, "The Roman Law of Treason under the Early Principate", pp.73-81; Rogers, "Treason in the Early Empire", pp.90-94 for the legal technicalities of *maiestas*; on another aspect, Rogers, "A Tacitean Pattern in Narrating Treason Trials", pp.279-311. Walker's list in Annals, App. II is more useful than Rogers in CTLT, although less complete.
77. Dio LIV 2.
78. Tac. III 52.
79. Dio LVII 23.4f.; Tac. IV 15.3-5. Cf. III 66-69.
80. On Tiberius' attitude towards divine honors, v. L.R. Taylor, "Tiberius' Refusal of Divine Honors", pp.87-101; Divinity of the Roman Emperor, p.239f.; Scott, "Tiberius' Refusal of the Title Augustus", pp.43-50; Ros-tovtzeff, "L'Empereur Tibère et le culte impérial"; and Scott, "Tacitus and the Speculum Principis".
81. Perhaps Tiberius did not have the ability to try such a case; v. the section above on capital jurisdiction.
82. Tac. IV 22.
83. Lex Iulia, Dig. XLVIII 5.30, pr.; Paul. Sent. 26.8 for the regulations regarding the rights and obligations of the husband.
84. Tac. II 85.2ff..
85. Also Dig. XLVIII 5.12, 6; 5.15, 2.
86. Heidel, "Why the Jews Were Banished from Italy in 19 A.D."; Rogers, CTLT, p.32ff.; Tac. II 85.5; Suet. 36; Jos. Ant. XVIII 3.5; Dio LVII 18.5a. Mundus was convicted under the Lex Iulia. v. Paul., Sent. 26.14.

87. Dig. XLVIII 11.3 and 7 pr. (Macer). [Cf. P.I.R. S700.]
88. Tac. IV 42.
89. Tac. VI 2; Dio LVIII 17.4. Cf. Scott, "The Diritas of Tiberius", p.143.
90. Tac. VI 3.1ff.; Dio LVIII 18.3f..
91. For the first trial v. Tac. IV 13.2; 6.2; 15.3. On the application of the *Lex Iulia de vi publica* v. Jackson, Tac. Ann. IV p.25, n.7.
92. Tac. IV 44.
93. Compare the eventual usurpation of the delators' functions by the emperor and the praetorian praefect later in the reign. Also, cf. the trial of Lepida, when Tiberius waited until after conviction for the introduction of his own evidence.
94. Tac. IV 67; V 3; Suet. 54; Vell. II 130.4.
95. Plin. N.H. VIII 145.
96. Philo. in Flacc. 3.9. Cf. Suet. 53.2; 54.2; 64; Calig. 15.1.
97. Rogers, "Agrippina", pp.141-168; Kuntz, Tiberius Caesar and the Roman Constitution, p.60ff.; Marsh, "Roman Parties in the Reign of Tiberius"; Allen, "Political Atmosphere in the Reign of Tiberius"; Seager, Tiberius, pp.233f., 206ff., 196ff.; Marsh, Reign, p.185ff; Syme, Tacitus, p.404f.; Charlesworth, "The Banishment of the Elder Agrippina", p.206f. For Tiberius' jurisdiction, v. App.I.
98. Dio LVIII 3.8; 13.1; 22.4; Tac. VI 23; 24; 40; Suet. 54.2; 64; 65.2; Calig. 7.
99. Suet. 25; v. also Tac. II 39ff.; Dio LVII 16.3f..
100. Tac. II 40.
101. Shotter, "Silius", pp.712-716; Rogers, "Agrippina", pp.146-152 and 142f.; Tac. IV 18-20; XI 35.2; Vell. II 130; Brunt, "Maladministration".
102. For the two charges, one for conviction, one for the purpose of sentencing, v. Marsh, "Aristocratic Tradition", pp.307-308.
103. Shotter, "Silius".
104. Rogers, CTLT, p.77; Shotter, "Silius", p.714; Levick,

Tiberius the Politician, p.181.

105. Tac. IV 19 fin..
106. Tac. IV 18.1.
107. Dig. XLVIII 4.11 (Ulpian); Rogers, CTLT, p.78; Levick, Tiberius, p.133. Cf. the transfer of the property of Seianus to the Fiscus.
108. Dio LVIII 3.1-6; 23.6; Tac. VI 23.
109. Rogers, CTLT, p.105f.; Dig. LVIII 24.1 (Ulpian).
110. Dio LVIII 3.7.
111. Dio LVIII 9-12; Juvenal 10.56-89; Sen. Tranq. II 11; Jos. Ant. XVIII 181f.; Philo. ad Gaium, 24.159f.; Suet. 65; Val. Max. IX 11.4; Tac. IV 8; 11; VI 3.8; 14; Sumner, "The Family Connections of L. Aelius Seianus"; Adams, "The Consular Brothers of Seianus"; Boddington, "Seianus, Whose Conspiracy?"; Sealy, "The Political Attachments of L. Aelius Seianus"; Bird, "L. Aelius Seianus and his Political Significance"; Seager, Tiberius, pp.214-223.
112. For the possible intention of the plot v. Syme, "History or Biography. The Case of Tiberius Caesar", pp.486-488.
113. It is interesting that in the ensuing pogroms, only one consular met his death, Seianus' uncle Junius Blaesus. (Tac. V 7). For a summary of the conspiracy question set out by Marsh and Rogers, v. Rogers, CTLT, p.110-114.
114. Dio LVIII 10.8.
115. Dio LVIII 11.4.
116. As an aside, for Seianus' guilt in the murder of Drusus, v. Balsdon, "The Murder of Drusus, son of Tiberius", and Rogers, "Seianus".
117. Tac. VI 2.1f.. Cf. Dio LIX 8.5.

CONCLUSION

The constitutional position of Tiberius should now be clear. Tiberius' desire to see the Republic maintained led him to view the principate in a unique manner. Unlike Augustus who intended the republican forms as a guise for his autocratic foundation, Tiberius truly seems to have seen the value of senatorial and oligarchic participation. Yet, at the same time Tiberius realized the necessity of the Augustan principate. Thus Tiberius intended and even desired senatorial activity in administration, but consistently controlled any of the senate's executive functions. The reasons for the limitations placed on the senate are clear. The senate, as under the republic, was to administer the empire. But the senate had also shown its inability to control the caprice of its generals and armies. Tiberius, following upon the precedent of Augustus, realized that ultimate power and loyalty must rest with one who, due to his position, could not be embroiled in factional struggles. In this way tradition was overshadowed by the principate in order that some part of tradition could survive.

In the political sphere Tiberius drew on the support of elements which are best called conservative. The vast majority of Tiberius' adherents were drawn from consular families and aristocratic families which were in direct contrast to the supporters of Germanicus or Seianus. It was this conservative group which was least likely to oppose a moderate and able princeps.

By indirectly controlling elections, Tiberius was able to control the senate. As long as lesser magistrates could be chosen by the princeps, greater magistrates would tend to be more loyal to empire and emperor. It was, in fact, Republican electoral tradition which worked in favour of Tiberius. As long as Tiberius was princeps, his *auctoritas* necessitated his interference. And, as long as Tiberius supported the consular families, as long as he worked to maintain magisterial dignity and prominence, he could be assured of powerful support from the greater families of Rome which had most to gain from the status quo. In such a way, through the attractive exclusivity of the consulate, even *novi homines* were won over to the imperial cause.

However, certain prerogatives were left to the senate, such as the control of the lucrative provinces of Asia and Africa. Yet, while Tiberius retained electoral control, such provinces were bound to fall to men favored by the princeps. Senatorial control may then be said to have been diminished in two ways. Firstly, there was the expected diminution of the senate's power through necessary imperial control, and secondly, through either the subservience or the wisdom of the senate in abandoning its rights to the higher control of the princeps.

In the legal sphere, Tiberius markedly demonstrated his preference for the conservative and cautious approach to government. Legislation must be seen as lacking in any innovative tendencies, yet law remained to serve the needs of the state. Never disinterested, Tiberius stressed modera-

tion, combined with overtones of moral and political utility. Legislation needed to serve the practical needs of the people, and therefore the state. Legislation should not have attempted what was beyond its pale or its ability.

Trials followed this same view to utility, although the evidence handed down lacks somewhat in clarity and objectivity. The major trait which is evidenced remains a deep concern for the dignity and safety of the state.

The most fortunate aspect of Tiberius' reign was the coöperation which came to exist between the princeps and the nobility. The nobles, especially the consular families, realized that only through some sacrifice on their part could they hope to benefit from the new peace and order which had resulted from Augustus' constitutional settlement. "Only by accepting the major restraints that the principate imposed on independent action could they preserve some semblance of dignity. Greater freedom Tiberius the republican was powerless to grant."¹

CONCLUSION: FOOTNOTES

1. Seager, Tiberius, p.247.

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APPENDIX I: Capital Jurisdiction

While there was no real change in civil jurisdiction under the early principate, a major break occurs between the capital jurisdiction of the Republic and Principate.¹ Under the Republic the authority in a position to pass capital sentence was the *iudicium publicum* or one of the jury courts at Rome.² The legal rights governing institution of the death penalty were contained in the *Leges Corneliae* and the *Lex Iulia de vi publica*. Yet we know that under Tiberius the senate, and perhaps the emperor, held the power to inflict the capital sentence almost without trial.³ Of the executions of the reign, sixteen do not seem to have been held before the *iudicium publicum*.⁴

While Piso's case was obviously a capital one, one to be tried under the *Lex Iulia*, and there was a proper right for the *iudicium* to take charge,⁵ no objection was raised to the legal position of the princeps as one empowered to try the case. Although there may have been a lack of justification for the emperor's capital jurisdiction, his preliminary *cognitio* into the matter was indicative of the power which he held in his capacity as princeps. He may not have had the legal right to try the case, but his personal *auctoritas* was such that neither accusers nor defenders were about to object to his handling of the trial.⁶ Yet Piso's attitude appears to indicate a disbelief in the emperor's right to conclude the inquiry. I would therefore tend to object to the attitude taken by Jones.⁷ As far as Tiberius was concerned, the major

charge was not murder, but *perduellio/maiestas*.⁸ Indeed the charge of murder was successfully refuted.⁹ One of the difficulties encountered in the case, which gave rise to the extraordinary procedures employed, might have been the processing of three separate charges, all of which should have come under a separate *quaestio perpetua: repetundae, de sicariis et veneficis*, and *maiestas*.

There was sufficient precedent for the charge of *maiestas* to be tried before the senate, or even the emperor.¹⁰ Likewise, there was sufficient precedent to have the senate try the charge of *repetundae* under the SC Calvisianum of 4 B.C., which established the civil *recuperatores* and general senatorial usurpation of criminal jurisdiction. The last charge, that of poisoning, was probably appropriated to the senate because of, among other reasons, the prestige of the defendant and the victim.¹¹ Additionally, there was little chance of a trial before the *quaestio* being an impartial affair. The words of Tacitus indicate the exceptional nature of the inquisition, as well as the penalty in mind. The intention was for the capital penalty to be granted on the charge of murder, and it was to be the senate which would so decide. Thus, the trial of Piso is to be viewed as exceptional, and perhaps the first instance of its kind.¹³ Yet we are left without conclusive proof: was Piso convicted of murder or *perduellio*, either of which could be transferred to *maiestas*? Would the capital penalty have been inflicted if Piso had been found guilty? Paulus seems to indicate there could have been execution of sentence without appeal.¹⁴ Jones lists the trial of Piso as

evidence that the senate tried and convicted capital offenders without *provocatio*. But Piso did not live to appeal the decision, nor was he put to death.¹⁵ There is reason to believe that the penalty for the charges might have been alleviated by the presiding magistrate, the consul *in consilio*.¹⁶

In view of the evidence, it would appear proper to believe that it was under Tiberius that those holding consular *imperium* were granted the right to try capital cases coming under the *Leges iudiciorum publicorum*. Under Augustus the procedure for senatorial capital cases is undocumented as far as conclusions to be drawn are concerned. The lines of Ovid¹⁷ do not argue for a conclusion. The SC of 4 B.C. indicates a lack of senatorial jurisdiction in capital cases without the jurisdiction of a magistrate holding *imperium*, and therefore *jurisdictio*.¹⁸ There is simply insufficient evidence to believe that Augustus tried criminal cases within a legal context. Suetonius (Aug. 33,51) is somewhat obscure on the matter. The only clear indication is Dio (LVI 24.7) where the accuser asks Augustus to preside over a trial in which the accused has utilized the services of Germanicus. Augustus refuses, but even without his refusal, it is evident that the imperial court is being requested for an extraordinary reason. Dio even adds that the *iudices* normally heard such cases. It would appear that the innovation takes place under Augustus' successor: perhaps there are examples of an earlier date, but as a practice, trials of *maiestas*, *repetundae*, *falsum*, *adulterium*, etc. come under imperial/senatorial auspices as the result of two major innovations.

The first is the conferment, by some means yet unknown, of capital jurisdiction on the consular magistrate (including the emperor?) which entailed control over the *Leges iudiciorum publicorum*.¹⁹ Secondly, there was a utilization of the old Republican and Augustan legal statutes and precedents to justify the functioning of the new courts within the constitutional framework. Thus Tiberius created new avenues for the legal formulae of the Republic to follow, while, at the same time, he maintained the legal corpus almost without addition.²⁰

It would seem, if the speculations are correct, that the emperor possessed no legal right of capital jurisdiction, but shared it with the consuls as a magistrate vested with *imperium*. Yet, under Tiberius it was rarely utilized by the emperor, if at all, with the consul *in consilio* becoming the dominant *ultimum iudicium*. The effect was to move the trial of any capital case to the senate should either party in the dispute so desire, or should the senate or emperor have some interest in the case.

As for appeals, we need not even regress as far as the reign of Augustus. The SC of 21, which stayed the execution of sentence for ten days, was not intended to allow for appeals, but to allow the emperor to alter the verdict, or know of the case before its culmination. It indicates that the senate did not allow *appellatio* to the emperor, since, prior to 21, it had the ability to execute immediately. The emperor did not, even following 21, accept appeals as a general rule, but simply confirmed or annulled sentence, without the formal procedure of a trial.²¹

Thus, we have the senate, with all the rights of a *iudicium*, functioning as the final court of arbitration. The emperor, perhaps with the legal right, definitely with the personal power of capital jurisdiction, relegating all of his authority to the *patres*.

FOOTNOTES: APPENDIX I

1. Jones, "Imperial and Senatorial Jurisdiction in the Early Principate", p.86.
2. Note the penalties for denial of *provocatio* or *appellatio*: Paulus Sent. V xxi.1; Dig. XLVIII vi.7 (Ulpian).
3. Seianus and Tiberius' Rhodian friend are examples.
4. Ignoring 20 of the executions of 33 which are of less than certain procedure.
5. Tac. III 10.
6. It is peculiar that Tacitus says that Piso chose his defenders only prior to the senatorial trial, but seemingly had gone through Tiberius' *cognitio* without them. Perhaps he acted as his own defence, or knew that the trial would never reach a conclusion. V. McFayden, Rise of the Princeps Jurisdiction within the City of Rome, p.249.
7. Jones, "Jurisdiction", p.87f..
8. Rogers, CTLT, p.46.
9. Ibid.
10. Bauman, The Crimen Maiestas in the Roman Republic and the Augustan Principate, p.291, etc. V. p.263 for an example of the usurpation of the *iurisdictio quaestionis* by the senatorial and imperial courts.
11. Tac. III 12.
12. Tac. III 12: 'id solum Germanico super leges praestiterimus, quod in curia potius quam in foro, apud senatum quam apud iudices de morte eius anquiritur.'
13. McFayden, Rise, p.243, perhaps not followed again during the reign.
14. 'antea ad populum nunc ad imperatorem appellansem', Sent. V xxi.1; 'adversus provocationem', Dig. XLVIII vi.7 (Ulpian).
15. Jones, "Jurisdiction", p.87.
16. At least the crime of murder, which in itself may have been transferred to that of *perduellio/maiestas*. Tac. III 14: 'senatus numquam satis credito sine fraude Germanicum interesse ...' V. Ulpian, Dig. XLVIII xix.1, 'licet ei, qui extra ordinem de crimine cognoscit, quam vult sententiam ferre, vel graviorem vel levioem, ita tamen ut in

utroque moderationem non excedat', and Marcianus, Dig. XLVIII viii.1, 3, 'leniendam poenam eius qui in rixa casu magis quam voluntate homicidium admisit.' Cf. Dig. XLVIII viii 3.5; Pliny, Ep. IV 9.17; II 11.2 and the senate's right to 'mitigare leges vel intendere'.

17. Ovid, Tristia, II 131-132: 'nec mea decreto damnasti facta senatus / nec mea selecto iudice iussa fuga est.'
18. Jones, "Jurisdiction", p.88.
19. V. Table II; Dig. I xxi.1 (Papinian).
20. The SC of 21 was Tiberius' only innovation. There is not enough information to speculate whether the proconsuls were allowed capital jurisdiction, but even if they were it would appear that they were governed by the necessity of establishing some sort of *iudicium publicum* which reached decisions binding upon the magistrate. SEG IX 8.1; iv; but contrast Pliny, Ep. II 11.
21. In the light of this, Jones' statement ("Jurisdiction" p.94ff.) cannot apply to the reign of Tiberius at least prior to 21, and perhaps later as well. Tac. III 51.3; Suet. 75; Sen. de Tranq. 14.6. McFayden, Rise, p.248 feels that it was a matter of the emperor exercising his tribunician veto. V. Jones, The Criminal Courts of the Roman Republic and Principate, p.105.

APPENDIX II: The *Moderatio* of Tiberius

*Moderatio*¹ as one of Tiberius' principal virtues is undeniable. Examples are more than plentiful in even hostile authors' works. The actions or re-actions of the emperor towards suggested honors for Livia and himself,² towards the five year predesignation of consuls proposed by Gallus,³ or the 'pretense' of moderation mentioned by Suetonius,⁴ all follow a consistent pattern on Tiberius' part. More instances can and perhaps should be mentioned in brief.

Tiberius refused the title of *pater patriae*,⁵ as well as the *praenomen imperatoris* and the *corona civica*. He also declined useless flattery, especially the erection of temples to himself or any other living being.⁶ Both consulships and triumphs were limited: during his reign he held but three consulships lasting a total of eight months, and celebrated only three of seven triumphs earned.⁷

Livia's legal meddling was consistently tempered by the moderation of the emperor. Her attempts to have a certain citizen enrolled as a juror met with Tiberius' approval only on the condition that the official records show that he had been coerced by his mother.⁸ The case of Urgulina indicates Tiberius' regard for outside interference with the courts of law.⁹ And as mentioned, Livia, and also Germanicus were refused excessive honors, even after their deaths.¹⁰

Tiberius' own son Drusus was repeatedly restrained by his father: "ζῶντος μὲν μου οὐδὲν οὔτε βίαιον οὔθ' ὑβριστικὸν πράξεις· ἂν δέ τι καὶ τολμῆσης, οὐδὲ τελευτήσαντος."¹¹

During the trial of Aemilia Lepida in 20, Drusus, as consul-designate, was relieved of the necessity, or the privilege, of voting first,¹² and in 22 when Drusus received the tribunician power, Tiberius vetoed honors proposed for himself and his son.¹³

Another consistent feature of Tiberius' reign was his insistence on moderation in funerals for the imperial family and its associates. At the death of his brother Drusus "modum tamen lugendi non sibi tantum sed etiam aliis fecit".¹⁴ The funeral of Augustus saw Tiberius "adroganti moderatione".¹⁵ Nor during either the funeral of his son or grandson would the emperor suspend his usual activities to indulge in mourning.¹⁶ The same was true for the funeral of Livia which Tacitus describes as "modicum".¹⁷

In the realm of government and law Tiberius repeatedly attempted to reduce or define the application of the *lex maiestatis*. "Non tantum otii habemus, ut implicare nos pluribus negotiis debeamus; si hanc fenestram aperueritis, nihil aliud agi sinetis; omnium inimicitiae hoc praetexto ad vos deferentur."¹⁸

In 20 the senate debated "de moderanda Papia Poppaea" and Tiberius "statuendo remedio" set up a commission of fifteen senators which resolved many of the law's intricacies.¹⁹ In an outstanding display of sense and moderation, Tiberius declined to pursue attempts to enforce the sumptuary legislation.²⁰

Tiberius' attempts to limit the power of the principate may be evidenced by the commendation of only four candidates

in the praetorian elections.²¹ Moderation on the emperor's part was certainly in evidence at the trials of Libo, Piso, and Pompeius Labeo, all of which were handled "non vi principis".²² As Velleius notes, Tiberius acted "ut senator et iudex, non ut princeps".²³ Towards the proposal of Dolabella for imperial approval of provincial governors, Tiberius again showed his restraint: "satis onerum principibus, satis etiam potentiae: minui iura quotiens gliscat potestas nec utendum imperio ubi legibus agi possit".²⁴

On Tiberius' personal holdings, Tacitus comments: "rari per Italiam Caesaris agri, modestia servitia, intra paucos libertos domus; ac si quando cum privatis disceptaret, forum et ius".²⁵

As we have seen, Tiberius, refusing further responsibility, offered an increase in the functions of individual senators and the senate as a whole. We are informed that when the emperor visited the praetor's court, he refused to allow the magistrate to give up his curule chair. Concerning taxes, the emperor may be shown to have exercised *moderatio*, or even *providentia* in the case of Egypt, Achaëa, Macedonia, Syria, Judaea, Cappadocia, Asia, and Italy. Tacitus, writing of the year 23, says: "et ne provinciae novis oneribus turbarentur utque vetera sine avaritia aut crudelitate magistratuum tolerarent, providebat".²⁶

His restoration of buildings followed a similarly moderate and humble vein, allowing the name of the original builder to remain without adding his own.²⁷ His table showed no greater pretension,²⁸ nor did his residence. While maintai-

ning respect for the magisterial dignity of the consuls, and for the senate as a whole, he openly displayed his appreciation of close friends.²⁹

Moderation was an integral part of Tiberius' conservative approach to government. In many respects it reflects the two main aspects of the principate: moderation in retaining the precedents of Republican and Augustan periods and not deviating from them to any great extent, and moderation as a view to utility. Both aspects are almost uniquely Tiberian.

FOOTNOTES: APPENDIX II

1. For the vocabulary of *moderatio*, v. Rogers, Studies p.62, and Sutherland, "Two Virtues of Tiberius, a Numismatic Contribution to the History of His Reign", pp.129 and 139.
2. Tac. I 14.1-3; cf. Dio LVII 12.4f.: Suet. 50.3; Tac. I 11.1; 12.1-3; and also Suet. 24; 25.2; 26.1.
3. Tac. II 36.
4. Suet. 57.1.
5. Tac. I 72.1-3; 8.5; Suet. 67.2-4; 26.2; Dio LVII 2.1; 8.1, 4; cf. LVIII 17.3; Tac. II 87; Suet. 27; Dio LVII 8.2.
6. Tac. III 47.4f.; IV 37f., v. Taylor, "Tiberius' Refusal of Divine Honors", esp. p.89, n.6 for the Gythium inscription. Also Dio LVII 2.1; 8.1, 3; 9.1f.; 18.2; LVIII 8.4; Suet. 26; cf. Dio LIX 3.2. Following the death of Seianus honors were again resisted: Dio LVIII 12.8; 13.2; 22.1. On flattery v. Tac. I 77.1-3; Suet. 27; Tac. II 87.2; III 65.2-4; VI 38.2f..
7. Suet. 26.2; Vell. II 122.1.
8. Suet. 50.2; 51.1.
9. Tac. II 34.3-7.
10. For Livia, Tac. V 2.1; Dio LVIII 2.1-3; Suet. 51.2; for Germanicus, Tac. II 83.4; cf. III 12.10.
11. Dio LVII 13.2.
12. Tac. III 22.6.
13. Tac. III 59.2; cf. 57.2f.. V. Rogers, Studies, p.71 for the attitude of the emperor towards the honors accorded Nero, Drusus, and later Gaius. Also, Tac. IV 17.3; Suet. 54.1; Dio LVIII 23.1.
14. Sen. ad Polyb. 15.5.
15. Tac. I 8.6.
16. Dio LVII 14.6; Tac. IV 8.2f.; 13.1; Dio LVII 22.3; Suet. 52.1.
17. Dio LVIII 2.1; Tac. V 1.6; 2.1.
18. Suet. 28.

19. Tac. III 25.1; 28.6.
20. Tac. III 52; 53.2; cf. Dio LVII 13.3.
21. Tac. I 15.2; cf. 14.6.
22. Tac. III 12.4.
23. Vell. II 129.2.
24. Tac. III 69.6.
25. Tac. IV 6.7; cf. Dio LVII 23.5.
26. Tac. IV 6.7; cf. I 76.4; II 42.7; 56.4.
27. Dio LVII 10.1f.; Vell. II 130.1; Tac. III 72.4.
28. Suet. 34.1; Plin. NH xix 137.
29. Dio LVII 11.1, 3, 7; Suet. 29.

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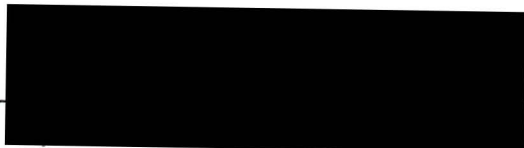
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