legal imposition of the death penalty. The "re-introduction" of the death sentence against Caepio and Murena (p. 205 above) had taken the form of a sentence of interdictio, but actual execution, and the same doctrine of "quick pursuit" may have been invoked against Antonius. It is suggested that this doctrine was limited to maiestas, so that if this was the manner of Antonius' death it is evidence of the nature of the charge against him. A similar conclusion is reached if Velisius' version of suicide (2.100,4) is accepted. The introduction of an allegation of maiestas would have reminded Antonius of the fate of Caepio and Murena. Faced with the prospect of a sentence of interdictio followed by an ignominious death, he chose suicide.  

There is another piece of evidence to suggest that the charge was maiestas. L. Antonius, the son of Iullus Antonius, was exiled by Augustus after his father's death, and while still an "adolescentulus" who had not yet completed his studies (Tac. Ann. 4.44,5). He is nowhere mentioned as a paramour, and seems to have been too young to have got into political trouble on his own account. His crime may well have been that of mourning his father, in breach of the rule which prohibited mourning for those convicted of maiestas.

It may be objected that if Gracchus and the rest were also charged with maiestas they should also have been pursued and executed, or driven to suicide in anticipation, instead of being allowed to go quietly into exile. The answer seems to be that there was an aspect of Antonius' conduct which aggravated his offence, and either prompted Augustus to pursue and execute him, or left him in no doubt that this would follow

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1 It should not be assumed that his motive was to avoid confiscation of his property. Chilton's view (79-81) that this motive accounted for suicides in maiestas cases does not outweigh the counter-arguments of Cicero (267-9); Rogers (Trials 183-4); and Valtorena (486.)

2 Dig. (3.2.11.3); cf. Tacitus (Ann. 6.10.1): "neotagus est unus Vitia, Rufii Gemini mater, quod filli recentissim."
his condemnation. In order to take this question further, it is necessary to consider the precise nature of the crime of Julia and her paramour, and to determine the relationship between the crime of "laesae religiones ac violata maiestas" (Tac. Ann. 3,24.3) and the "crimen maiestatis populi Romani imminutae".

B. "GRAVI NOMINE LAESARUM RELIGIONUM AC VIOLATAE MAIESTATIS APPELLANS"

The conspiracies against Augustus which have been discussed (pp. 189-215 above) do not require the assumption of a maiestas shift from the Roman People to Augustus in order to put them in their proper legal perspective. Whether as triumvir or as princeps, Augustus himself at all times fell under the category "quis magistratus populi Romani quive imperium potestatem habet" (Dig. 48.4.1.1), so that all plots against him, at least until 2 B.C., are within the framework of acts which diminished 'maiestas populi Romani'. That no extraordinary principle had to be invoked for these attacks is shown by the fact that the plots attending the 'lectio senatus' in 18 B.C. were punished as having been directed against both Augustus and Agrippa (Dio 54.15.1,4), so that this is clearly a case where they were injured in a magisterial capacity. The punishment of adultery with Julia as maiestas owner, however, be justified on any of the principles which have so far been considered. It may at a pinch be argued that any disgraceful conduct by a magistrate or senator could, without offending against Republican usage, be prosecuted as maiestas (cf. pp. 99-101 above), but this rule would not have applied to at least one of the friends of Julia, namely a certain Lemosthenes (p.215 above). Adultery could in general terms be regarded as an 'injuria' to the woman's father (Mommsen, Straf 695,798-9), but it was precisely for this reason that he shared a preferential right of prosecution with the husband (Mommsen, Straf
To call an imperium maiestatis meant that an "inimicis" to Augustus, as a father, and not as the holder of imperium and potestas, was converted into a crime against the State. Caesar's "ego et populus Romanus" at the very least admitted the State as a junior partner, but how did the populus Romanus fit into "ego et domus mea"?

Pollack, correctly pointing out that the populus Romanus, meaning the State, was a juristic person, says of Augustus (126): "Denn steht eine Person in Vordergrund des politischen und staatlichen Lebens, eine Person, die den Staat verkörpert, repräsentiert ..." (cf. Syme 519; De Francisci 73). Arangio-Ruiz (137) maintains that if "inimicis principis" in Digest (48.4.3; cf. pp. 290-8 below) can be referred to Augustus, it would mean that he was a corporation sole - which amounts to saying that a technical maiestas shift to Augustus would have meant the replacement of one juristic person (the populus Romanus) by another (the princeps). Evidence of such a transformation should first be sought in the constitutional position of Augustus, and a brief estimate will be attempted of the extent to which certain of his constitutional powers furnish evidence of a maiestas shift.

Whether the (probably) proconsular imperium on which Augustus based his provincial administration was effective over the governors of senatorial provinces in terms of the original

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1 Pollack 127; cf. Mommaen (Staat 3.1.3-4); Greenidge (Public Life 30); Buckland 35; Sibler (Verfassung 10.)
2 Contra Buckland (35): "There is nothing corporate about the Emperor - he is a man".
3 Mommaen (Staat 2.2.840, 845, and passim); Greenidge (Public Life 560); Preussertein (226-32); Syme (311, 330 and n.2); Nicholls (BE 22.2.1770-2). A consular imperium is assumed by Pollham 69 and Grant (426, 437 and n.1). Salmou (404-5) believes in two contemporaneous imperia, a consular in Rome and an Italian, and a proconsular in the provinces. As to whether any adjective at all should be attached to 'imperium', see Beranger 73.
settlement of 27 B.C., or whether the "maius imperium" should be assigned to the settlement of 23 B.C., this power does not seem to furnish evidence of a maiestas shift. Mommsen (Staat 2, 2, 849 and n.3) holds that an Augustus had the exclusive right to levy troops (Dio 53.17.5), the sole criterion as to whether a governor was liable for maiestas was whether he had acted "ius su principis". Mommsen relies on Dio (53.1.5,6) for this proposition, but the evidence of Dio on this question can more conveniently be considered when the lex Julia maiestatis of Augustus is discussed (pp.36 ff below).

At this stage it is sufficient to point out that Dio is against Mommsen, for he says that either the Senate or the princeps could authorize levies. It should also be pointed out that "maius imperium" was not exclusive to Augustus, for it was also conferred on Agrippa in 18 B.C. (Syme 337, 389) and on Tiberius (Syme 431, 433). A corporation sole would not have derived its charter from a power which more than one could hold.

In his Rea in Gestae (34) Augustus records his pre-eminence in 'auctoritas', but equality in 'potestas', with his magisterial colleagues. As 'potestas' was one of the attributes which enjoyed the protection of the maiestas law (Dig. 48.4.1.1), Augustus in effect attests that in his official capacity he received no special recognition from the lex maiestatis. The question is whether his pre-eminent auctoritas has any bearing on a maiestas shift. 'Auctoritas' expressed the Senate's function of sanctioning the People's acts and acting

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1 Mommsen (Staat 2, 2, 845, 2; 847-8; 854-5; 859-61); cf. Prenninger 226, 281.
2 Pelham 72; Syme 513, 1; Wickert (BE 22.2, 2271-5); Salaman (667, 459-70); Sattler 69.
3 De Franciscis (72-3) believes that there is a vital connection: "Auctoritas rappresenta cioè un' idea che si accosta a quella di sovranità; idea che, data la contrapposizione a potestas, se non secondo il contenuto a potestas, se non secondo il contenuto e delle distrazioni dell imperium maiestas alle populi Romani. Essa designa la posizione giudicando il preminente dell uomo, nella cui persona è connaturato il potere pubblico, in modo completamente diverso da quello con cui esso viene attribuito ai magistrati della Repubblica".
as the consilium of the magistrates; but as the Senate was by the sum of its members, the exercise of auctoritas was the function of individual senators, each of whom spoke with a degree of authority dependent on the point in the debate at which he was entitled to be consulted. 

Auctoritas therefore essentially expressed precedence, the prior right to be consulted, and the right to expect the acceptance of the counsel which was tendered. The Senates neglected to their cost the "salutare consilium" of Q. Publius Pontius, who was "auctoritate praestans", and Q. L. Q. Qius was "consilium, auctoritate praestantium". There is a similar association in "auctoritate omnibus praestitis" (Res Gestae 34). While the auctoritas of Augustus is generally regarded as extra-constitutional, it had a legal significance, although not on the constitutional level. It was on the principle of precedence that a jurist's opinion carried weight regardless of the merits of his view (Sciu, Principles 383-5). On a similar principle other fiduciaries followed Augustus in discharging fiduciaria imposed by codicil, although codicils were previously unknown: "deinceps reliqui auctoritatem eius (sc. Augusti) secunt" (Inst. 2.25pr). Augustus acted thereon the advice of Trebetius, "cus tum auctoritas maximae erat", but not even this precedent established codicils "de lite", for they were not fully recognised until Labo wrote them (Inst. 2.25pr). Augustus' auctoritas had a similar persuasive, but not mandatory force, when he granted the 'ius respondendi' to the more eminent jurists: "ut major juris auctoritas (sc, prudentium) haberetur, constituit ut

1 Baedon (Auctoritas 43-5); cf. Humm (Staat 3,2,1034-4; 1037-9); Schulz (Principles 178-90); Syme 322.

2 Baedon (Auctoritas 44), citing Valerius Maximus (7.2, ext. 17) and Cicero (Cluent, 38,107).

3 Froscantin (187-90); De Francisci 72; Syme (313 and n.1); Grant (452.5); Wicke (RE 22.2 2287-9); Salcyn 419; Sattler 91,131.

4 Burckland 18; Schulz (Principles 180-7); Legal Science 112-3; Jolowicz 369.
ex auctoritate eius respondentur" (Dig. 1.2.2.49). 1

Mommsen (Staat 3.2.1033 and n.1) holds that in the Republic there was no identification of 'senatus auctoritas' with the maiestas of the People and its magistrates, although he believes that in the Principate the Senate possessed maiestas. It is clear that the latter view is not correct, if only because the Senate was not a corporate body. When Menonst-in (1.88) says that the grant of 'potestas' to Augustus was in the gift of the Senate, but remained vested in the sovereign People, which continued to exercise its power directly by legislation and indirectly by delegation, he in fact means that the Senate did not have maiestas which remained with the populus Romanus. The transitive verb 'augere' does not have the same force as the intransitive 'maior esse'. Auctoritas is the active element, the factor which initiates an increase; maiestas is the relationship resulting from the activity of auctoritas. In 'maiestates audi' the auctor augments maiestas, and the result of his action is the passive co: 'it maiestas aucta'. In like manner maiestas is the subject of activity when it is diminished, resulting in the passive concept 'maiestas minuta'. The auctoritas of Augustus is evidence not of a maiestas shift, but of his pre-eminently favourable position for the initiation of measures designed to augment maiestas.

It is presumably because it is not possible to show a technical transference of maiestas from the Roman People to Augustus that some authorities have postulated a different

1 Saltzler (50,126) believes that Augustus exercised his auctoritas only in the field of private law, but the better view is that of Salmon (541) who, pointing out that 'auctoritas' is derived from the same root as 'augere' (Cf. Mommsen, Staat 3.2.1034.1; Pfeil 55), sees its significance in the senatus auctoritas; it was Augustus of being the initiator or privilege which it gave Augustus of being the initiator or 'auctor' of a policy. The expressions 'me auctore' and Cne-senatus' do not mean that his auctoritas was the senatus auctoritas' do not mean that his auctoritas was the auctor auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the auctoritas auctoritas' do not mean that his auctoritas was the aucto
concept of maiaestas for the princeps and his house. Pollack (135-6; cf. 127-8, 140) puts it as follows:

Der populus Romanus vindiziierte sich Majestät als Souverän gegenüber den auswärtigen Staaten um den Gliedern der eigenen Gemeinde, der 'magistratus populi Romani' aber als der sichtbare Vertreter, also Organ des souveränen Gemeindekörpers. Des Prinzeeps eigene Majestät, nicht weil er Souverän, nicht weil er Organ ist, sondern weil er erster einer in sich gleichen Gemeinschaft ist und diese seine Qualität als 'primum inter pares' durch den ihm zugebilligten Majestätschutz gewährleistet wird ... Die 'maiaestas' ist nicht mehr das Atribut eines öffentlich-rechtlichen Funktionen, sondern das Insignium für das persönliche Ansehen des ersten Bürgers.

This characterisation is partly correct, in that it postulates a form of maiaestas which is 'sui generis', but it goes too far in discarding the concept of 'maiaestas populi Romani' entirely in relation to Augustus. The better approach may be to assume the co-existence of two maiaestas concepts. The concept of 'maiaestas populi Romani' still obtained, insofar as Augustus' official capacity was concerned, for any act against him which mediately diminished the People's maiaestas continued to be punished under the 'crimen maiestatis populi Romani imminutae'. It is believed that a second concept developed concurrently with 'maiaestas populi Romani', but independently of it, and it was for the protection of this new concept that a new crime came to be punished, the crime which Tacitus (Ann. 3.24.3) refers to as "laesa religiones ac violata maiestas". The suggestion is that, at least for the Augustan period, it is not technically correct to describe this new offence as the 'crimen maiestatis populi Romani imminutae'. It was not connected with 'maiaestas populi

1 Premerstein (13) stresses the personal position of the princeps, "bei dem nicht, wie in der Republik, die Person für das Amt, sondern umgekehrt das Amt für die Person da ist", cf. Röschel (7, 22.2.1958): "Träger der maiaestas aber, in dem eigentlichen Gewande, ist nun der Princeps"; Levi (Augusto 169): "l'uomo che per la sua sacrosanctitas riusumeva in sé la maiaestas del popolo".

2 Pollack (135-6) is wrong to describe the Principate as a magistratus. See Palmen (79.1). But Augustus held either a regular magistracy or Imperium and/or tribunicia potestas a regular magistracy or Imperium and/or tribunicia potestas and therefore fell under continuously from 27 B.C. to 24 A.D., and therefore fell under his Principate.
Romani', and did not derive its existence from the leges maiestatis. At the same time, however, it did not derive from a mere arbitrary exercise of power, but from a series of valid principles.

The nature of the "new" maiestas has been skilfully analysed by Dumézil (16-18), who argues that magisterial maiestas in the Republic had two separate sources. On the one hand it was a derivative of 'maiestas populi Romani', and on the other the magistrates were the successors to the kings. Ultimately both sources went back to Jupiter, "puisque la maiestas populi Romani vient du pacte initial, des auspices et des promesses de Jupiter, valables pour toute la durée de Rome, et que si le rex avait la maiestas, c'était comme réplique terrestre de Jupiter". "Maestas Iovis" expressed something more than a 'majo-minor' relationship, something which corresponded not only to 'majo' but also to 'maximus', that is, to a 'majo' whose counterpart was all the rest.

The notion of "superiority" which the word implies was elevated to "supremacy", thus tending to be a quality rather than a relationship. This quality was possessed not by a group, but by an individual, and it is from this sense of 'maiestas' that the word "majesty" is derived. This was the form of maestas possessed by the kings as the earthly homologues of Jupiter. The Republic parcelled out the heritage of the kings, fragmenting "maestas Iovis" among the magistrates, and emphasising 'maiestas populi Romani' as the source, thus obscuring the ultimate origin in Jupiter. The fragments were re-assembled in one individual in the person of Augustus.

Dumézil's interpretation is a reasonable characterisation of the majesty of Augustus on the non-legal level, but

1 Cf. Balduinus Franciscus (1014): "Non tamere tamen est quod Tectus, ubi de iudicis maiestatis quaeritur, admetet discarende esse rei publicae et Caesarum; nam et sub his alia novaque maiestatis definitio esse coepit".

2 "Majesté" in Dumézil (18).
it does not attempt to isolate the steps by which Augustan majesty reached a position of such general acceptance that it became possible to bring its protection within the ambit of the criminal law. It is proposed to examine certain principles which seem to have played the major part in the process of giving legal recognition and protection to the majesty of Augustus.

"Sacrosanctus in perpetuum ut esses et quoad viveres tribunicia potestas mihi esset per legem sanctam est" (Res Gestae 10). The authorities are fairly evenly divided between those who accept Dio (48.15.5-6; 52.32.5) for the grant of tribunician sacrosanctity, and no more, in 36 B.C., and the full tribuniciation power for life in 23 B.C., and those who follow Appian (B.C.5.132,598) and Orosius (5.18.34, 20.7) in postulating the full grant in 36 B.C. But the important aspect for the present purpose is the grant of sacrosanctity, which on both traditions took place in 36 B.C., according to Dio, and as part of the full power attested by Appian and Orosius.

"Sacra sancta" meant "sanctified by an oath", and thus it was that tribunician sacrosanctity was originally protected by an oath of the plebs, the so-called "lex sacrata" which Von Fritz (894, 901-3) believes was equated to "plebian sacrum", meaning not a lex, but the plebian oath to commit

1 Strack (350-3, 370, 381); Lengle (RE 7A.2, 2486); Syne 336; Grant 969-51; Broughton 2,400; Jones (Augustus 115); Siber (Verfassung 281-2); Micken 122.2,2285.6; Sartoris 68-9, 64; Hardy (64) and Kelly (17-18) accept Dio (51,19,6) for a full grant in 30 B.C. Hammond (11) and Salmon (668) are non-committal. Grant in 30 B.C. Hammond (11) and Salmon (668) are non-committal. For Caesar 67, 74, Strack argues rather well (350-3) that Orosius and Appian in fact mean the same as Dio.

2 Mommsen (Staat 1,1872.6; 173.1); Crowridge (Public Life 265-6) - with the rider that the 336; Pelham 74; Preusserstein (265-6) - to be granted anew in 23; Rohr (Caesar 57, 74). Strack argues rather well (350-3) that Orosius and Appian in fact mean the same as Dio.

3 Cf. Siber (Verfassung 282), Jones (Augustus 115-6), while decrying the rights which made up Augustus' full tribunician power, does not extend his criticism to sacrosanctity.

4 Mommsen (Staat 1,236); Lengle (RE 7A.2, 2460).

5 Mommsen (Staat 2,1,286-7); Niccolini (27,46); Lengle (RE 7A.2, 2455-7).
namely, a crime to kill the violator of a tribune.\(^1\) Subsequently a 'lex populi' - traditionally a Valerio-Horatian of 449 B.C. - indemnified the plebs against prosecution, but the oath remained the only effective guarantee.\(^2\) Even in the period of Caesar and Augustus the traditional origin of sacrosanctity in an oath gave a "religiösen Schimmer" to the tribunicia potestas, although in law "sacro sanctus" now meant merely that particular form of inviolability for which the sanction was "sacrum esse".\(^3\) It is disputed whether the enforcement of this sanction by pure tribunician coercitio was lawful,\(^4\) or was based on a distortion of the tradition for party purposes in the late Republic.\(^5\) The sources reflect this uncertainty, and seem to suggest that the conflict between the principle of coercitio (or direct action), which derived from the tradition of inviolability "religiones", and the principle of recourse to due process of trial, which derived from inviolability "lege", was never satisfactorily resolved.\(^6\) The cases in the late Republic perpetuate the confusion, for there are

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1 Lengle (RE 7A.2.2451) denies the historicity of the oath to kill. Cf. Kühler (RE 1A.2.1685,1687).
2 Von Fritz (loc. cit.) Cf. Strachen-Davidson (1.13). For the view that the Valerio-Horatian substituted a legal for a sworn guarantee, although the plebs also insisted on a renewal of the oath, see Mommsen (Staat, 2.1,303-4; Straf 581 and n.3), and Niccolini (46-8). There were other forms of 'lex sacra', of which the most significant is that whereby a group bound itself to a leader in a military undertaking (Niccolini 41; Von Fritz, 895-7), the oath being termed a 'sacramentum' (Niccolini 41) or 'conjuratio' (Von Fritz 895-6), and those bound by it being known as 'milites sacrati' (Niccolini 41; Von Fritz 895). The oath was frequently sworn by clients to their 'patronus' for the purposes of a military undertaking which he contemplated (Von Fritz 895).
3 Mommsen (Staat 2.1,303-4); cf. Strachen-Davidson (1.13).
4 Appian (B.C. 2.108).
5 Mommsen (Staat 2.1,305; Straf 932) - against Straf 46; Siber (Verfassung 231 282). Kühler (RE 1A.2.1685) notices that popular regard for the 'sacrum sancti potestas' was so great that it was even credited to other magistrates - "populi Romanorum sacrorum magistratibus sacrosancti" (Bell. Hisp.42.6); but Strack (368,5) believes that this text is corrupt.
6 Dionysius (5.89) confused the tradition of an oath in 494 B.C., and a lex in 449 B.C., when he describes the tribus as having been made sacrosanct νωμυ τε και δεξιάν (cf. Lengle, RE 7A.2.2460; Siber, Analogie 28), and attests (cf. Lengle, RE 7A.2.2460; Siber, Analogie 28), and attests (cf. Livy 3.57) "ut qui tribunis oportet aequam potestatem habeat." Cf. also ad sedem Cereri Liberi Liberorum venam iuvat. Cf. also Appian (B.C. 2.109).
examples of tribunes resorting to direct action against the "homo sacrosanctus" by attempting summary execution or consecration, while more or less contemporaneously the more mature procedure of a prosecution for perduellio or maiestas is invoked. It was pure coercitio, derived from the sworn rather than the legal aspect of sacrosanctity, when the tribune C. Atinius Labro attempted in 131 B.C. to hurl the censor Q. Metellus Macedonicus from the Tarpeian Rock for having omitted his name from the Senate list, but was prevented by a colleague's intercession. 1 Cicero (Dut. 47.123) says that Atinius consecrated Metellus' goods, but denies the legal efficacy of "ille furor tribuni plebis ductus ex non nullis perveterum temporum exemplis." The elder Pliny, the only source to discuss both the capital and the pecuniary measures against Metellus, says that after the intercession at the rock "alieno beneficio postea vixit, bonus in istam consecrationis datum suo" (N.H. 7.44.144), which suggests that the consecration was effective. An analogous case is the violent arrest of the consul L. Marcus Philippus for interrupting A. Livius Drusus in 51 B.C. (Val. Max. 9.5.2). But in other cases the aforesaid tribune prosecuted for perduellio or maiestas, such as the charge of maiestas brought by C. Flamininus against his father (p. 34 above), and the prosecution of P. Caecilius by Ti. Claudius Aeclanum, "cul equum in senatu ademerat" (Cass. 3.4.1) - clearly a maiestas charge: "F. Africanus 'pro se contra Tiberium Aeclanum' de multa ad populum" (Cass. 6.11.9). There are some borderline cases. When T. Annianus Lucus criticised the action of Ti. Gracchanus against H. Octavius, Gracchanus both arrested (coercitio) and tried to prosecute him (Plut. Gracch. 14.4-5; Livy Per. 58). In 159 B.C. a freedman of the tribune P. Rutilius appealed to the tribunes against a directive of the censors C. Claudius Pulcher and Ti. Sosponius Gracchanus. When Rutilius alone interceded, the censors indicted the freedman for maiestas. Rutilius having

1 Livy Per. 58; Pliny N.H. 7.44.143-4. Manwaring (Strat. 932.1) compares the hurling of Sextus Iulius from the rock by Rutilius Laenas in 87 B.C. (Vell. 2.26.2), but this is not a certain case of coercitio, for Velleius goes on to attest the regular prosecution of other Sullans by Laenas: "nullus dies discerat".
proposed a law in the concilium plebis to invalidate the censor's location of public revenues, the censors appeared to speak against it. Claudius was interrupted and ordered a 'praeco' to restore order. Rutilius left the meeting, complaining that he had been deprived of his authority. The next day he consecrated the 'bona' of Gracchus (coercitio), for having prosecuted the freedman after he had appealed to a tribune, and indicted Claudius for having taken the meeting out of his hands. He then seems to have prosecuted both censors for perduellio. A day having been fixed for each accused, Claudius was tried first. It was a close finish, for the final acquittal was by a mere eight centuries. The case against Gracchus was dropped. The significant fact emerging from all the confusion is that in the late Republic tribunicien sacrosanctity was a particularly fertile field for extensive interpretation (cf. Mommsen, Staet 2,1,305 and n,1; Slicher, Analogia 29).

Dio (49,15,5-6) describes the grant of sacrosanctity to Octavian in 36 B.C. as τα μητε θρηματα λογαριασθειν, adding that the sanction was of the same as the consuls or praetors in δικαιωματα: οθερα κατ' εν δημοτικα εκτελεσθαι. Dio does not at this point enlarge on "the penalties which had been prescribed in the case of a tribune", but elsewhere (53,17,9) he says: ἐὰν τε δικαίωμα δημοκριτική χαροφυλακίων δὲν εἴχεται δέσμευς, τω δίκαιω τοῦ πολιτικοῦ αὐτῶν ἢ κατ' ἴσια ἀπολύονται (cf. Zonaras 7,15). This was not, in Dio's opinion, an extension of the powers of Republican tribunes, but was specifically an aspect of their power δεσμονορ οὐ μάλιστα ἀνάμεσα (53,17,10). Furthermore, the tribunicien power was one of the institutions which was taken over from the Republic ὡς κατ' έκ νεωτερον

1. Livy 43,16,4-16. Schlesinger (58,1) believes that there was 'consecratio honorum' against both censors, but that it had to be confirmed by the People, hence the perduellio charge.
Dio (49.38.1) attests a comprehensive grant by Octavian to his sister Octavia, and to Livia, in 35 B.C.: (Kaffap) τὰ μὲν ἄκινοια γυρισθέντα αὐτὸς Ἀναπόλος, τὴν δὲ Οκταβίαν τῷ τε Λιονίῳ καὶ εἰκόνας καὶ τὰ τά σφήνα ἦναν φιλιός 
τὸν δὲ διαλεκτήν, τὸν ἄδεξαν καὶ τὸν Ἀναπόλον ἀν ἐκ τῶν ὅμοιων τοῖς δημάρχοις ἔχειν ἔσχον. Hohl (Caesar 70) finds a precedent for this grant in the traditional rule concerning the Vestals, whereby "( Numma esse) ... venerabilis ut sanctae fecit" (Livy 1.20.3), but Strack (368.5) rightly points out that "sanctae ut essent" was not the same as "sacrosanctae ut essent". Dio (59.3.4) seems to support Strack, for he makes no reference to ἐκ τῶν ὅμοιων τοῖς δημάρχοις when he reports the grant of τὰ ἄνθρωπαν to the sisters of the emperor Gaius. As no other precedent suggests itself, it is assumed that the grant of sacrosanctity to Octavia and Livia marked the introduction of a new principle in Roman public life, and a principle fraught with anomaly. Although the grant of the powers of an office, separated from the office itself, had been recognised since at least 211 B.C. (Siber, Verfassung 208, 214-8, 281), it is startling to find the rule applied to women, who were absolutely ineligible for office (Mommsen, Staat 1.493; Schulz, Principles 205). It is true that the separation of office and powers was often expressly designed to empower someone who was otherwise ineligible (Siber, Verfassung 214), and indeed this is precisely what happened when the patrician Octavian received tribunician powers (cf. Grant 450.7). But this was only a relative ineligibility, for Octavian could have become a plebiscian by adoption, as Clodius had done in 59 B.C. Nothing, however, could have
made a woman eligible for office. And how were injuries to Octavia and Livia to be punished? They could obviously not have resorted to coercitio, nor does the power to prosecute seem to have been available to them. The general prohibition against prosecutions by women (Mommsen, Straf 369; Schulz, Principee 209) does not seem to have admitted of any exceptions in the comitia, while the limited special cases in the indicia publica (Mommsen, Straf 369 and nn. 4, 5, 7) do not include the sort of charge which a violation of sacrosanctity would have involved. Mommsen (Straf 369 and n. 6) asserts, on the authority of Paninian (Dig. 48.4.8), that women had an unlimited right of accusation for maiestas. But as Papinian's precedent is "Julia (Fulvia?) mulier" who gave Cicero evidence of the Catilinian conspiracy, he probably means no more by "etiam mulieres audiuntur" than the admissibility of their evidence. In any event, the absolute inaccessibility of the comitia is decisive, for no conceivable extension of the maiestas statutes, as they stood in 35 B.C., could have made the quaestio available to Octavia and Livia.

Why was sacrosanctity granted to Octavian's womenfolk? Mommsen (Staat 2.819 and n. 3) believes that Octavia was honoured as Antony's wife, rather than as Octavian's sister, but Hohl (Caesar 70) points out that Antony rebuffed her at Athens in 35 B.C., and on her return to Rome Octavian told her to leave Antony's house (Plut. Ant. 53.2, 54.1). Hohl's argument can be taken further. The release of Octavia from tutelage, simultaneously with the grant of sacrosanctity (Dio 49.38.1), would not have been in Antony's interest if he had a 'manus' marriage with her, nor would the release in such a case have been within Octavian's power. It therefore seems that she was released from the agnatic tutelage of Octavian. And Dio's contracted ὡ μὴ ἐκπλήκτο ἀλλὰ ἐπειδὴ ἄρα ἐκπλήκτο (49.38.1) implies that Octavian deferred the immediate honour of a triumph, but approved an alternative which was no less an honour to him, although mediately. Furthermore, when
Octavia wanted to join Antony in Greece, Octavian agreed as of akenous alyousv, oux exavt hapsizpovos, dali daw ephkdvesta kai kataxel-vaseto para tiv paxemov aixian evperaK paradoxou (Plut.,Ant. 53.1). Plutarch here detects a pretext for war in language strikingly reminiscent of that which he uses when he credits Caesar with a similar pretext (p.142 n.2 above). But the significant difference is that Caesar relied on an injury to actual tribunes, but Plutarch says that an affront to Octavia gave Octavian an equally valid excuse. This seems to make it clear that Octavia was not honoured for Antony's sake, but the matter goes even further. When Octavia was rebuffed, Octavian delivered polemics in the Senate and to the People (Plut.,Ant., 54.1, 55.1). The incident is not to be explained as a stock example of Caesarian tendentiousness, nor as an error by Plutarch. Octavian would not have based a propaganda point on something which was demonstrably untenable (cf. p.191 above), nor would Plutarch have recorded an event which depended on a striking constitutional novelty, unless the evidence had supported him. Octavian's polemics on the incident probably made much play of his 'dignitas', and Plutarch would have recalled that Caesar had also linked his dignity to tribunician sacrosanctity.

Although Mommsen (Staat 2.2.819.3) holds that Octavian, in making the grant to Octavia and Livia himself - phaxev (Dio 49.38.1) - acted under his triumviral authority, he elsewhere (Staat 2.2.872-81, 909 and n.1) suggest a better answer when he assumes that the grant to Octavian of the tribunician power for life in 36 B.C. (as Mommsen dates it) was made by a lex which was the prototype of the 'lex de imperio Vespasiani' (Dio 48.15,3-5; Bes Gestae 10).

1 Hammond (RE 17,2,1865) credits the grant to the Senate, while Clemenurff (RE 13,1,905) assumes an unspecified legal process.

2 Hammond (82) believes that Vespasian's law was the first of its kind. Synes (336,2) assumes a 'lex de imperio' in 23 B.C.
wickert (RE 22,2,2284). A prototype of Vespasian’s law would have included the discretionary clause which was passed for Vespasian: “utique quaecumque ex usu rei publicae maiestatesque divinarum humanarumque publicarum privatarumque rerum esse counselit ei agere facere ins potentatesque sit ita uti divo Augusto ... fuit (ILS 1,294). This may have been the source of Octavian’s authority for the grant to Octavia and Livia. It is possible, therefore, that Octavian decreed, “ex maiestate publicarum rerum”, that whoever injured Octavia or Livia would be deemed to have violated the sacrosanctity of Octavian himself. It would follow that a breach of the decree would have been punished by Octavian, either by coercion or by a prosecution for maiestas in the comitia tributa.

The grant of sacrosanctity to Octavia and Livia is one of the strands in the formation of the concept of “domus Caesaris” (cf. Mommsen, Staat 2.2.813 and n.3). Whether this concept is to be regarded as an extension of ‘maiestas populi Romani’ depends on the view taken of the relationship between tribunician sacrosanctity and the crimen maiestatis. Mommsen (Straf 5’8-9) has postulated that the crimen maiestatis originated in the revolutionary period, to protect the maiestas which he believes was originally the tribunician equivalent of the potestas of patrician magistrates. When the tribunes became proper magistrates the ‘crimen maiestatis tribunicae imminutae’ became the ‘crimen maiestatis populi Romani imminutae’. To the general arguments against this view (Pollack 162-4) may be added the objection that Mommsen’s hypothesis must presuppose a ‘maiestas plebis’ from which tribunician maiestas was derived, but such a concept is not justified (p. 13 above). The passages on which Mommsen relies do not assist him. He cites Cicero (Invent. 2.17.32), claiming that it is a case of diminished tribunician maiestas. But Cicero says: “At enim qui patris potestates, hoc est privata quaedam, tribuniciae potestates, hoc est populi potestates, inflat, minuit maiestatem”. The diminished maiestas is clearly that of the People, the source of ‘tribunicia potestas’.
Mommsen also relies on Asconius (51c), but that was merely an unsuccessful attempt at extensive interpretation. It is not clear what comfort Mommsen gets from Livy (3,24,9), for the only maiestas in issue there is that of the consul (cf. Pollack 156; Mühler 545). Some support for Mommsen is furnished by Greenidge (Public Life 100,1), who believes that in the later law resistance to the will of any other magistrate was charged as vis, while resistance to a tribune was always maiestas. The inference to be drawn from this would be far-reaching, for it would mean not only a tribunician origin for maiestas, but also the restriction of Saturninus' law to injuries to tribunes. But Greenidge has not noticed that the resistance of P. Rutilius' freedman to the will of the censors was maiestas (p.234 above), while Caesar's resistance to Bibulus was one of the matters on which the Optimates were so anxious to interview him (p.109 above).

Nicollini (49-50), accepting the crime of "tribunicia potestas minuta", believes that it was capable of extension to persons other than tribunes. He cites the case of the lictor who was hurled from the Tarpeian Rock for interfering with the 'viator' of the tribune Iulius (Dionys. 10,31), and argues that the tribune's sacrosanctity extended to the person of the official who was charged with the execution of the tribune's orders. Ciaceri (253-4) takes the argument further by postulating sacrosanctity as the source of the extension of the maiestas law to the person and dignity of the princeps. He argues that it is because of the sacrosanctity of the princeps that Digest (48,4,1pr) equates the crime maiestatis to sacrilegium, but this view is based on a misunderstanding of the crime of sacrilegium (p.235-6 below). Ciaceri also relies

1 See pp. 82-7 above. See also the arguments of Pollack (165-6) and Schires (9-10).
2 Levi (152) makes substantially the same point as Ciaceri when he says: "La condizione sacrosancta riconosciuta alla sua persona era la sanzione giuridica di quella eccellenza personale superiore, che si realizzava già nel campo religioso con la serie degli onori di carattere sacrale."
on Tacitus (Ann. 3.56.2): "id summi laetigii vocabulum (sc. potestatem tribuniciam) Augustus repperit, ne regis aut dictatorius nomen adsumeret ac totem appellationem alique cetera imperia praemineret". Tacitus clearly has in mind the legislative and executive (cf. Grant 946-59) aspects of the power, when he loosely compares it with "cetera imperia". If it had been the source of the crimen maiestatis, Tacitus would not have failed to mention his bugbear at this point.

Although the tribunician origin of the crimen maiestatis is not accepted, it should be pointed out that the apparent inability of the Romans to resolve the conflict between "religio" and "lex" as the theoretical basis of sacrosanctity cannot be overlooked, and it is possible that this conflict remained unresolved when tribunician sacrosanctity became the special preserve of the emperor and his house. The particularly wide field of extensive interpretation which was inherent in the concept, and the possibility of arbitrary action offered by the notion that the tribunes were "religiones inviolati", made tribunician sacrosanctity one of the principal avenues for the importation of new aspects into the crimen maiestatis.

"Juravit in mea verba tota Italia sponte sua et me bellli quo vici ad Actium duros depoposcit. Inuvverunt in easem verba provinciae Galliae Hispamiae Africe Sicilia Sardinia" (Res Gestae 25). The 'confessio' of 32 B.C. is the basis of Premerstein's analysis of a fundamental facet of the Augustan Principate. His argument is that the key to Augustus' position is his vast expansion - the 'clientele' concept, rather than his constitutional powers (6,18,22,25; cf. Grant 318-9). The Republic had known oaths to faction leaders, such as the Italian oath to Drusus in 91 B.C., Cnina's

1 Which is the aspect stressed by Augustus himself in Res Gestae (9).
2 Premerstein's hypothesis is approved, among others, by Kolbe (32) - "eine grundstirrende Erkenntnis"; Syne (288 and n.3); Wickert (Review of Premerstein) - with reservations.
oath to Sulla in 88, and the oaths to Catiline in 63 and Antony in 44 (27, 30, 31, 61, 1; cf. Yuex 285). The oath was extra-constitutional, and did not furnish a legal basis for Octavian's position, but was sworn to him in his private capacity as a party leader, and as the contemplated commander in the coming war (36, 40, 42, 44). His formal appointment as commander by the Senate and People was a mere formality, for the oath was a universal surcharge which silenced opposition (93; cf. Nemo 210; Grant 419), and would have been effective even without an appointment as commander (51). The deponents were in the "fides" of Octavian, being bound to assist him with arms (94-5); "in fides seae dare" also (significantly) expressed a client relationship between Rome and an ally (18). Mommsen (Grant 2, 2, 792-3; cf. Hammond 104) believes that the only oath was the military service-oath (sacramentum), sworn at a princeps' accession and at each anniversary thereof, but Premerstein shows that soldiers took the oath of allegiance together with civilians (73-5). The oath was termed a "sacramentum" because it replaced the old military service-oath, but unlike the true sacrament it was sworn to a commander in his personal capacity, not as the holder of imperium; it was therefore a personal tie between the princeps and his troops, sworn before his formal recognition (78, 81). The oath was not affected by the "restoration of the Republic", for it had nothing to do with the "res publica".

Premerstein reconstructs the terms of the oath, relying on the oath of Gangra (Dessau 2, 8781), which was sworn to mark either Augustus' 12th consulship in 5 B.C., or the incorporation of Paphlagonia in Galatia in 3 B.C.; the oath of Aristaion (Dessau 1, 150), sworn to Gaius on his accession; and the oaths of Assos (Bittenberger 2, 481-5), sworn to Gaius at the same period, and of Sestinum (CIL 11, 5998a). The argument

1 Contra Levi (132-6), who believes that the oath gave Octavian a new form of imperium superior to the triumviral, and "sanz a la posizione legale di Ottaviano".
which Frommerstein (57-52) bases on these inscriptions is that the basic element of these oaths is the formula introduced by Octavian in 32. The provision in the Arrius oath, whereby the "inimici" of the princeps are also the "inimici" of the deponents, corresponds to the situation in 32, when there was a private feud (inimicitia) between Octavian and Antony, but Antony was not declared a "hostis". But war was declared on Cleopatra (37.5); cf. Sykes 291; Grant 419), so that the "inimici" of Octavian became associated with the "Hostes populii Romani". This is reflected in the Arrius oath: "evexrego, qui in sum hostili animo fuerint, et hostes esse ducam". The oath of Gangra has the same basic elements, but with an overlay of Hellenism: the attestation by Greek gods and Augustus; the express undertaking of an obligation to the patron's children, whereas in the West a duty to the patron's family was an assumed result of 'patrocinium'; and the duty to report hostile acts by the princeps' enemies (47-8, 66).

In the oath of Gangra ἐχθρός expresses both "inimici" and "hostes", but the absence of θέλοιt, which can only mean "hostes", is significant (51). Both the oath of Gangra and that of 32 were sworn by provincials as well as Roman citizens (50).

While the oath of Arrius required mutuality of "inimici" and "hostes" only, that of Gangra imposed the same ἐχθρός and ἐχθροπόλοι. Frommerstein's explanation (98-9) is that the oath of Gangra corresponded to the typical "Klientelvertrag" - that is, to a 'maiestas' treaty - while that of Arrius

1 Homo (232-3) discusses the first three oaths, but without linking them to the oath of 32.
2 37, 46. Cf. Sykes (182,291-2); Grant (517,419); Sibere (Verfassung 272). For the view that Antony was a "hostis" see Levi (136) and Sattler 20.
3 The (Western) oath of Arrius does indeed not refer to the children, but Dio (59.3,4) says that Gaius granted his sisters "μεν... τοὺς ἄδηλους δὲ τὸν ἄρχην ἀσφάλειαν ἐκατοντάκτην καὶ τὰς ὁμοίους γυναικεῖς. Dio omits ἐξαλείψας διακοσμήσεις γυναικίων. Dio indisputably refers to this oath by Gaius (which is doubted by Sestinus) in his account of the terms of the oath: that the deponents for his account of the terms of the oath - that the deponents for his account of the terms of the oath (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of Gaius and his sisters (59.9.2) - corresponds closely to Sestinus' version (61, 15.3). If the oath of
followed a less common form; in the West the main concern was a front against the princeps' enemies, while the Eastern division of states into "subject" and "free and federate" cast the emphasis on solidarity with like-minded persons in other cities. But this view is weakened by Presserstein's own observation (46) that the Italian oath to Drusus provided for τὸν αὐτὸν φίλον καὶ κολάσιον ἄρτιον ἄρτιον. And in fact the typical 'saeiitas' treaty confined mutuality to enemies, such as those with the Abolians, Rhodes, and Mitylene.¹ In any event there were no mutual friends in the oath of 32, for Presserstein (49) deletes this part of the Gangas oath in order to arrive at Octavian's "Urformel".

The official line emphasised the voluntariness nature of the oath - "sponte sua" (Res Gestae 25) - in order to present Octavian's 'clientalas' as the linear descendant of the Republican "Gefolgschaft" (62-3). But the provincial oath (Res Gestae 25) is not described as spontaneous, for there was no need to show that subjects had acted voluntarily (52). In fact there was considerable pressure, even in Italy (42, 62, 81; cf. Syme 784, 287, 288). The Republican tendency for a 'clientalas' to be inherited² made it a simple matter for the following of Augustus to pass to Tiberius by an oath to the latter; which, although extra-constitutional, strengthened Tiberius' hand when he negotiated his accession with the Senate (56-9). After Tiberius the oath became a standing formula on accession, with annual renewals (59-60). Renewal became associated with the oath to the princeps' 'acta', whose compulsory nature tended to deprive the oath of allegiance of its voluntary character (61). The absence of Thrasea Paetus from the annual

¹ Mühler 63; 64; 50-1, 56, 456. The negotiations preceding the Aetolian treaty contemplated the same enemies and friends (Mühler 64,i), but the Aetolians appealed to the Senate against Scipio's terms before the final draft (Mühler 49).
² Cf. Homan (Staat 5,1,65); Greenidge (Public Life 8-9); Grant 320.
³ Wickert (Review of Presserstein 334-7) is critical of this attempt to derive a dynastic principle from the oath. Decision would be easier if there were currently any measure of agreement as to precisely when and how a man became emperor.
renewal in 66 A.D. was maiestas (68; cf. Tac.Ann. 16,22,28). ¹

The relationship recognised by the oath of 32 was not unlike a maiestas relationship. Octavian was the 'maior' as against Italy and the Western provinces, in a relationship which was not created by law, and which depended on physical force for its maintenance. There was also the typical bilaterality of rights and duties - "do ut des" - for the 'beneficium' which the deponents received was 'libertas' (cf. Kun-A-Kel 335-6). But there are important differences. As the 'patrocinium' was extra-constitutional, there can be no suggestion that Octavian's position as the sole 'maior' made him a corporation sole, and indeed there is clear evidence that his 'maiestas' was not the same as that of the populus Romanus. The oath imposed an obligation on the deponents vis-a-vis the members of the house of the 'maior', a concept quite inconsistent with 'maiestas populi Romani'. The only possible possessors of maiestas proper were the populus Romanus, and the magistrates who derived their maiestas from it. There is no reason to believe that in the Republic the members of a magistrate's household enjoyed the protection of the maiestas law. Indeed this was probably impossible in law, for "delegatus delegare non potest". In any event, the protection which the oath gave to the princeps' family did not arise derivatively, but was an original incident of the 'clientela' relationship - by implication in the West, and expressly in the East. It is this

¹ Pomerstein (177-31) is on less sure ground when he postulates a "cura et tutela rei publicae universae" granted to Augustus in 27 B.C. by lex, and extending to the whole State the personal 'patrocinium' recognised by the oath of 32. The personal 'patrocinium' recognised by the oath of 32. The theory is based (15.1,126-2) on Dio's selected passages (53,12,1) which Pomerstein takes to mean "patronatus", but the use of the word patronatus is clearly not the text of the clause "cave et tutela... censuit", but only Dio's interpretation of the "cave et tutela universae" in the lex is to postulate an unusually succinct style for a Roman statute.
aspect which made the 'patrocinium' a better instrument than
sacrosanctity for the creation of the "Domus Caesaris". Sacro-
sanctity was limited to those to whom it had been expressly
granted, but τῶν τάξιον ἵγγα τῶν ἄνδρων (Oath of Caius,
Dessau 2,8761) was indeterminate and elastic. Apart from
Octavian's policy in respect of the affront to Octavia (p.
238 above), there seems to be no case where the sacrosanctity
of a female member of the house had significant consequences.1
But the oath of allegiance had results which appear with some
prominence in the sources. Tiberius Gemellus would not have
the guard officers take part in his enforced suicide, ὀὰ 
ἐὰν ἐκτὸς ἀδελφάτος Ἰουτώπος τὰ ἐργα λινοτο
priestīa (Philo Leg. ad Dei. 5). Burrus advised Nero that
the praetorians would not execute Agrippina: "praetorianos
toti Caesarum domni obstricta esse" (Tac.Ann.14.7). It may
be that the grant of sacrosanctity in 35 B.C. was not repeated,
as the oath of 32 was regarded as an adequate safeguard as far
as women were concerned. In a certain sense the oath was not
so much a substitute for sacrosanctity, as a cognate notion,
for its roots were similar. Sacrosanctity went back in the
final analysis to a 'lex sacrata', a sworn obligation to pro-
tect inviolability (pp. 232-3 above); the comuratio of 32
likewise originated in another form of 'lex sacrata', the
'sacrumentum' or 'comuratio' sworn by clients to a patron
do contemplated a private military undertaking (p.232 n.2
above).

Premerslein (70-1; cf. Klingender, RE IA, 2,1672)
asserts that the oath had only a moral and religious force,
but that the perjurer was guilty of "impietas" (= ἀσεβεία),
and that this concept was invoked for those injuries to the
principes which could not be punished under the lex maestatia;
but as the Principate evolved the concept approached maestatia
more and more closely. Premerslein's hypothesis is
acceptable, but with modifications. In the first place,

1 Unless the man whom Augustus condemned to the galleys
for claiming to be the son of "clarissimus ac sanctissimae
soror suae Octaviana" (Val.Max. 9,13,2) is an example.
Premarstein states his proposition too narrowly when he describes the perjurer's crime as "impietas". He correctly cites Tacitus' "laesa religione" (Ann. 3.24.3) as an example of "impietas", but he does not notice that Tacitus goes further: "ac violata maiestas". The full significance of Tacitus' criticism of Julia's case now begins to be clear. The "maiestas" which was "violata" was not, and did not claim to be, "maiestas populi Romani", for the latter would have been "iminuta" or "minuta", and not "violata". Tacitus was perfectly familiar with the expression "maiestas populi Romani minuta" (Ann. 1.72.3), and intended to convey quite a different notion by "violata maiestas", namely, the "majesty" of Augustus. This new form of 'maiestas' arose from the twin concepts of tribunician sacrosanctity and 'patrocinium', both of which had respectable Republican antecedents. From both was derived the notion that the respect due to the new "majesty" was founded on an oath, so that a violation was "laesa religio". From 'patrocinium' came the additional feature of a relationship close enough to a maiestas relationship to lead to the eventual adoption of the same word to characterise Augustus' position. From both concepts, but in particular from 'patrocinium', came the "domus Caesaris", the extension of the emperor's "majesty" to the members of his house. The word 'maiestas' is used to describe both the personal "majesty" of Augustus and the "majesty" which members of his house possessed through him. When Augustus introduced the practice of addressing his soldiers as "milites" instead of "omnimitones", he forbade the use of the latter expression by members of his family. "ambitious id existimans quam aut ratio militaris aut temporum quias aut sua domusque suae maiestas postularet" (Suet. Aug. 25). The "majesty" of Augustus was widely proclaimed by the Augustan poets: "negque parvum carmen maiestas recipit tua" (Hor. Ep. 2.1.257-8); "maiestas tua" (Ovid Trist. 2.512). And the general recognition was extended to members of his house. Ovid, instructing his wife to intercede for him with Livia, tells her not to hide her nervousness, but "sentiat illa te maiestates partimissae suam" (Pont. 3.1.155-6). The most striking passage is Suetonius (Aug. 37): "exegit
It is this use of the same word to express two different ideas which is responsible for much of the confusion in regard to the crime of maiestas in the Principate. This is precisely the anomaly which troubled Tacitus: "legem maiestatis ... cui nomen est veretera idea, sed alia in judicium veniunt, e.g., maiestas populi Romani minuisset" (Ann. 1,72.3). Suetonius is similarly conscious of ambiguity when he says that Vespasian, on his accession, lacked "auctoritas et quasi maiestas quaedam" (Vesp. 7). If injuries to the princeps had been consistently termed "impietas," an important constitutional principle - that the populus Romanus was still the State - would not have been obscured, and the crimen maiestatis, as distinct from the "crimen lacae pietatis," would have been spared much criticism.

As the penalty for violations of sacrosanctity matured from direct action into recourse to the public criminal law (pp. 232-5 above), so the sanction for breaches of the oath of allegiance assumed a less primitive form. The oath to the

1 As they were in Greek: ἀξιόν τὸ γε ἐπίθεσιν πρὸς τινὸς καὶ τῇ ἑπεράθεις πρὸς τινὸς (διότι δεδομένον ἐστὶν ἀξιόν τῷ τιτοῦτῳ αὐτὸς ἦν καὶ τῇ ἑπεράθει γεγονον καὶ δίκης ἔκει ἀντί ἰκλίται ἐκθέων) (2 liv 57.9.2). Because the Greek historians had no single equivalent for 'maiestas' (p. 1 above) they were able to avoid the ambiguity of the Latin. For the crimen maiestatis proper, at least in the form of plots against the State or its magistrates, the almost invariably expression is ἐπιθέσια, or ἐπιθέσια, It is only for affronts to the emperor's majesty that ἀξιόν is used.
Republic, sworn before Cannae in 216 B.C., has the primi-
tively phrased sanction: "me Luppiter optimus maximus domus
familium renque meus pessimo late adficiat". The oath of Ar-
tium has greater precision of expression: "expertas patria
incolucitate fortunibus omnibus factiunt", This is almost a
literal equivalent of the penalties under Caesar's maiestas
law (pp. 172-84 above): "expertas patria incolucitate" is
interdiction; "expertas fortunis omnibus" is confiscation,
although of the whole property, instead of the half prescribed
by Caesar - but when the oath of Artilium was sworn to Calus,
the prescribed penalty for maiestas was already total con-
fhiscation (cf. Tac.Ann. 3.50.6). It is suggested that the oath,
without any violation of tradition, could be and probably was
given a more effective sanction than a mere moral and reli-
gious force. The concept of 'clientela' was a legal one (Mom-
msen, Staat 3.1.76), and from an early date the criminal law
concerned itself with a patron's breach of his duty to his
client. But the public law did not interfere when the
client breached his duty, leaving it to the patron to proceed
in his "Hausgericht". It has been maintained (Mommsen, Straf
556; Siber, Verfassung 20) that the old 'clientela' was ob-
solate in the historical period, and had no connection with
the great political 'clientelas' of the late Republic; but
this proposition is too wide. When C. Herennius refused to
testify against L. Marius, on the ground that the Marii were
clients of the Herennii, Marius did not deny the 'clientela',
but claimed that his aedileship had released him from it (Plut.
Mar.5). And when Proculeus (Dig. 49.15.7.1) equates the posi-
tion of a 'maiestas' ally to "clientes nostros", he shows that
the legal principles developed by the old 'clientela' were
still valid in his day. There is no reason in principle why
some of those rules should not have been taken over by the

1 Livy 23.53.10ff. Niccolini (41) regards this oath as a
"lex secreta", while Freyermuth (8.1.2) understands it as the
formal ancestor of the oath of 32.
2 "Patronus si clienti fraudem factit sacer esto" - Servius
(ad Aen. 6.609), supposedly citing the XII Tables. Greenidge
3 Mommsen (Straf 556.1); Siber (Verfassung 15). Public Life
(Public Life E) mistakenly regards the client's breach as
perduellio.
great political allegiances, and in particular the institution of the "Hausgericht". The survival of that tribunal would explain the precision of the oath of Aritium. A domestic tribunal, although only a quasi-judicial body, was expected to conform to certain rules. Thus, a father who killed his son while hunting, for adultery with his step-mother, was deported by Hadrian "quod latronis magis quam patris iure cum interficit: nam patria potestas in iucunde debet, non auctate consistere" (Dig. 48.9.5). The oath of Aritium dealt with a relationship which was in several ways analogous to a maiestas relationship, and it laid down for Octavian's guidance that when he punished offenders in his domestic tribunal, the penalties prescribed for the crimen maiestatis were to be imposed.

Some authorities have maintained that Julia and the paramours were dealt with by Augustus' domestic tribunal, but it has been suggested that the forum was a public criminal court (pp. 221-2 above). The question is whether there existed concurrently under Augustus both a domestic tribunal ("Hausgericht") and a public criminal court presided over by the princeps ("Kaisergericht"), as Volkmann (63-93, 105-26) and Kelly (26) believe. It is generally agreed that there was an imperial criminal court under Augustus, but there is less agreement on the extent of its jurisdiction and the manner of its creation. Mommsen (Straf 260-5) postulates a jurisdiction extending throughout the empire, independent of the categories laid down by the criminal statutes, and having an arbitrary discretion on sentence. Other authorities limit the jurisdiction to the ambit of certain criminal statutes only, namely those concerning murder, adultery, maiestas, and forgery (Volkmann 89), to which Jones (Jurisdiction 481) adds extortion. The better view is that of Kelly (36-46), who makes out a good case for the restriction of the jurisdiction to cases of maiestas, and even then only in the case of acts which concerned Augustus himself.

1 Mommsen (Straf 260-5); Volkmann (63-93); Jones (Jurisdiction 481-2, 485-7);Kelly (36-46); Langle (Straf 74-6).
Silver (Verfas. ung 292-3) is not convinced of the court's existence, and serious doubts are expressed by McFadyen (231-42).
great political allegiances, and in particular the institution of the "Hausgericht". The survival of that tribunal would explain the precision of the oath of Araricus. A domestic tribunal, although only a quasi-judicial body, was expected to conform to certain rules. Thus, a father who killed his son while hunting, for adultery with his step-mother, was deposed by Hadrian "quod latronis magis quam patris iure eum iudicavit: nam patria potestas in pieta debet, non atrocitate consistere" (Dig. 48.9.5). The oath of Araricus dealt with a relationship which was in several ways analogous to a maiestas relationship, and it laid down for Octavian's guidance that when he punished offenders in his domestic tribunal, the penalties prescribed for the crime maiestatis were to be imposed.

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If, however, violations of imperial majesty were punished in the imperial criminal court, the use of the domestic tribunal for the same purpose would have been an unnecessary duplication. It is not likely that Augustus arbitrarily tried some of these cases in his criminal court, and others in his domestic tribunal. It is suggested that the distinction drawn between the imperial court and the domestic tribunal is unrealistic. Vollmann (106) correctly sees 'renuntiatio amicicitiae' as the social penalty suffered by 'amicis' who incurred Augustus' displeasure, but this was surely independent of any forensic or quasi-forensic procedure. When Tiberius said of Co. Piso that in certain circumstances "odero sequamque a domo eam, et privatas inimicities non vi principis ulciscer" (Tac. Ann. 3.12.4), he made it clear that renunciation of friendship was divorced from the exertion of "vis principis". When Appuleia Varilla was charged with adultery and maiestas, Tiberius absolved her of the maiestas charge, and urged her family to banish her for the adultery (Tac. Ann. 2.90.1,4). The only domestic tribunal in question was that of Appuleia's family, despite the fact that she was a great-niece of Augustus - "Caesaris connexa". Tiberius' part in the case was limited to the public criminal law. It seems safe to postulate that the only court of the princeps was the imperial court. But this does not mean the abandonment of the suggestion (pp. 248-50) that the oath of 32 was originally sanctioned in Octavian's domestic tribunal. The suggestion is that the domestic tribunal of Augustus was gradually elevated to the status of a public criminal court, and that it took cognisance of the crime which flowed from the oath - "laesa religio ac violata maiestas" - and imposed the penalty "suggested" by the oath, namely interdiction and confiscation. As the quaestio maiestatis could not deal with a crime which did not touch on 'maiestas populi Romani', the alternatives were: either to amend the lex maiestatis, or to create a new court. The former course would have been a blatant revelation of the realities of the

1 For the confusion which can arise from the separation of the "Hausgericht" and the "Kaisergericht" see Kelly's comment. The conflicting assertions that Julia's paramours were tried in the "Hausgericht" (10-11) and in the "Kaisergericht" (36-7).
new majesty, but a new court was practicable, particularly if it could be introduced gradually, by Augustus' "back door technique". It is doubtful whether the imperial criminal court was established under an enabling lex, and indeed no lex was needed. The super-patrocinium of 32 B.C. was qualitatively and quantitatively different from its predecessors, for it contributed substantially to the new majesty which, without formal legal recognition, successfully challenged the maiestas of the State. It was equally capable of gradually giving the domestic tribunal of a 'patronus' a status which put it on a par with the public court established under the maiestas laws. As Augustus became more sure of his ground, he was able to extend the jurisdiction of his court to cases properly falling under the crimen maiestatis, and so to initiate that blurring of the demarcation line between majesty and maiestas, which was eventually to lead to the appropriation of 'maiestas' as the exclusive property of the emperor. But sufficient of the dividing line survived under Augustus to lend weight to Tacitus' criticism (Ann. 1.21.3) that, by bringing "majesty" under the crimen maiestatis, Augustus exceeded the limits of the lex maestatis.

There remain three questions arising out of Julia's case. Why was Julia herself, one of the beneficiaries under the new dispensation, charged with "laesa religio ac violate maestas"? Why did Julius Antonius anticipate harsher treatment than that which the other adulterers received? And why was it precisely in 2 B.C. that Augustus found it necessary to take action against a state of affairs which had prevailed for

1 Thus Volkmann (89) and Kelly (92, 64, 70). Meessen (Straf 260 and n.2) sees the court's formal basis in the grant in 30 B.C. of the right εἰς ἀνάγκην τὸν Μαίστορα (Dio 51.19.7), but Kelly's arguments against this view (25-26) are decisive. See also Jones (Jurisdiction 485-7).

2 Kelly (90-2) particularly notices the conspiracy of Cinna (pp. 210-5 above) as a case dealt with by the imperial criminal court, although in his view (37) this was because the maiestas of Augustus was identified with that of the State, maiestas of Augustus was identified with that of the State, maiestas of Augustus was identified with that of the State (343).
a number of years, and which was known to him a long time before he acted? (Cf. Dio 55.10.13; Macroch. Sat. 2.5.3,4,5,6,8,9).

The first question becomes significant when the case of Julia is compared with that of Appuleia Varilla, a great-niece of Augustus, who was prosecuted in 17 A.D. (Tac. Ann. 2.50). The charge was a twofold one of maiestas: insulting remarks about "divus Augustus", Tiberius and Livia; and the commission of adultery by one who was "Caesar conexus". It was held that the adultery fell to be dealt with under the lex Julia de adulteriis - "de adulterio satis cavit lege Iulian visum" (Ann. 2.50,2) - and Tiberius urged that instead of suffering the penalty prescribed by the lex, she be banished by her family's domestic tribunal (2.50,4). Tiberius not only refused (uncharacteristically) to follow an Augustan precedent, but by leaving the case to the domestic tribunal he seems to have gone out of his way to make it clear that adultery by a member of the imperial house was not maiestas. Even her paramour, one Manlius, was merely interdicted from Italy and Africa, instead of being relegated to an island (2.50,5). Koesterwann (91) suggests that Tiberius acted laconically because the case was not politically important, as Appuleia did not represent a threat; he proceeds (94-5) to compare the case of Lepida (Tac. Ann. 3.22-3) where, on charges of adultery and maiestas, Tiberius was more severe, possibly because he had a political motive against M. Lepidus, the brother and defender of the accused. This view seems to be supported by the case of Claudia Pulchra, a cousin of Agrippina and a descendant of Augustus (Tac. Ann. 4.52.1,4). In 26 A.D. she was charged with adultery with Furnius, and with having attempted to use poison and spells against Tiberius. As both she and Furnius were condemned (4.52.6), it is clear that the adultery charge succeeded (cf. Ciochri 254), but that the case had a purely political motive is shown by Agrippina's taunt to Tiberius, that the real reason for Claudia's downfall was her association with Agrippina (4.52,5). It would seem that,
although the punishment of adultery with a member of the
imperial house as "violata maiestas" was always inherent in
the 'patrocinium', the principle was not invoked except in
cases of pressing need.

Before attempting an answer to the questions which
have been posed (pp. 252-3), it is necessary to identify what
is believed to have been the last of the three great concepts
which shaped the majesty of Augustus, namely, the grant of
the title 'pater patriae'. The title had been applied to
Augustus long before it was officially conferred, so that
the official grant on the 5th February, 2 B.C., by the unani­
mous action of Senate and People, was simply the formal recog­
nition of a position which had long obtained. This 'de facto'
occupation of a superior position, followed by 'de iure' recog­
nition, conforms to the postulated manner of a maiestas
shift (pp. 133-4 above), and in addition there are all the
marks of a maiestas relationship. There is, firstly, the
constant comparison of Augustus and Jupiter, which goes back
to the original concept of maiestas as an attribute of the gods
(pp. 4-8 above). Thus Ovid, when discussing the title of
'pater patriae': "Hoc tu per terras quod in aethere lupiter
alto nomen habes. Hominum tu pater, ille deum Romule concedas" (Fast. 2.131-3). To Ennius (Ann. 6.153) Jupiter was "divorum
hominumque pater rex" (Dumesil 17), and in an obvious allusion
to this Manilius (1.7) has: "tu Caesar, patriae princepsque
paterque". Jupiter was "invictus" (Ovid Fast. 5.126), and so
was Augustus as 'pater patriae': "sot pater invictus patriae"

1 Dio 55.10,10; Horace Carm. 1.2.50; 3.24.25-9; Ovid (Fasti
2.127-30); "Sanete patre patriae, tibi plebs, tibi curia nomen
hoc dedit; hoc dedimus non tibi nomen aequas. Res tamen ante
dedit. Sero quoque vera tu tuli tinitis: iampridem tu pater
orbis eras". See also Alfeldi 2.115.
2 Res Gestae 35.1; Suet. Aug. 58.1-2; Ovid Fast. 2.127-8.
3 Cf. Alfeldi on the title of 'pater patriae': "ein Ober­
begriff, der das ganze Wesen des Prinzes umfasst" (2.115);
ähnlich gezählten Iterationsziffern der 'republikanischen'
fällig gezählten Iterationsziffern der 'republikanischen'
Vor- und "Familyrenken der 'republikanischen'
Funktions der 'republikanischen'
2.118; and particularly, "den neuen, väterlichen
Majestätsbegriff" (2.121.)
The crucial aspect is the relationship between patrimonialism and 'majestas populi Romani'. Frimerstein (186-7), observing that 'pater' often meant 'patronus' from the point of view of the clients, believes that the concept of 'pater patriae' was derived from that of 'clientela'. This would mean that the conferment of the title in 2 B.C. was the culmination of the process which began with the oath of 32. It would follow, on the view of 'patrocinium' which has been submitted, that the 'pater patriae' was the possessor of 'majesty' but not of technical majestas. Alfeldi (2.119) rejects Frimerstein's hypothesis, although he concedes that the Republican 'pater patriae', before the transformation of the concept under Caesar and Augustus, was sometimes addressed as 'patronus', and that Caesar's position as 'parens patriae' took on 'die Fahren des Patronates'. Indeed Caesar's title had much more than the 'colour' of 'patrocinium', for Nicolaus of Damascus (Jacoby, 4.407) attests simultaneous decrees concerning the oath of allegiance to Caesar in 44 B.C., and the grant to him of the title of 'parens patriae'. The sources are inclined to stress the connection between the exclusively Roman concept of 'patria potestas' (cf. Gaius 1.55; Inst. 1.9.2) and the Augustan title of 'pater patriae'. Seneca (Clem. 1.14.2) observes that the title of 'pater patriae' was not merely honorific, but expressed the 'patria potestas' which

1 Ovid Pont. 2.2.117. Cf. Alfeldi (2.119), who also cites Rer Gentes 3.1; Valerius (2.66.2); Seneca Clem. 1.10.3; 1.13.4-5.
2 Which Alfeldi (2.106-10) regards as the lineal ancestor of the Augustan title.
3 Cf. pp. 152-3 above, for Frimerstein's analysis of the oath to Caesar as the forerunner of the oath of 32.
bound princes and citizens. Dio (53.14.3) notices that the
title gave the emperors the authority which fathers had over
their children. (Strabo (6.4.2, p.268c) uses language which
suggests that title involved something approaching a
technical transfer of power: χαλκόν ὰν ἄλλων διοίκησις τὴν
τιμίασθην ἡγεμονίαν ἢ ἐν ἐπιτρέφοντες ἐκ σαρκί.

Salmon (477) believes that the title marked the trans­
fer of the State into the potestas of Augustus, as if into
the power of a paterfamilias, and gave his Principate its
final form. The testimony of Augustus himself seems to con­
firm the latter point, for he ends Res Gestae (35.1) with the
conferment of the title (cf. Mohl Augustus 338), and he de­
scribed it as the achievement of his supreme ambition (Suet.Aug.
58.2). There are strong associations between patria potestas
and maiestas, for 'patria maiestas' was used as the equivalent
of 'patria potestas'.

It seems to follow from Cicero (Quint. 2.5) that patria po­
testas could be raised to a public level, as an attribute of the People itself: "Vestros denique honores,
gave eramus graduia singulis aedificati, non a vilis universus
habebamus, ut quantum antea parentibus ... tandem hoc tempore
universum cucunco populo Romano debeatasse". There is perhaps
most significantly of all, the strong identification of the
'pater' and the State suggested by Valerius Messalla when
saluting Augustus as 'pater patriae': "Quod bonum ... faus­
tuque sit tibi domique tume, Caesar Augustus (sine enim nos
perpetuum felicitates rei publicae et laeta huius praeclari
existimamus)..." (Suet.Aug. 58.2). But the same passage
tends to indicate the final stage in the development of Augustus
"majesty", rather than a technical maiestas shift, for
"tibi domique tume" is not difficult as an incident of 'clien­
tela', but is quite inconsistent with 'maiestas populi Romani'.

1 Livy 4.45,8; 8.7.15; Val.Max. 7.7.5; Quint.Declam. 376.
2 Cf. Livy (44.13.4-5): "Praemani legati ... gratias
degen... aus eos senatus populoque Romano quam parentibus
et. "...vere".
3 The grant to Livia of the title 'pares patriarum' or 'pater
patris', although vetoed by Tiberius (Tae. Ann. 1.13.2-3),
was also an easy development of the patronimical concept, but
could not have been contemplated as an extension of technical
maiestas.
It is not possible to follow Mazzini\(^1\) in regarding the

title as merely honorific. Apart from the evidence of Seneca,

Diœ and Strabo (p. 256 above), there is the statement of Suetonius

(Aug. 58.1) that it was conferred on Augustus as a cognomen,

which leads Alfeld (2.120 and n.948) to suggest that

it had acquired the character of "einer Herrschaftsbezeichnung,

eines kaiserlichen Monopols". Alfeld (loc. cit.) holds that

the appropriation of the title by others would have fallen

under the crime maiestatis, and cites the charge against Cn.

Piso, who allowed his soldiers to call him "parens legi mens".

(Tac. Ann. 2.55.4,80.4; 3.13.3). This is not an apt example,

for Tiberius consistently refused the title of 'pater patriae'

(Tac. Ann. 1.72.2; 2.87.2), and it would be going too far to

suggest, as an alternative argument, that in Piso's case

Tiberius defended the memory of "divus Augustus". Piso's

unofficial title is rather to be regarded as part of his general

abuse of his proconsular imperium. There is better evidence

that the title had legal significance: "Legatus

moratur non potest Romas ... quia communes patriae est, negue

in ea civitate in qua moratur princeps vel per quam transit:

illius enim solius permissum est principem intueri, qui Romam

ingredi possunt, quia princeps pater patriae est" (Vig. 48.

22,18). Furthermore, the literary chorus which greeted the

new title, and subsequently stressed its significance,\(^2\) is

not paralleled by the reception accorded to Augustus' other

titles and offices and seems to show a realisation that an

event of profound significance had taken place. Ovid (Trist.

4.4,13-15) is particularly significant: "Ipse pater patriae ..."suspendet in nostro carmine saepus legi. nec prohibere potest,

guis res est publica Caesar" (cf. Pont. 2.8,19-20). And the

very fact that it was found advisable to give formal

\(^1\) Staats 2.2,779,2; cf. Premarestina (173) and Salmon (277).

\(^2\) Ovid: fasti 2.127-48; Trist. 2. 39,181,574; 4.4,13-15;

\(\) Pont. 2.117-22. Manilius 1.7,925. Senea: Octavia 477-8;

\(\) Clem. 1.5.7; 1.10,3; 1.13,4-5; 1.14,2. Strabo 5.5.2 p.288C.

acknowledgement to a title which had long enjoyed unofficial
currency, suggests that a formless concept was converted into
a constitutional element.

The 'domus Caesaris' does not fall under the concept of
the paterfamilias, for it was of the essence of patria potestas
that the 'pater' stood alone, as against his entire 'familia' -
in this case, the State. The inclusion of the 'domus' would,
however, mean that the 'paterfamilias' was made up of the
princeps and some of his dependents, as against the rest of
the community. It is safer to assume that elements of both
patrocinium and patria potestas were fused in the position
which was finally achieved in 2 B.C. In his capacity as the
supreme 'patronus', Augustus could demand that the respect and
protection owing to him be extended to his house; but as the
supreme 'pater' he could demand respect and protection from all
the rest, including the members of his own house.

The majesty of Augustus, in common with the 'maiestas
populi Romani' with which it co-existed, was an unstable re­
relationship, requiring constant vigilance for its survival (cf.
pp.8-11 above). Instinsky (21-6) shows that under Nero the
concept of 'Securitas Augusti' was officially expressed as a
legend on coins, to be followed under Galba and Otho by coins
inscribed 'Securitas Populi Romani', which was a concept quite
distinct from 'Securitas Augusti'. Although Instinsky (16-
17) believes that the word "securitas" as used in relation to
the Augustan period (Vell. 2,89.4, 103.3) had only a general
meaning in regard to the community as a whole, and had not
yet acquired the differentiated conceptual values which it
afterwards expressed, he at least concedes that Augustan
"securitas" was "Vorspiel, ... Wirklang spätere Jahrzehnte".
The suggestion is that this "Vorspiel, Wirklang" can be ex­
pressed by the formulae: maestas populi Romani - crimen
maiestatis populi Romani eminentiae; 'maiestas' Augusti -
crimen laesaeorum religiosum as violeae maestatis.
The moral aspect of "majesty" is important. Notice has already been taken (p. 6 above) of the stress placed by Ovid (Fasti 5.11-32) on the moral values which were involved in the birth of Maestias, but these should be briefly recapitulated in the light of Dumont's view (14-15) that this passage in Ovid is the most valuable source for the nature of the new "majesty". The birth of Maestias is described thus: "Honor placidoque docens Reverentia voltu corpora legitimis imposuerat torcis. Hinc sata Maestias" (vv. 23-5). Maestias sat resplendent in purple and gold, and next to her were "Pudor et Natus" (vv. 27-9). The assault of the Giants having been broken by Jupiter (vv. 35-42), "His bene Maestas armis defensa deorum restat et ex illo tempore culta manet; assidet indes Iovi, Iovis est fidissima custos et praestat sine vi sceptra tendenda Iovi" (vv. 43-6), Maestias having come down to earth (47), "illa patres in honore pio matresque tecta" (93). These concepts should be linked to the moral obligations which were regarded as resting on the 'pater patriae': "Si quaeret PATER URBIUM subaeribi statuis, indomitam audeat refrenare licentiam" (Hor. Carm. 3.24.27-9).1

In 2 B.C. the seal of full official recognition was placed on the personal majesty which Augustus had been steadily building up since the days of the triumvirate. His position now was such that it was no longer possible for him to condone the irregular conduct of Julia. What ray previously have been merely the exercise by Julia of "the prerogatives of her station" (Syme 426) now became a direct threat to the new majesty. Lawful wedlock was the hallmark of Maestias, Pudor was her companion, and "refrenare licentiam" was the duty of the 'pater patriae'. The continuance of a situation in which these values were flouted would have exposed the new majesty to grave danger. An example had to be set, and its setting was so managed that the action taken to defend "majesty" would, at the same time,

2 For the identification of 'pater urbiun' with 'pater patriae' (although prior to the official conferment of the latter title) see Wickham (1.259, s.v. "pater urbiun").
underline the true nature of the new concept. The procedure which was adopted encompassed all three elements which had made the principal contribution to the creation of majesty. The paramours had breached their sworn duty of respect towards a member of the imperial house, and this was "laesa religiones". But in so doing they had injured Augustus, not only in his tribunician sacrosanctity ("laesa religiones" again), but also as the universal 'pater'. In the latter regard the crime was now for the first time given a name - "violata maiestas". This crime was now meaningful in the sphere of the public criminal law, because the title 'pater patriae' had been officially conferred, and was legally significant. Julia was an injured party from the point of view of the protection which the patrocinial oath gave her, but she was a transgressor vis-à-vis the 'pater patriae'. In the final analysis it was the situation resulting from the new official title of 'pater patriae' which was emphasised by the prosecutions. The universal paterfamilias stood in splendid isolation on a peak from which even the members of the 'domus Caesaris' were excluded. At that level his immediate 'familia' was merged with the general body of citizens, although at a lower level it occupied a superior position as against the rest. For the protection of this unique pre-eminence the lex maiestatis and the lex de adulteriis were both legally inappropriate and politically inadequate. It was not a question of statutory categories of crimes and periods of prescription. There was only one principle in issue: "Nemo me impune laceret". And, to give the final point to the lesson, Iulus Antonius was chosen to receive the most severe treatment of all, for the precise reason that he was married to Marcella, the daughter of Octavia and the niece of Augustus (Fall, 2,186, 3-4). The point having been made, the other paramours could be allowed peaceful exile. In the case of a member of the imperial house the supreme penalty had to be exacted, so that those who stood closest to the throne might know that there was only one Father of the State. Dossau (1,467) believes that the
precedent established by Augustus in 2 B.C., was responsible for "die vielen missbräuchlichen Anwendungen des Majestäts-
gesetzes unter den folgenden Regierungen". It would perhaps
be more correct to say that Augustus, by introducing the
crime of "violated majesty", and by deliberately allowing the
dividing line between this new concept and the crimen mai-
estatis to remain obscure, set the pattern for the ambiguity
which marked the crime of maiestas under Tiberius and succeed-
ing emperors, an ambiguity which was probably not resolved
until the age following that of the great classical jurists
of the late second and the third century A.D., when majesty
and maiestas were fused in the person of the emperor.

The disgrace of the younger Julia (the daughter of the
Julia who was relegated in 2 B.C.) is of interest both in regard
to the principle of "violated majesty", and because the poet
Ovid was in some way involved in it. The facts are that Julia1
died in exile in 28 A.D., twenty years after her condemnation
and relegation for adultery (Tac. Ann. 4,71,6-7; cf. Suet.
Aug. 65); that Tacitus classed her case with that of her mother
as an abuse of the laws (Ann. 3,29,2-3); that her husband, L.
Aemilius Paullus, conspired against Augustus and was executed
(Scholiast ad Juvenal 6,158); and that D. Silianus, one of her
paramours, was excluded from the friendship of Augustus, went
into voluntary exile without having been prosecuted, and was
allowed to return in 20 A.D. (Tac. Ann. 3,29,5-7). Julia's
death in 28 A.D., twenty years after her relegation, seems to
suggest that her trial was in 8 A.D., but a more complex
position is attested by the Scholiast on Juvenal (6,158), who
says that Paullus was executed, Julia was relegated and re-
called, but subsequently again exiled for her vices, and her
brother Agrippa Postumus was relegated to Sicily because of
his incest with her and his "feritas". Hohl (Augustus 339-42)

1 Who, as Hohl (Augustus 340) observes, inherited "die
Nymphomanie ihrer Mutter".
2 Dusau (1,467); Syms (432).
Notices that Paulinus was consul ordinarius in 1 A.D., but was replaced by M. Herennius Picenum as suffect consul, and argues that the conspiracy took place in 1 A.D., and that Julia was relegated on this occasion, and thereafter recalled and again relegated in 8 A.D. This is not inconsistent with the view which the 'pater patriae' took of his majesty. Julia's first relegation would have been because of her involvement in her husband's conspiracy, rather than because of her infidelities, which means that she was guilty of a serious form of the crimen maiestatis proper. For this she was treated much more leniently than her mother, which perhaps shows that Augustus was disposed to use greater severity against the 'crimen violatae maiestatis' than against the 'crimen maiestatis insipientes', even when the latter was directed against him in his official capacity. Subsequently, when Julia was exiled for her vices, leniency was abandoned, for on this occasion the crime was that of "violated majesty"; and, like her mother, she died in exile.

The reasons for Ovid's relegation to Tomi in 8 A.D. are obscure. The poet himself speaks of "due crimina, carmen et error" (Trist. 2.207). The "carmen" which resulted in his being changed as "obscenior doctor adulterii" (Trist. 2.212)

1 Norwood (154) prefers 5 A.D. Syme (142) believes that part of Paulinus' crime was connivance at his wife's adulteries, but there is no discernible objective which he hoped to achieve by his abatement.
2 Schol. Juvenal 6.199, Norwood (151) may be right to suggest that if the Agrippa whom the Schol. attacks as having corrupted her was not her brother, Agrippa Postumus, but Marcus Agrippa.
3 Norwood (154-9) believes that Julia and Agrippa Postumus were implicated in a plot against Augustus, and that Augustus, not wanting to let it be known that there was a plot in his own family, gave out that Postumus was mentally deranged, and a sop for the story of Julia's misconduct, using Silius as a scapegoat. Ovid was a friend of Postumus and Julia, and learnt of matters which Augustus did not want made public, namely, that the real reason for the punishment of Augustus' grandson was that it was not convenient to proceed "violata maiestas". When it was not convenient to proceed "violata maiestas", with a prosecution for maiestas proper, "violated majesty" was a suitable alternative expedient.
can probably be identified as his "Ars Amatoria", but as this had been published eight years before it looks more like a pretext than an instant cause of complaint (cf. Dassau 1,469; Gysen 468). Ovid cannot specify the "error" without re-opening a wound which it was bad enough to have inflicted on Augustus in the first place (Trist. 2,208-10), but insists that it had nothing to do with either external treason or conspiracy, nor with verbal injury, nor indeed with the contravention of any law: "Nec quicquam, quod lege veteri committere, faci" (Pont. 2,9,71). Taken with Ovid's complaint that he was punished without trial, which means by the exercise of coercitio (Dassau 1,469; Volkmann 185), and with the fact that the crimen maiestatis was excluded where 'mens rea' was absent (Ply. 48, 4,7,3), the evidence suggests that in Ovid's view his offence fell outside the ambit of the public criminal law. Indeed he says so quite explicitly: "illa dies venisti, mea tua lugubris ponam; causasque privatas publicas invocavit" (Trist. 4,2,73-4). His crime had something to do with "violated majesty", and in this regard it is significant that his appeal for clemency is addressed to Augustus in his specific capacity as 'pater patriae': "perece, pater patriae". There is no information as to the nature of the "error", except that it consisted in inadvertently seeing something which should not have been seen (Trist. 2,103-5; 3,5,49-50), and probably also in making known what he had seen (Trist. 3,5,31-2; 3,6,35). It has been reasonably assumed that his forbidden knowledge related to the adulteries of the younger Julia (Volkmann 105; Dassau 1,463). His offence was far removed from the crimen maiestatis imminuita, and was even too nebulous to be prosecuted in the imperial court as the crimen violatae maiestatis. This explains why he was dealt with extra-judicially, and why his punishment was comparatively

1 Dassau (2, 469,532); Volkmann (185); Norwood (150).
2 "Qui nec contraria dicere arma, nec hostiles esse scelus semper open" (Trist. 2, 31-2); "Cae poena non sit causa omissit sem" (Trist. 3,5,44).
3 "Non aliquid addi, violansque linguis locuta est, laceraque sunt nimio verba profana aeris" (Trist. 3,5,47-8).
4 "Nec sem decerto deapasti factus semus, nec sem selec- to judice imusa fugi est" (Trist. 2,131-2).
5 Trist. 2,131; cf. Trist. 2,39; 2,574; 3,4,13-14; Pont. 1,1,36.
lent, in that he was left in full possession of his property (Trist. 2.137-8). But as lenient as the 'pater patriae' might be, his majesty weighed heavily on his "children". The concept which, under the relatively stable regime of Augustus, was employed with moderation and a minimum of injustice, was fundamentally a dangerous notion, and lent itself only too readily to the abusive extensions which characterised the crimen violatae maiestatis, as it was steadily brought closer to the crimen maiestatis imminutae under his successors.

1 Cf. Ovid Pont. 2.6:29-30: "perque torti sociam ... cui maiestas non neronosa tua est".
CHAPTER VII

"DE FAMOSIS LIBELLIS"

"(Apud veteres) facta arguiabantur, dicta impune erant. Prius Augustus cognitionem de famosis libellis specie legis eius (quae saeratiae) tractavit, consuetus Cassii Severi Libidine, qua virum senesque illustres procumun scriptis diffamaverat" (Tac. Ann. 1.72.3-4). Tacitus' criticism should be evaluated by investigating the extent to which the crime saeratiae was used as an instrument for the suppression of freedom of speech, both in the Republic and under Augustus.

In 206 B.C. the poet Naevius was imprisoned "ob asidiam maledictiam et prohra in principes civitates de Graecorum poetarum more dicta" (Cass. 1.3.13; cf. Plaut. Mil. Glor. 211-2). The poet is supposed to have said "Fato Metalli Romae fuit consul..." and so to have levelled an insult by name - "de Graecorum poetarum more" - against Q. Metellus, consul in 206 B.C. Naevius also insulted Scipio Africanus: "Eviae qui res magnas consupe gessit gloriosae, cuibus facta riva nunc vigent, qui apud gentes saeule praestat, eum non poter cum pallio uno ab aedibus abduxit" (Cass. 7.8.5). Fraenkel (RE Supp. 6.622; or Mattingly 417) takes this as another example of "nominatio", an attack on a named person. The existence of a sanction for criminal defamation in Naevius' day depends on the meaning of Cicero (Rep. IV sq. Augustine Civ. Dei 2.9), who has Scipio comment on Attic Old Comedy's freedom 3000010838 as follows: "Non-astra, inculte, contra duodecim tabulas cum perpennis sacris capite saeculant, in honore quoque sanctissima putaverunt, si quis occentravisset sine cause condississet, quod infamam faceret...

1 Pe-Ascon. ad Sic. Verr. 1.10.29. Fraenkel (RE Supp. 6.623) and Mattingly (915) accept Naevian authorship of the verse. Fraenkel (RE Supp. 6.623-4) also accepts the historicity of Q. Metellus' reply: "dubitam salut Metalli Naevio poetae" (Pe-Ascon. loc.cit.); but Mattingly (920-1) regards it as apurios.
flagiitio alteri". Despite the attempts which have been made to restrict this passage to a sanction against magic spells and incantations, the better view is that Cicero means a capital sanction against the publication of defamatory verses. The question is whether this provision was used against Naevius. Silius (2.3.15) says that while in prison he composed his "Hariolus" and "Lamia", thereby purging the injuries which he had previously inflicted; the tribunes therefore released him. If the tribunes interceded for this reason, and not because his imprisonment was unlawful, weight is lent to the view that his punishment was an exercise of coercitio. But there is a tradition that Naevius was exiled, for Jerome says that he died at Utica, "pulvis Roma factione nobilium ac praestigio Metelli". This suggests voluntary exile to avoid condemnation.

The next appearance of defamation in the criminal law is linked to a corrupt passage in Cicero (Fam. 3.11.3). Congratulating Sempronius Claudius on his acquittal of maiestas, Cicero says: "De criminibus, vero quid interest, inquis, an de maiestate? Ad eum nihil: alterum enim non attigisti, alterum autem." Verum tamen est maiestasibi Sulla voluit non in quasvis sine qua non declamari liceret: ambitus vero hic sputum viae habitat ut aut accusetur improba aut defendatur.

The general sense is that there is no difference between:

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1 Cf. Cic. Tusc. 4.4: "duodecim tabulas declarent condicionem suam esse cernent: quod ne liceret nisi ad alterius immoralis leges saxerunt"; Hor. Sat. 2.1.62-3: "si mala considerit in quem quis carminis, ius est indicium poeta."  
2 Strachan-Davies (1.107.3); Backland 325; Mattingly 417,13.  
3 Fraenkel (Review of Edet's - passim); Jolowicz (375 and n.1); Mazzigliano (Review of Robinson 123-3); Smith (169-70); Deut. (25). Fraenkel does not sufficiently stress a strong argument in his favour, namely that Cicero's purpose is to contrast the provision in the XII Tables with the free political satire of Greek Comedy.  
4 Girard (Organisation 256-7); cf. Smith (170); Mattingly (419).  
5 cf. Abr. 1905 = 201 B.C. On the chronological difficulty see Fraenkel (RE Supp. 6,625) and Mattingly (422-3).
Some of the proposed emendations are violent: "ea est maestatis vis, et sic involuta, ut in quernis impune declamare licet" (Prüßich, RE 4.1522); "verum tamen est maestas (etsi Sulla voluit ne in quernis impune declamari liceret) ambigua" (Glynn Williams 232); "verum tamen est maestas (etsi Sulla voluit ut in quernis impune declamari liceret" (Zyrell and Poucher 231). Ebbeler's reading (247) is: "ea est maestas (et sic Sulla voluit ne in quernis declamari liceret" (italics mine). A.H. McDonald (cited by Smith 176,3) suggests: "varia tamen est maestas et si Sulla voluit ne in quernis impune declamari liceret" (italics mine). This sounds only a single word, and gives the desired contrast between the uncertainty of maestas and the "aperta vis" of ambitus.

The crisp question is: What was it that Sulla did or did not intend? The answer depends on "in quernis declamati", which is taken by Greenidge (Treason 235 n.13) to mean the publication of defamatory statements, and by Smith (176) as referring to a punishment for bringing a prosecution not falling under Sulla's maestas law. On Greenidge's view, Sulla introduced a substantive rule prohibiting defamation, while Smith's interpretation class a procedural rule. At first sight the lex Ronula is against Smith.
This law, which is first attested by Cicero (Rei., R. 13, 55), punished "calumnia", which was an intentional prosecution on false grounds (Schol. ad Cic. loc. cit.; Dig. 48, 16, 11-5; 22, 5, 13). No special charge was brought. The procedure was that the court, when acquitting the accused, punished the accuser (Accon. 296). The law is dated between the first gens-natio perpetua and Sulla (Krausen Streif 431-2), or before 80 B.C. (Boughton 2, 13, 473). On either view it was in force when Sextus Roscius was tried in 80. There is no suggestion that it was not of general application,1 but on Smith's view it would follow that Sulla made special provision for calumnia in maiestas cases. Greenidge's opinion is open to the more serious criticism that a substantive ban on defamation seems to have nothing to do with the "variability" or lack of "aperta vis" of maiestas. It would be illogical for Cicero to have said: "Maiestas is uncertain, although Sulla made defamation a form of the crime".

It is possible, however, to support Smith by assuming that the very uncertainty of maiestas made the Romanian remedy ineffective. In the case of ambitus, on given facts the guilt or innocence of the accused was ascertainable in advance, and on an acquittal it would have been clear whether there should be a conviction for calumnia. But even on admitted facts a conviction for maiestas was not certain, for the outcome of "maiestatem auxisti" versus "maiestatem minus" could not be known beforehand. A court acquitting on the ground of "maiestatem auxisti" could not say that the accuser had intentionally prosecuted on false grounds. For example, the accuser of A. Gabinius (pp. 88-9 above) could have had no reason to anticipate that unauthorized departure from a province would not be regarded as maiestas. The rule was: "Nemo deminutur nisi qui intellect non recta se agere ... calumnia enim aucto est" (Caes. 4, 176). A maiestas jury could scarcely condemn an accuser under the lex Romana for not having known what the jury itself had just discovered.

1 Caes. 4, 178; Dig. 48, 16, 1. Cf. Krausen (Streif 431-2); Greenidge (Procedure 460-9).
The result was practically a white ticket for accusers, for nearly every charge of calumnia could be met with the answer: "varia tamen est maiestas". Sulla therefore devised a special rule, giving those accused of maiestas the protection against malicious prosecution which the lex Romana did not supply. It is proposed to adopt McDonald's "varia" and Stubbinger's "sic", and to punctuate as follows: "Varia tamen est maiestas: ut sic Sulla voluit ne in querela impune declamari liceret". This gives the desired contrast; because of the variability of maiestas, Sulla introduced a special rule against maiestas prosecutions without good cause; but as for ambitus, its scope is quite clear, so that the ordinary rule of the lex Romana applies.

The evidence so far considered does not assist greatly in refuting Tacitus' "(apud veteres) facta arguerentur, dicit impune erant" (Ann. 1,72,3). The ill-tempered remark of Claudia (p.30 above) was maiestas, but it was not a case of criminal defamation. Smith (127) suggests that, independently of anything in Sulla's maiestas law, defamation, as a form of "iniuria", could lead to a maiestas charge if directed at a magistrate: "Iniuriam fecisti, ed quis magistratui, maiestatis actio est" (Quint. Inst. Orat. 5,10,39). But this suggestion overlooks the import of Tacitus' criticism that Augustus associated defamation and maiestas because Cassius Severus "virum feminasque inlustres ... diffamaverat" (Ann. 1,72,4). Given the existence of magisterial maiestas, there is nothing un-Republican in the proposition that any attack on a magistrate's dignity was a mediate diminution of "maiestas populi Romani". But Tacitus does not mean "iniuriam magistratui facta". His point is injuries to "virum feminasque inlustres" (italics mine, become maiestas. The inclusion of women excludes magisterial maiestas, and suggests an un-Republican innovation.

1 "Sic" in the sense of "under these circumstances, accordingly", hence it is attested, although rare. See Lewis and Short, 1890 s.v. "sic".
For the Cesararian period there is some evidence to support Carcopino's opinion (Cicero, 2.413) that Caesar as dictator suppressed writings which displeased him, condemned the authors to exile, and organized a police system to maintain his grip on public opinion. But there is nothing to suggest that Caesar's conditioning policy involved the inclusion of defamation under the crime maestatis. He quarreled with Calvis and Catullus, as a result of their libellous verses (Taylor, Politics 145-7, 230.28), did not lead to criminal proceedings, and indeed Suetonius (Lec. 75.3) attests his liberal attitude towards insults, citing in particular his condonation of the libels of M. Volturnius Ptolemaeus and A. Cæcina. Ptolemaeus produced the pungent comment on the appointment of Cæcinus Sabinus as consul for a day: "vates flamintes sumo consulves dias fluit" (Macrob. Sat. 2.2.13). If this was not punished it is difficult to fault Suetonius' assertion of Caesar's liberal attitude. Cæcina published "Amphorae" which were probably seditious (Carcopino, Cicero 2.413), but his exile after Eunus was probably due to his service under Cato in Africa (Bell. Af. 89.5), rather than to his writings, despite his own assertion to the contrary: "Mens error exigitur, cuius summa oririonis est, quod amatus adversario male dixi" (Cic. Fam. 6.7.1). It is true that Suetonius (Cass. 75.5), by saying that Caesar preferred to discourage libels rather than to punish them, implies that punishment was a possible alternative (cf. Carcopino, Cicero 2.413), but there is no reason to believe that the crime involved in attacks on Caesar was other than the type of maiestas which consisted in "inuria magistrati" facts.

As in the case of Caesar, there is some evidence that Augustus was tolerant of personal attacks. He did not react strongly to "famosi libelli" posted against him in the Senate (Sat. Aug. 55), confined himself to replying by edict to insulting jokes circulating about him (Sat. Aug. 56.1), vetoed a law which prohibited freedom of expression in wills (Sat. Aug. 56), and did not press a charge "quod male opinari de Cassaro soleret" against Assilus Asellanus Cordubensis, but
confined himself to the threat of retaliation in kind (Suet. Aug. 81). When Tiberius complained of his leniency, his advice was: "Hasii in hoc re indulgere et minus indignam, quam esse, qui de me malo loquitur. Satia est enim si hoc habemus, ne quis nobis male facere possit" (Suet. Aug. 81). Seneca was able to say of him: "Sub divo Augusto nomines hominibus verba sua cruculorum erant, iam molesta" (Sen. 3.27.1). Even Tacitus (Ann. 4.34.8) was able to make a favourable estimate of the attitude of Caesar and Augustus to insults, as against that of Tiberius.

Horace (Sat. 2.1.18-20) seems to imply some inhibition of freedom of speech: "nisi dextro tempore Flacci verba per attentam non ibunt Caesaris aurem; cui male si palpere, recalcitrant umbilicus totius". But this need mean no more than Octavian's protection of his tribunician sacrosanctity. In the same poem (Sat. 2.1.82-3) Horace is warned by Trebatius that the composition of satires may bring him into conflict with the law: "si malo consideretur in quem quis carnam, ius est judiciumque"). This passage has been understood as a reference to the sanction against defamation in the XII Tables (Fraenkel, Review of Beckman 135), and as an allusion to Sulla's lex de iniuriis (Smith 178), but it is not certain that Horace intends a serious reference to any law. In the same satire (2.1.7-9) he has Trebatius advocate a remedy for incensio, in language similarly reminiscent of an ancient statute: "ter uncti transiant Tibertin, somno quisque est opus alto, irriguines quaer sub noctem corpus habuisse". This is surely on a par with Cicero's parodies of Trebatius' legal pedantry.1 And Horace's reply to Trebatius' warning suggests that his sole purpose is to lead

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up to a witticism: "Esto, si quis mala: sed bona si quis indice considerit laudatus Caesarum?"

Suetonius (Aug. 51) notes with approval that Junius Novatus escaped with a fine after publishing a serious defamation - "asperrimam epistulam" - of Augustus, under the name of Agrippa Postumus. The charge may have been based on the senatus-consultum attested by Suetonius (Aug. 55): "Consulit (sc. Augustus) cognoscentum ... de ilia qui libellus aut examinias ad infamiam quidam sub alieno nomine ediderit" (PASSAGE A). A similar rule is stated in more general terms by Ulpian (Dig. 47.10.5.9): "Si quis librum ad infamiam allicium pertinentem scripsisset composuerit ediderit dolove mal fiererit quo quis eorum fieret, atiam; alterius nomine ediderit vel sive nomine, uti de ea re agere liceret, et si condemnatus sit qui id fecit, intesta-
"te ex lege esse inbetur" (PASSAGE B). Ulpian (Dig. 47.10).

then mentions a senatus-consultum which apparently extended the law: "Eadem poena ex senatus consulto tenetur utiam is, qui atque a quodam alio
aliove quid sine scritura in notam aliquorum producserit: item qui emendum venditansve curaverit" (PASSAGE C). Elsewhere (Dig. 28.1.18.1) Ulpian says: "Si quis ob cemem famosum damnetur, senatus consulto expressum est, ut intesta-
hills si t" (PASSAGE D). The same topic is discussed by Paul (Sent. 5.4.15), who says: "Qui cemem famosum in infamia allidus vel ali quaelibet certico, qui aequi posset, composuerit, ex auctoritate emplacendi ordinis in insulas deporta-
tur: interest enim publicae disciplinae operiosis muliebusque a turpi carminis infamia vindicaret" (PASSAGE E). Paul also says (Sent. 5.4.17): "In eos auctores, qui famosos libellos in controversiam alterius composuerint, ex auctoritate emplacendi in insulis deporta-
tur: reclusionem insulam vindicaret" (PASSAGE F). Paul says further (Dig. 47.10.6): "Quod senatus consultus necessarium est cum nomen adiectum non est alius, in quem factum est: tune ei, quae difficilis probatio est, voluit senatus publica
questione rem vindicari" (PASSAGE G).

Levy (Paul 285-7) believes that E refers to the same
degree as E, arguing that "quo agnosci possit" in E refers to the same rule regarding an unnamed victim as "cum novem adduc-
tum non est eius in quem factum est" in G. Although E attests deportation, and G intestability, they can be reconciled if Levy (Paul 286) rightly postulates that "in insulam deportatur" in E is a later addition to Paul's original text. Levy (Paul 286) extends E as follows: "si quis ... sine nomine, (senatus 
consulto cautum est) uti de ea re (ex lege) agere liceret et ... 
intestabilis [ex lege] esse intestus". The decree attested by 
this reading is then identified by Levy (Paul 286) with E and 
G. His argument then is (Paul 287; cf. Schult, Classical Law 
598) that the lex Cornelia de inertia applied only to real 
injuries (Dig. 47.10.3pr). The Senate extended the lex to 
'cormina famosa', and so subjected them to a criminal quaestio, 
as well as to a 'judicium privatum' under the Edict, and at 
the same time introduced intestability as a new penalty, and 
provided for the anonymous wrongdoer and the unnamed victim, 
Finally, Levy (Paul 287) surmises that "in insulam deportatur" 
found its way into the text of E by contamination of two mat-
ters discussed by Paul in succession, namely, the decree ex-
tending the lex Cornelia to 'cormina famosa', and the associa-
tion of defamation and maiestas attested by Tacitus (Ann. 1.72. 
3-4).

Smith (173) criticises Levy's emendation of B, arguing 
that there is no sign of the lacuna for which Levy supplies 
'senatus consulto cautum est". Smith's reading, incorporating 
part of Digest (47.10.5.8), and re-punctuating, is: "sed 
Sabiuca in adsessorio etiam praetore examplum legis secuturos 
aet: et ita res se habet: si quis librum ... edicit ... 
sine nomine, uti de ea re agere liceret ... intestus". This 

1 That is, the lex Cornelia de inertia. Cf. Smith (173), 
Kosmesc (Straf 800.15), who holds that it means the XII Tables; 
and Maschke (cited by Mondiglino 123), who believes that the 
lex Cornelia maiestatis is meant. Fail to notice that Digest 
lex Cornelia maiestatis in meant, fail to notice that Digest 
(47.10.5), where B appears, names the lex Cornelia de inertia 
eight times, clearly implies it four other times, and nowhere 
refers to any other lex.
reading may well, as Smith contends, supply "ita res se habet" as the required antecedent to "uti ... liceret", although the change of tense is awkward. It also preserves the reference in the text to a "lex" which dealt with "libri". This forms the basis of Smith's hypothesis (174, 175) that "libri" were dealt with by the lex Cornelia itself, and that a senatusconsultum extended the law to "libelli" and "carmina". The argument is that "carmen", "libellus", and "liber" were not interchangeable. "Librum" in B should be restricted to longer written compositions, as against "libelli", which were short writings capable of transmission by word of mouth, and "carmina", which were meant to be sung or spoken, even if reduced to writing for propagation.

Smith's denial of interchangeability to "libri" and "libelli" is not persuasive. "Libello aut carmina" in A suggests a distinction between written defamation of all kinds on the one hand, and oral defamation on the other; but not a subdivision of the written forms. And as far as the excerpts from Ulpian are concerned, if "librum" in B is restrictively interpreted, and if C and D are confined to "carmina", there is no mention of "libelli" at all. Conversely, Paul (E and F) does not mention "libri". Furthermore, the "famosi libelli" of Cassius Severus (Tac. Ann. 1.72.4) must have been the same type of publication as the "libri" of T. Labienus (Sen. Controv. 10 Praef. 5). And the title "de iuris et famosis libellis" (Dig. 47.10) suggests that "libelli" had a general meaning.

It is difficult to avoid the impression that a senatusconsultum lurks somewhere in B, as Levy believes. In B itself "etiamsi ... sine nomine" looks like a later addition to the original provision "si quis ... liceret", and, in the light of Dauhe's analysis (6-23, 90) of the use of "licere" in legislation, it is doubtful if "uti ... liceret" is statutory. And "ex senatus consulto tenetur etiam s" (italics mine) in C suggests that a senatusconsultum was also discussed in B.
Perhaps the stronger proof is furnished by "quod senat. . . consulsum..." in G. These words (Dig. 47.10.6) cannot refer solely to the provisions attested in Digest (47.10.5.10-11), but follow logically on Digest (47.10.5.9), that is, B.

The most serious criticism of Smith is that his hypothesis drives him to an unreasonable expedient. Faced with the Augustan senatusconsultum against defamation "sub alieno nomine" (A), and with the inclusion, on his theory, of a similar rule against written defamation "alterius nomine" in the lex Cornelia (B), Smith (179) unconvincingly proposes that the purpose of the Augustan decree was not to create a new rule, but merely to provide machinery for the detection of anonymous authors; by putting the onus on the Senate, Augustus avoided the odium of being the inquisitor himself.

It is significant that the special case of anonymous and pseudonymous defamation is limited by Ulpian (B) to publication ("ediderit"), while the general case applies to composition and publication ("scripsisset composuerit ediderit"). There is a similar limitation in the Augustan senatusconsultum: "qui sub alieno nomine ederent" (A). It is probable that, at least to the extent of "etiam si ... sine nomine", Ulpian (B) is referring to a senatusconsultum, and therefore to that which was procured by Augustus. Insofar, therefore, as the anonymous or pseudonymous publication of written defamation is concerned, it is postulated that there was only one piece of legislation, the Augustan senatusconsultum. But there was also a decree which dealt with oral defamation (A, C, D, and E). According to Suetonius (A) it did not introduce a general rule for oral defamation, but a special rule dealing with anonymous publication in both the written and the oral forms. This suggests that the general case of oral defamation had been previously introduced, and in the absence of evidence of another source it seems reasonable to assign it to the lex Cornelia. It is therefore proposed to accept
Smith's hypothesis that the lex Cornelia dealt with "libri", subject to the amplification that it also dealt with "libelli" and "carmina", and to the restriction that for all three types it dealt only with the general case of composition and publication. The special cases of the anonymous or pseudonymous publisher, and the unnamed victim, were introduced by the senatusconsultum which was carried on the initiative of Augustus.

Cassius Severus was probably the most able orato of his day, although inclined to spoil a case by virulence. He appeared in a number of criminal cases, but with little success either as accuser or defender (Macrob. Sat. 2.4.9), and was often in trouble because of his outspokenness. He was brought before the praetor for inciting his advocates to a 'conviciam' against L. Varus Epicurius, a friend of Augustus, but parried the charge with the neat "nescio, inquit, qui conviciati sint, et puto Stoicos fuisse" (Quint. Inst. Orat. 6.3.78). Although Quintilian (loc.cit.) describes this case as a "crimen", it was a civil action if, as Volkmann (207) believes, it was based on that provision of the Edict which is attested in Digest (47.10.15.2). But there seems to be a clear reference to Sulla's law in the charge which Cassius brought against Cestius Pius: "Postulavi ut praetor homen eius recipert legem inscripti maleficii".

When Asprevae Nonius, a close friend of Augustus, was prosecuted by Cassius on a charge of poisoning, Augustus attended the trial with the Senate's approval, but took no part in the proceedings (Suet. Aug. 58). This case may have had a

2 Cf. Quintilian's equally inaccurate "malestatis actio" (italics mine) (Inst. Orat. 5.10.38).
3 Sen. Controv. 3 Praef. 17. 14. mean (Strabo 387 and n.1. holds that this means 'crime not provided for in the laws, and assigns the case to "den parodischen Quistionen" of the princeps, but his view is opposed by Volkmann (203-4) and, to a certain extent, by Brzoska (NE 3,2010).
sequel of importance to the circumstances under which Augustus associated defamation and maiestas. The crucial passage is in Dio (55.4.3), who records, under the year 9 B.C., that Augustus stood by a friend who was accused, after having communicated his purpose to the Senate. Although Dio does not name the accused, his facts are strikingly similar to those in Asprenas' case, as attested by Suetonius. Dio adds that Augustus saved his friend. Although Suetonius does not give the outcome of Asprenas' trial, it is probable that there was an acquittal. Asprenas was defended by C. Annius Pollio (Quint. inst. Orat. 10.1.22), who died in 5 A.D. (Syme 512.7), which means that Asprenas' trial was not later than 5 A.D. But Asprenas was suffect consul in 6 A.D. (Syme 424.2), an office which he is not likely to have achieved if he already had a criminal record. Dio next records that Augustus was not only not angry with his friend's accuser (whom Dio does not name) because of his extreme outspokenness - 

\[ \text{οὔχ οὐχίδες} \]  

- but also acquitted him when he appeared before him. The legal principle involved in an investigation was that enunciated in the Edict: "\[ \text{At praetor: qui adversus bonos mores convicium cui feoisse ... dicitur ... in ssum judicium dabo} \]" (Dig. 47.10.15.2; cf. Volkmann 207). Although "convicium" represents the "occidentarum" of the XII Tables (Kaser 521.6, Klos 259), it can be taken as equivalent to the general term "iniuria verbis" (Mommsen, Straf 794.9). Volkmann (207), correctly assuming that the accused friend of Augustus, to whom Dio refers, was Asprenas, and therefore that the accuser was Cassius Severus, believes that the accused in the prosecution before Augustus was Cassius, and that the charge against him arose out of his 

\[ \text{οὔχ οὐχίδες} \]  

at Asprenas' trial. The only difficulty is the last assumption. Dio says that no action was taken against Cassius as a result of his outspokenness against Asprenas, from which it seems to follow that the proceedings which were instituted were brought on a subsequent occasion, which had nothing to do
with Asprenas' trial. A charge against Cassius which may be identified as the proceedings ἐκ τοῖς τρόποις is that which was brought by Paulus Fabius Maximus. Cassius addressed to Fabius the virulent remark: "quasi discer tus es, quasi formosus es, quasi divus es: unus tantum es non quasi, vagus"; he was prosecuted for this, but acquitted (Sen. Controv. 2.4. 11; 3. Praef. 5). A further clue is furnished by Dio (55.4.4) who, immediately after the acquittal of Cassius ἐκ τοῖς τρόποις, says: οἶκος γε μὴν ἐπιθυμεῖ οἱ μνημεῖοι τοιοῦτος ἱκλάσατο. When Dio uses ἐπιθυμεῖ he means the crimen maiestatis proper (p.268 n.1 above), so that his sense is: "Cassius Severus was acquitted of 'convicium'. But others, who were alleged to have conspired against Augustus, were convicted of 'maiestas'". It seems that Cassius was tried at a time when conspiracy was in the air. In Dio's context it also appears that the 'convicium' of which Cassius was acquitted was analogous to τὸ ἐπιθυμεῖ, that is, the crimen maiestatis proper.

Cassius' trial for 'convicium', as attested by Dio (55, 4.3), seems to be the "cognitio de famosis libellis" against him which Tacitus mentions (Ann. 1. 72.4), for the charge of 'convicium' was based on the maiestas law, and Tacitus' "cognitio" was also conducted "specie legis (sc. maiestatis)". But Cassius was acquitted of 'convicium', while it is widely assumed that he was convicted as a result of Tacitus' "cognitio". If so, the trial to which Dio refers was earlier than that of which Tacitus speaks, for the exile of Cassius to Crete "judicio iureti senatus" (Tac. Ann. 4.21.5) would have been on the occasion of his conviction by the "cognitio de famosis libellis". There can be no suggestion that Cassius was allowed to return to Rome after his exile to Crete, thus making it possible to assume a later date for Dio's trial, for in 25 A.D. Cassius'
punishment was increased to confiscation and interdiction, and he was relegated to the island of Seriphus (Tac. loc. cit.). This sentence was imposed because Cassius “illic (sc. Cretae) eadem actuando recentia veterque odio advertit” (Tac. loc. cit.), which implies continuous exile from the time of the relegation to Crete. If the chronology of Jerome (ad a. Abr. 2048 = 32 A.D.) is correct, Cassius died in 32 A.D., in the 25th year of his exile. This would date the relegation to Crete to circa 8 A.D. But if Dio’s trial was earlier than that of Tacitus, the latter is wrong when he says (Ann. 1.72.4) that the “cognito” against Cassius was the first of its kind. Tacitus, however, does not say that Cassius was convicted, but only that Augustus “cognitionem ... tractavit”. This inconclusive expression rather suggests an acquittal, for it was not Tacitus’ practice to fail to mention a condemnation for maiestas. Furthermore, Dio’s trial was held in Augustus’ imperial criminal court (Volkmann 207 and n.4), and Tacitus’ “cognito” was probably in the same forum (Volkmann 178). Indeed, it seems clear from “Augustus ... tractavit” that there was an exercise of jurisdiction by Augustus personally. But the exile to Crete was decreed by the Senate (Tac. Ann. 8.21.5).

It may be possible to identify the occasion of Cassius’ acquittal more accurately. Great popular unrest followed the famine and the fire of 6 A.D., with much seditious talk, and the posting of pamphlets by night: μηδενευτερος ἐκεῖθεν σταυρο (Dio 55.27.1). One Publius Rufus was said to be the ringleader, but it was believed that the real leaders were making use of his name, in furtherance of the revolt which they were planning: ἐκρούν ὡς τὸ ἐκεῖνον ἱερὰν κατορθῶντος ἐνομοτέρων ἐκενεράντως (Dio 55.27.2). The Senate decreed an investigation, and offered rewards for information.

1 As is believed by Breeska (RE 3.1746); Fitzler-Saeck (RE 10.372); Volkmann (38.2).
2 This date is accepted by Breeska (RE 3.1746) and Volkmann (38.2). Fitzler-Saeck (RE 10.372), allowing a margin for error, prefers 6 A.D. Anderson (47) takes the date as 12 A.D.
3 Possibly the Flavians Rufus mentioned as a conspirator by Suetonius (Aug. 19).
(Dio 55.27.3). It is probable that the pamphlets posted by night were lampoons on Augustus, for famine had previously produced similar attacks on him. During the triumvirate, his dinner-party... which the guests came dressed as gods and goddesses provoked the anonymous lampoon cited by Suetonius (Aug. 70); and criticism was particularly severe because there was a famine at the time: "Auxit cena rumorem summa mmo in civitate penuria ac fames adolamatumque est postridie, omnis frumentum deos comeddias et Caesarem esse plane Apollinem, sed Tortorem ..." (Suet. loc.cit.). It is probable that in 6 A.D. those which the real ringleaders made of Rufus’ name was to post pamphlets of a similar type, purporting to have been composed by Rufus.

It should be noticed that the senatusconsultum which extended the lex Cornelia de iniuriis to cases of anonymous and pseudonymous publication (pp. 275-6 above) included a provision which has not yet been discussed, namely, the authorisation of rewards to informers: "et ei, qui indicasset, sive liber sive servus sit, pro modo substantiae accusatæ personæ assessmente iudicis praemium constituitur, servo forsan et liberitate praestanda" (Dig. *7.10,5.11). Ulpian’s comment on this provision is: "quid enim si publica utilitas ex hoc emergit?" (Dig. loc.cit.). In the result there is a striking correspondence between the senatusconsultum and the events of 6 A.D. In that year lampoons on Augustus were published "alterius nomine" (cf. PASSAGES A, B and E); the Senate decreed an investigation (cf. PASSAGES A and B, and Levy’s reading of E); and the Senate offered rewards to informers (cf. Dig. 47.10.5,11). The lampoons in the name of Rufus were far more serious than mere ‘iniuriae’, for they were published in furtherance of a seditious conspiracy, so that there was a clear involvement of “publica utilitas” (cf. Dig. 47.10.5,11).

It was at this point, in 6 A.D., that the Senate extended the lex Cornelia de iniuris, and did so in such a way as to associate defamation and maiestas. The crimen maiestatis
already included any conspiracy "quos homines ad seditionem convocentur" (Dig. 48.4.1.1), and it was precisely in pursuance of such a conspiracy that the pamphlets in Rufus' name had been published. But although incitement to sedition was already maiestas, the 'ipseissima verba' of the maiestas law did not cover the particular evil of the pamphlets. The Senate could have simply extended the maiestas law by decreeing that defama­tion "alterius nomine" would be deemed to be incitement to sedition. But then the new rule would have had to be restrictively phrased, so as to limit it to publication "ad infamiam principis", for only in that case was it realistic to speak of sedition; a rule against publication "ad infamiam alicius" could scarcely be associated with sedition. But "ad infamiam principis" in the maiestas law would have seriously undermined the fiction that the concept of 'maiestas populi Romani' still survived.

The solution was an extension of the lex Cornelia de iniuriis, in which "ad infamiam alicius" would not be out of place, while at the same time there would be no need in practice to apply the new rule except against attacks on the princeps. But while this would give the desired rule of substantive law, there was a procedural difficulty. The criminal action under the lex Cornelia de iniuriis can fairly be described as "sui generis". It was brought before a tribunal consisting of a quasi-magisterial president and a consilium, which assimilated it to a criminal trial; but it was known as an "actio", and never as an "acusatio", and was in fact "eine hinsichtlich der Bildung des Schwaengerichts modifizirte Civilklage" (Mommsen, Straf 803, 804 and n.1; cf. 368). The plaintiff proposed a specified amount as damages, and if the court condemned it was bound to award precisely that amount; in addition, condemnation carried 'infamia' (Mommsen, Straf 805). Two differences:

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1 Known as "actio iniuriarum legis Corneliae", as distinct from the purely civil action, "actio iniuriarum praetoria". Mommsen (Straf 804.1).
between this action and a prosecution before a quaestio are significant. Firstly, there was no general right of accusation, the action being available only to the injured party. It follows that there was no room for anonymous prosecution before a quaestio. Secondly, there could be no question of imposing any of the recognized criminal penalties, such as interdiction or confiscation. The 'actio iniuriarum' did not, therefore, furnish a suitable means of bringing anonymous publication under the public criminal law. The 'actio' could have been converted into a 'crimen' by creating a 'quaestio iniuriarum', but there were probably two objections to this course. It would have meant the attachment of an outright criminal sanction to real injuries, with consequent disturbance of the system of honorary law which had been built around 'iniuria' as a civil delict. Furthermore, it was convenient not to remedy the position by creating a 'quaestio iniuriarum', for the existing state of the law gave Augustus a convenient pretext for accomplishing, in an unobtrusive way, something which he was in any event determined to bring about - the punishment of attacks on him as maiestas. In order to bring criminal defamation under a 'indicium publicum', a two-fold procedure was followed. The category of verbal injury in the lex Cornelia de iniuriis was extended to "qui alius alius nomine ediderit" by senatusconsultum, which gave the desired enlargement of the substantive law. But this left 'Infuria', even as extended, without a quaestio perpetua before which transgressors could be prosecuted. As it had been decided not to create a quaestio de iniuris, jurisdiction had to be conferred on one of the existing quaestiones. The quaestio maiestatis was chosen for this purpose. The senatusconsultum therefore went on to provide that anyone composing or publishing defamatory matter was to be punished "ex lege maiestatis", possibly in the form: "ut si quis librum ... ad infamiam alicuius pertinentem scripsit ... etiam alius nomine ediderit vel sine nomine, sua poena teneatur, qua tenentur qui homines ad seditionem convocassae indicati sunt". Although worded in the general form "ad infamias alicuius", in practice the rule
could easily be confined to attacks on the princeps and his family. It is probably the selection of the quaestio maiestatis for this purpose that Paul has in mind when he says: "voluit senatus publica questione rem vindicari" (PASSAGE F; italics mine). A provision such as that suggested would have been no different in principle from that attested by Ulpian (Dig. 47.22.2), whereby the Senate (Dig. 47.22.1.1) brought unlawful associations, for which there was no quaestio, under the quaestio maiestatis: "quisquis illicitum collegium usurpaverit, ea poena omnes, qui hominibus maiestatis loca publica vel templum occupasse judicati sunt" (Cf. Dig. 48, 4.1.1: "locave occupentur vel templum"). Jurisdiction having been given to the quaestio maiestatis, there could be an assumption of that jurisdiction by the Senate and the imperial criminal court, which would have been impossible under the 'actio iniuriarum'. It was also possible to introduce rewards for informers (Dig. 47.10.5,11), for the regular accusatory procedure now applied. Furthermore, a full-scale criminal penalty could be introduced, namely relegation (PASSAGE F; cf. PASSAGE E and Paul, Sent, 5.4.18). The penalty was "extra ordinem", as attested by PASSAGE F, precisely because the 'actio iniuriarum legis Corneliae' had been abandoned, as far as criminal defamation was concerned.

It is therefore suggested that the "cognitio" against Cassius Severus (Tit. Ann. 1.72,4), which has been identified as the prosecution for 'convicium' attested by Dio (55.4.3), was conducted in 6 A.D., and was the first trial to be held under the senatusconsultum which was introduced as a result of

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1 If the Sosius who was charged with maiestas because "apud matrem dissererat liberam non esse tollendam" (Sen. Soss, 2,21) was the C. Sosius who was consul in 39 B.C. (Ep. Virid. 115), or 32 was the C. Sosius who was consul in 39 B.C. (Ep. Virid. 115), or 32 under the new law; rather was it a general diminution of 'maiestas populi Romani', similar to the remark of Claudia (p. 30 above.)

2 Fitzler-Seyeck (RE 10,372) suggest, although they put it forward only as a bald possibility, that Cassius was exiled during the disturbances of 6 A.D. But on the hypothesis developed in the text, this was not the occasion of his relegation.
the unrest that year, and which, in effect, brought defamation under the Roman maestas. Cassius was acquitted, but convictions were secured against the leaders of the conspiracy who had furthered their purpose by publishing lampoons in the name of Rufus. These leaders are the αὐτοὶ δὲ καὶ σφαλέοις μουσικάς to whom Dio (55.4.4) refers. It may be supposed that, although Cassius had no part in the conspiracy, some of his many enemies denounced him when an investigation was held (Dio 55.27.3) to determine the true author of the Rufian pamphlet. Although Cassius' record made him an obvious suspect, the evidence must have satisfied Augustus of his innocence.

But Cassius was an incorrigible slanderer (Tab. Ann., 4.2115), and in or about 8 A.D., he was in trouble again, and was relegated to Crete under the senatusconsultum. It is possible that his offence on this occasion was connected with the proceedings against Titus Labienus, the son of Caesar's defecting lieutenant and an inveterate Pompeian (Kroll, RE 12.270; Syne 486), whose virulence caused him to be known as "Rabienus" (Sen. Controv., 10. Praef.5). His enemies contrived to have all his writings publicly burned, a punishment previously unknown (Sen. loc.cit.). This was probably linked to a maestas charge against Labienus (Carcopino, Cicero 2.566.2), and the burning of the books was authorised by the Senate (Sen. Controv. 10. Praef.8; Suet. Calig. 16.1). Labienus' works went up in flames, Cassius remarked: "Nunquae, quaerit, vivum usque opus est qui illos edidit" (Sen. loc.cit.). It is known that Cassius' works were burnt also by decree of the Senate (Suet. Calig. 16.3), and it is probable that this took place soon after the destruction of Labienus' books. But then this general bonfire must be that attested by Dio (56.27.1), who reports that in 12 A.D. Augustus conducted an investigation into pamphlets which had been composed ἀπὸ τῶν ἕπειρων, and had the offending works burned both in Rome and elsewhere, and punished some of the authors. These measures were clearly taken under the senatusconsultum of 5 A.D., with the possible exception of the book-burning, which may have formed the subject of a later addendum by the Senate. Dio's chronology is not consistent with the date of Cassius' exile to Crete as established by Jerome (9.279 above), but the inconsistency does not seem to have any bearing on the general picture of the course of events.
CHAPTER XII

"AD LEGEM JULIAM MAESTATIS"

Under the above heading Digest (49.4) sets out eleven excerpts from the works of seven classical jurists - Ulpian (49.4.1,2,11); Marcellus (49.4.3,5); Soesvola (49.4.4); Venuleius Saturninus (49.4.6); Modestinus (49.4.7); Papinian (49.4.8); and Hermogenian (49.4.9,10). The same heading introduces the discussion of Paul (Sententiae 5.29), and two collections of imperial constitutions (Code Th. 9.5; Code J. 9.9). A "lex Julia maiestatis" is also attested by Institutes (4.18.3) and, to judge from the misplaced excerpt in Code J. (9.8.5), by Marcellus (De Publicis Iudiciis I). Information about maiestas is, of course, ascertainable from many other juristic sources, but without mention of "lex Julia maiestatis".

It has been widely assumed that the lex Julia maiestatis was some sort of consolidating statute, which re-enacted the previous maiestas laws, with additions, and so went down to the Principate as the sole statutory source of the crime, subject only to the extensions introduced from time to time by decrees of the Senate, imperial constitutions, and judicial interpretation. In view of the fact that the laws of both Caesar and Augustus are known as "leges Iulias", and that a given "lex Iulias" cannot be identified as having been introduced by Caesar or Augustus, unless there is extraneous evidence.

1 On this passage see Mommsen-Kräuger (2.374.2); Volterra 486-5.
2 For example, Digest (3.2.11.3); 28.1.16.1; 47.10.5-6; 48.18.10.1, Code J. (4.9.1); 4.1.2; 8.11.10; 9.5.1; 9.42; 3.4; 9.46.10.5,11; 9.56.2; 11.9.4; Code Th. (9.11.1); 9.21.9; 10.21.3; 16.10.12.1; 15.1.3; Paul (Sent. 5.5.15-17); 5.21; Collatius (1.15.9); Edictum Constantii de accusationibus.
3 Rein (515, 516 and 41.); Zumpt (2.3.74.25); Mommsen (Staat 51); Greenough (Treason 230); Fawkes (L.115); Pollock (280, 290); Rotfard (955, 1840); Strachen-Davison (2.155); Girard (Leges 2321,); Ciampi (251); McFadyen (219); Muller (240); Lange (Staat 31); Rogers (Trials 6-7); Sibon (Rationale 22); Veit (Zitat 290); Arangio-Ruiz (317); Grant (513); Leve (24); Chilton (73).
pointing to a probability one way or the other, the authorities are divided mainly on the authorship of this consolidating statute. Some assign it entirely to Augustus, others to Caesar. It has also been suggested that the material in the texts is a composite commentary on statutes of both Caesar and Augustus; or that the definitive maiestas statute was made up of laws of Sulla and Augustus (Pollack 199-200). There is also the courageous view that the lex Julia maiestatis was introduced by Tiberius.

The strongest argument against a lex of Augustus is its omission from the literary sources which deal, although in the most scanty manner, with his legislation. Suetonius does not mention it in his brief resume: "Leges retractavit et quasdam ex integro sanxit, ut sumptuarias et de adulterinis et de pudicitia, de ambitu, de mariandis ordinibus" (Aug. 34.1; cf. Res Costae 2.12.14). Dio (54,12-18), reviewing the measures of 18 and 17 B.C., says nothing which can be interpreted as a reference to a maiestas law; his nearest approach to the subject is his assertion (54,18.1) that Augustus adopted Gaius and Lucius 'γ' ἱστορίαν μαίεστατος. It can be urged that Suetonius does not purport to give a complete list, and it has been pointed out (Rein, 516 n.) that he also fails to notice Caesar's known maiestas law. The crisp question is, however, whether Suetonius omits from the resume any other major laws known to have been introduced by Augustus. No reference point of absolute reliability is furnished by any Julian law, but a strong majority view regards Augustus as the author of the 'Leges Iuliae judiciorum publicorum et privatorum' (p. 304 n.1 below). These laws are absent from:

1. The only exception is Augustus' adultery law, for which there is internal juristic evidence: "hac lex Iata est a divo Augusto" (Dig. 48.5.1).
2. Zumpt (22.476); Menemen (Straf 541); Emsle (Straf 31); Bottryc (865.31); Puechou (1.142); Cicorelli (251); Grant (923); Lézur (23); Chilton (73).
3. Rein (516 n.); Greenside (Treason 235); Arangio-Ruiz (137).
4. See the authorities cited by: Rein (516 n.); Zumpt (2.2.475); Rotondi (822,483); Miler (246).
5. See the authorities cited by Rotondi (833).
the résumé, but the inference to be drawn from this fact is seriously weakened by Suetonius' mention of at least some of their provisions elsewhere (Aug. 32). Similarly, the lex de collegiis, which was Augustan (Juvides-Ruiz 104-5), is not included in the résumé, but is noticed by Suetonius elsewhere (Aug. 32). The significance of this law is that it applied the penalty laid down for incitement to sedition (Dig. 47.22.2), that is, for a form of maiestas. It may therefore be argued that when Suetonius consulted this lex, his attention would have been drawn to the maiestas law. It would perhaps follow that if there had been anything to say about an Augustan lex maiestatis, Suetonius would have said it. Of the Julian criminal laws set out in the Digest (48.4,5,6,7,11,12,13,14), those on adultery and ambitus are included in the résumé, and the extortion law was Caesarian (Zurob 2.2.294,475; Mommsen Straf 789). The authorship of the rest is too uncertain to base an inference on their omission by Suetonius, but at all events there is no certain case of the total failure by Suetonius to mention a law known to have been introduced by Augustus, and therefore some weight should be given to his omission of a lex maiestatis.

Mommsen (Straf 541 and n.3; cf. Elengle, Straf 31), infers an Augustan maiestas law from the statement which Tacitus (Ann. 4.34.2-3) attributes to Cremutius Cordus: "Verba mea, patres conscripti, arguuntur: adeo factum est oem insensum sum. sed neque haec in principem aut principis parentem quos lex maiestatis amplectitur". Girard (Iages 321.1), assuming that Mommsen's (unspecified) reasoning is that "principem aut principis parentem" means Augustus and Caesar, believes that the rule which Tacitus attests was introduced by a senatusconsultum. Arangio-Ruiz (137) takes Tacitus to refer to Caesar's maiestas law which, he believes, expressly names Caesar as the subject protected, the Senate having extended the protection to Augustus. But in view of the conclusion reached as to

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1 The rendering "the emperor or the emperor's mother" (Church and Brodribb 167) is one of the curiosities of classical scholarship.
the "maiestas" of Caesar and the probable content of his law (Chapters VII and IX), it is unlikely that he was the personal subject of the crime. Furthermore, the association of defamation and maiestas (Chapter XII) leaves no room for a Cae­saralex or senatusconsultum as the instrument whereby "verba" were included in the crime. In addition, a law protecting a named person could not readily have been extended to another named person, or to "princeps" in general. It is also not certain that Augustus would have wanted to associate himself with Caesar so openly. The other possibility (Arangio-Buiz 137) is an Augustan lex or senatusconsultum which was retroactively extended to "divus Julius"; but this means an equally in­expedient perpetuation of Caesar's memory.

The charge against Cordus, according to Tacitus (Ann., 4,34,1), was that in his 'Annales' he had praised Brutus, and described Cassius as the last of the Romans. This gives a basis for a maiestas charge without a Cae­saralex or Augustan law at all, for Cicero (296) holds that praise of an act punished by the lex Pedes was itself culpable, and it has already been suggested (pp. 187-8 above) that the lex Pedes was a maiestas law. But, against Cicero's view, Cordus' history was recited to and approved by Augustus (Suet. Tib. 61.3; Dio 57.24.2), which tends to retort Tacitus' suggestion (Ann. 4,34,1) that publication was still recent in 25 A.D. Although Cordus had not been particularly complimentary to Augustus

1 On the effacement of Caesar's memory by Augustus, see Carcopino (Cicero, Vol.2 - passim); cf. Suet. (17-8).
2 Cf. Suet. Tib. 61.3; Dio (57.24.3); that a further allegation was 87; 306 306; ... 307 307; 307 307. Saneons (ad Marc. 1,20.4) does not mention praise of Brutus and Cassius: (Seianus) 307 307; he must have altered liberius dictus; this agrees with the fact that the assassins were clients of Seianus (Tac. Ann. 4,34,2; Sm. loc. cit.) and Marsh (Tib. 223; cf. Rogers, Totals 87) believes that the charge attested by Tacitus was a preliminary introduced to create bias, and would have been followed by some substantial ejecta bias, and would have been followed by some substantial ejecta bias. 

Cicero allegation if Cordus had not committed suicide. Cicero allegation if Cordus had not committed suicide. Cordus is fictitious, although the trial is historic.
(Dio 57.24.3; Suet. Aug. 35), he managed to avoid trouble until 25 A.D. (Dio 57.24.2), which suggests that, although his "verba" were "in Caesarem", Augustus, who encouraged a Pompeian rather than a Caesarian tone in the literature of his age (Syme 317-8), had not regarded them as "in se". It follows that "neque (verba) in principem aut principis parentem" (Tac. Ann. 4.34.3) does not refer to Caesar at all. Cordus meant Augustus (principis parentis) and Tiberius (princeps). It would indeed have been strange for Cordus, speaking in 25 A.D., to have used "princeps" to mean "the previous emperor", rather than "the present incumbent". Tacitus (Ann. 4.34.1) describes the charge against Cordus as "novo ac tunc primam audito crimine", and in view of his similar language in regard to Cassius Severus (p. 265 above) it would seem that he is either deliberately inaccurate, or in fact means what he says, namely, that both cases were unprecedented. The difference probably is that Cassius was charged with the composition of pamphlets defaming a named person, Augustus, while it was alleged against Cordus that his attack on Caesar was an injury to persons not named, Augustus and Tiberius. The accusers, for want of a better case, sought an extreme extension of the "quo ad gnosco possit" rule attested by Paul (E. p. 272 above). In reply Cordus said, in effect: "My words may well have attacked Caesar but they were not directed against Tiberius or Augustus."

Tacitus (Ann. 4.34.3) therefore means that the maiestas law protected Augustus and Tiberius against verbal injury. But Augustus derived his protection from the senatusconsultum of 6 A.D. (pp. 272-85 above). There is no reason to assume any further legislation in his favour on the same subject, and it is suggested that the "lex maiestatis" to which Tacitus refers is that senatusconsultum. There may have been a supplementary decree extending the protection to Tiberius, but it would not have been necessary, for the rule was stated in

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1 Cf. Dio (57.24.2): οδηγημα έξαιτίαν αυτου ἡ μέμνησις ειτε εις την ἐστίν πατρίς εις ... κατά τον τις δικασθε λύσας προς' ου ενείπα τω συμβαθείναι κριθήναι.
the general form "ad infamiam aliquiis". Dio (57.24.4) reports the burning of Cordus' writings in terms very similar to those in which he describes the burning of the works of Labe­
nus and Cassius Severus (56.27.1); in particular, there is the identical mention that the burning in Rome was conducted by the aediles, and elsewhere by the magistrates of each place. It is probable that in both cases the burning was conducted under the same authority, namely, the senatusconsultum of 4 A.D.

Arangio-Ruiz (136) believes that the best argument for an Augustan maiestas law is Digest (48.4.3 - Marcian): "Eadem lege (ac. lege Julia maiestatis) tenetur et qui iniussu principis bellum gesserit diletum hubuerit exercitum comparaverit" (italics mine). A similar rule is attested by Paul (Sent. 5.29.1): "Lege Julia maiestatis tenetur in ... qui(ve) iniussu imperatoris bellum gesserit diletum hubuerit exercitum comparaverit ..." (italics mine). The words "iniussu principis (imperatoris)" have been described as an interpolation for "iniussu populi Romani" (Kibler 550), and as incompatible with the Augustan constitution, although closer to reality than "iniussu populi aut senatus" in Marcian's day, but it should be noticed that Marcian is supported by Ulpian (Dig. 48.4.1.1): "quo (ac. maiestatis crimine) tenetur is, cuius opera dolo male consilium iniussu iniussu principis intercordeant". According to Marcian, then, a lex Julia maiestatis prohibited levies and warfare "iniussu principis", and according to Ulpian the same criterion applied to the execution of hostages. Of the material in Digest (48.4), the excerpts which purport to cite the text of a lex Julia maiestatis are 48.4.1-4 (Lear 40), and perhaps 48.4.10,11 as well (Greenidge, Treason 236; but see pp. 306-7 below). Of these, 48.4.11 is in any event adjectival, so that the substantive rules which may represent part of the text of a lex Julia are 48.4.1.1 (from "quo tenetur"); 48.4.2 (excluding

1. Rein (517 - second note); McFayden (228); Arangio-Ruiz (137).
"nam ... enumeraturo"; 48.4.3 (from "qui in bellis"); 48.4.4pr 1 and 48.4.10. The only references to the princeps in these passages are those of Marcian and Ulpian (p. 290 above). In all other instances the subject, where specified, is "populus Romanus" or "res publica". 2 For example, Ulpian (Dig. 48.4.1.1) prefaces the rule against the execution of hostages with a definition: "Maiestas autem crimin illud est, quod adversus populum Romanum vel adversus securitatem alius committitur". In the same passage Ulpian consistently refers to "populus Romanus" and "res publica", including the significant "hostes populi Romani". 3 In the context, the execution of hostages "iniussu principis" was an act directed "adversus populum Romanum", and was therefore not a violation of the princeps' majesty, but a diminution of the maiestas of the Roman People. Similarly, Marcian (48.4.3) includes warfare and levies "iniussu principis" among various categories which he sets out to illustrate the proposition: "lex autem Julia maiestatis praecipit eum, qui maiestatem publicam lasserit, teneri"; he includes the case "qui(ve) imperium exercitum populi Roman desuerit". 4 It should not be assumed that Ulpian and Marcian "modernised" the text in some respects only, while ignoring other cases where "improvements" would not doubt have been equally justified. 7° they had interfered at all, they would presumably have done so to an extent comparable

1 Although Schultz (Legal Science 175) doubts this passage.
2 Paul (Sent. 5.29.4), in his summary of acts falling under a lex Julia maiestatis, adds or substitutes "imperator" in several cases whereas Digest (48.4.1.4) has "populus Romanus" or "res publica". For the full list see Lear (40-1), who describes this variation as "a significant shift from republican to imperial emphasis in Paulus". The variation should, however, be considered in the light of the probability that Sententiae is a post-classical anthology of Paulus' writings, abounding in interpolations and "modernisations". See Levy (Paul - passim); Jolowicz (176); Schultz (Legal Science 176).
3 Besseler (154) deletes "vel adversus securitatem eum", probably correctly. "Securitas populi Romani" first appeared under Galba and Otho (Instinsky 26).
4 There was a substitution of "hostes principis" when the oath of allegiance recognised a relationship analogous to, but not identical with, 'maiestas populi Romani' (p. 243 above).
to that attested by Paul's 'Sententiae'.

It will be noticed that the provisions regarding the princeps are concerned with external relations, and consist of matters which presuppose a positive function with which the princeps was vested. The populus Romanus, as the subject of a maiestas law, played a passive or an active role, depending on the particular act in issue. An overt act against the State, such as incitement to sedition or the murder of a magistrate, was culpable not because it had been done without authority, but because it had been done at all. But making war and raising levies were only relatively culpable, being valid if carried out under a prescribed authorisation. It is only in this relative sphere that Ulpian and Marcian portray the princeps as the subject of a lex Julia, namely, the sphere of external affairs. It is unnecessary for Arangio-Ruiz (137) to take "iniussu principis" as evidence of the substitution of the princeps as a corporation sole, for all that the provision indicates is the transfer of a particular executive jurisdiction from the populus Romanus to the princeps.

In the Republic external relations were the province of People and Senate, and Sulla made it maiestas to do certain things "in uasu populi aut senatus". If at some stage the power of authorisation passed to the emperor, a new lex maiestatis was needed, but it did not have to be a "general" maiestas law. It merely had to provide, within the framework of 'maiestas populi Romani', for the fact that a new agency had taken over the function of expressing the People's will in external affairs. The fact that the Senate was a joint agent with the populus, in exercising this function under Sulla's law, did not mean any derogation from the principle that technical maiestas was vested exclusively in the People and its...
magistrates. There is no need to assume any different result when the princeps became such an agency.

It is suggested that "iniussu principis" in Ulpian and Marcian is probably an authentic citation from the lex, subject only to the qualification that, consistently with Augustus' general policy towards the Senate, the full expression in his law was "iniussu principis aut senatus". It can be assumed that "aut senatus" was subsequently discarded, possibly by the classical jurists, but more probably by the compilers of the Digest, or their predecessors. It remains to identify the lex which made Augustus a joint agency with the Senate in external affairs. The question is linked to the arbitration of war and peace which, according to Strabo (17.3.25, p.840), was granted to Augustus at the inception of the Principate; συνὸν καὶ εἴρηται κάους ἐπίκειται διὰ τῆς φύσεως. The contemporary evidence of Strabo is corroborated by Dio (53.15.3) who says that in 27 B.C. Augustus received the right συνὸν το ἐν- αύθενται καὶ εἴρηται σύνεβαλες. Mommsen accepts Strabo, and holds that the power was conferred by the Augustan prototype of the lex de imperio Vespasiani. Thullier (172-83) infers from the renewal of the miestas treaty with Sertorius in 25 B.C., that the role of the People was taken over by Augustus, with the Senate fulfilling a merely executory function. Thullier refuses, however, to deduce a general rule from this case. Perhaps the most pertinent argument against the grant of the exclusive power of war and peace to Augustus in 27 B.C. is advanced by Sattler who holds that the non-participation of Augustus in the trial of M. Furius, except as a witness (p.200 above), means that he had not been injured in

1 For the view that many interpolations and changes attributed to the compilers should be credited to earlier editors, see van Harnsema (516-13).
2 Strut (2,2.954, and n.2; 955 and n.1); cf. Bremerstein (181, 182 and nn. 1 and 2).
3 46; cf, for other arguments see Sattler (loc.cit.) and Atkinson (150).
his own sphere of competence, for otherwise he would have brought Primus before his own court. Sattler concludes that under the settlement of 27 B.C., Augustus became the arbiter of war and peace only in his own 'provincia', which seems to be a reasonable corollary to the division of provinces between Augustus and the Senate.

Marcian (Dig. 48,4,3; cf. Ulpian, 48,4,2), after citing the rules against levies and warfare "iniusse principis", ascribes another rule to the same lex Julia maiestatis: "quive, cum ei in provincia successus esset, exercitus successor non tradidit". The evidence is, therefore, that the lex: (a) reserved matters of war and peace for the decision of the princeps; (b) made it an offence for a provincial governor not to hand over to his successor. It does not seem to have been noticed that there is a striking parallel to these rules in certain legislation which Dio (53,15,6) assigns to 27 B.C.: έξετάζει δὲ καὶ παράγει οὖσοι (proconsuls, propraetors, and procurators - 53,15,4) ἐνομοθετήθη μὴς καταλύσας στρατό παρά τι συνέβη επ' αυτὸν ἐκ τῆς γένους τούτου, εἰ μὴ προσάνει δικαιοσύνης ἡ ἀδελφάτωρ ανεστάθη. Εἰταν τῇ τῷ διδόσας ἐξέλιβεν ἐκ τοῦ διόνυσιος ἀκόικα αὐτὸν ἡμερήσθαι καὶ ἐν τῇ συνομολογῇ μὴ ἀνεχθεῖν, ἀλλ' ἐντὸς πρεσβευτικοῦ ἐνώπιόν χρησάμενος. The only material differences between the rules assigned by Dio to 27 B.C., and those ascribed by Marcian to a lex Julia maiestatis, are that Dio states the rule as "iniusse senatus aut principis", and omits the equivalent of Marcian's "qui bellum gesserit". But elsewhere (53,17,5) Dio attests an arbitration of war and peace, which he also assigns to 27 B.C., and "aut senatus" may well be accurate (p.293 above). It follows that in 27 B.C., rules were introduced which corresponded in all material respects to those which Marcian ascribes to a lex Julia maiestatis. Furthermore, these rules were part of the constitutional settlement of 27 B.C., which is generally accepted as having
been established not only by senatusconsultum, but also by lex.  

Prima facie, therefore, the law which introduced these provisions in 27 B.C. was a lex maiestatis, but the difficulty is that the authorities consulted do not date the legislative activity of Augustus as early as 27 B.C. Yet it is not clear why a lex Julia in 27 B.C. is impossible. The selection of 18-17 B.C. for all the 'leges Juliae' seems to be based on Augustus' statement (Res Gestae 6) that he rejected a 'cura legum morumque' in 19, 18 and 11 B.C., and introduced legislation under his triumviral power. But that legislation need not have gone beyond matters which would have fallen under the 'cura' if he had accepted it, namely, laws of a 'moral' nature. Indeed it is precisely to such laws that Suetonius (Aug. 34.1) confines his resume, although he elsewhere mentions "non-moral" laws (pp. 286-7 above). It may well be that the laws mentioned in the resume should not be dated earlier than 19 B.C., but no such limitation need be imposed on other legislation. Sulla's maiestas law accompanied the establishment of a new provincial regime (pp. 87-8 above), and it is probable that Augustus likewise made the necessary adjustments in the lex maiestatis when the need arose, rather than at a much later date. Regardless of the nature of the imperium under which Augustus administered his 'provincia' (pp. 225 and n.3; 227 above), adjustments to the maiestas law were needed, for "iniussu populi aut senatus" was not appropriate in the

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1 Dio 53.12.1; Woodhouse (88-9); Premmerstein (129, 230-1); Syme (331); Westermann (RE22.2.2272); Sibec (Verfassung 270-1, 273, 280); Sattler (37, 45-5).

2 The entire series of 'leges Juliae' is assigned to 18-17 B.C. by Girard (Leges 304-7 - although he says (300) that Augustus began his legislative programme after 27 B.C.; and to 18-17 B.C. by Arangio-Ruiz (102-5; cf. Pfitzner-Spittl, RE 10.553; Premmerstein 157) and is believed by Siber (Verfassung 357) to have begun in 17 B.C. Wissak (Proces 1.174) finds the 'leges Juliae' undatable, but believes (1.182-3) that the revision of special criminal statutes was completed before 17 B.C. Rotondi (439-40) dates the earliest lex Julia (apart from those of Caesar) to 12 B.C. (lex Julia de tutela) but queries the data. The lex Julia maiestatis is dated to 19-17 B.C. by Atkinson (459-9), to 8 B.C. by Rotondi (459), and to "den allerletzten Jahren des Augustus" by Kostermann (77). No date is assigned to the maiestas law by Zweit (2.2.476); vonessen (Straf 542); Formanx (1.141); Pollack (199, 3200); Botsford (455, 9); Ciard (251); Kühle (548); Grant (413); Brecht (Maiestas 357-8); Chilton (73); or Lear (25).
provinces which were transferred to Augustus. Even if Augustus did not have the full tribunician power, including the power of initiating legislation, until 23 B.C., he could, as consul, have introduced a 'lex Julia' in 27 B.C. in the comitia centuriata, or a lex could have been introduced in the concilium plebis by a tribune at the instigation of Augustus, and named for the instigator (p.107 n.2 above).

It must, however, be supposed that the law went further than the mere adjustments occasioned by the settlement of 27 B.C. Marcian (Dig. 48.4.3) introduces his enumeration of categories as follows: "Lex duodecim tabularum iubet eum, qui hostem concitaverit quive hosti tradiderit, capitum puniri. Lex autem Julia maiestatis praecipit eum, qui maiestatem publicam laeserit, tenere: quales est ille, qui ...". In addition to unauthorised levies and warfare, and wrongful retention of a province, Marcian cites acts falling under the concept of proditio, namely, the surrender of positions to the enemy, and desertion. Ulpian attests two cases of proditio, aiding the enemy (48.4.1.1) and desertion (48.4.2). Scaevola (48.4.4) gives a full list, and Hermogenian (48.4.10) notices two cases. It has been argued with some force that in the Republic proditio was not a formulated criminal concept, but a group of acts punished by consular coercitio, or under the arbitrary power of military commanders, and that it did not fall under the public criminal law until legislation absorbed these acts into the crimen maiestatis. This view requires the assumption

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1 See the authorities cited at p.232 n.1 above. For the power of legislation under the tribunicia potestas see particularly Grant (446-53); Salmon (469); Räusser (29-131).
2 In the general sense of treacherously handing over the person or interests of another to a hostile third party (Brecht, Perduillo 1,27; cf. Ruhemann, RE Supp. 9,1223); this also includes the defection of an ally and the more serious military crimes (Brecht, Perduillo 28).
3 Brecht (Perduillo 26-112, 225.2, 259-64); Ruhemann (RE Supp. 9,1229-30). Ipes (18,25,112,20,117,64) believes that proditio was a form of perduillo, but does not give enough weight to the research since Mommsen.
that Marcian’s reference to the XII Tables is merely a general reference to customary law (Fuhrmann RE Supp. 9. 1225), which may well be the case. In any event, the material fact is that there was legislation which brought various forms of prodiatio under the crimen maiestatis. There is nothing against the supposition that these matters were dealt with as part of the arbitration of war and peace which was included in the legislation of 27 B.C. It is therefore postulated that, as far as external affairs were concerned, there was a comprehensive maiestas law in 27 B.C., which consolidated the traditional body of customary law, and provided for the new provincial system.

It will be objected that the powers granted to Augustus in 27 B.C. were to endure only for 10 years, and that, although they were in fact renewed from time to time, this could not have been anticipated, so that a general statute should not be assumed for a situation which was not necessarily permanent. But the permanence of the new system is correctly stated by Syme (324-5): “This time the domination of a faction was to be permanent and unshaken ... Definition of powers and extent of provinces might later be modified how and when he pleased. One thing could never change, the source and origin of his domination”. There is a strong suggestion of a legislative programme in 27 B.C., in Tacitus (Ann. 3.28-3): “Sexto dominio consulatu Caesar Augustus, potestas securus, quae triumvirate inessent abolevit deditque iura qui pace et princepe uteremus”. It is not necessary to take “deditque iura” as a Tacitean compression of a lengthy period of time, for if he did not mean that the laws were introduced “sexto consulatu” he would rather have said: “... abolevit. mox dedit iura ...”. There is some support for legislation in 27 B.C., in Cassiodorus (Chron. ad 27 B.C.), although his chronology is not always reliable: “Caesar leges protulit, indices ordinavit, provincias dispositit etideo Augustus cognominatus est”. It may be contended that the grant in 23 B.C. of the troublesome ‘maius imperium’ (p.227 and nn.1,2 above), or more accurately,
"imperium (proconsulare) minus quam ..." (Bögerer 92-6; Wickert, Ne 22,2,2272), ought to have been accompanied by a maieastas law, but this would be so only if the new settlement of 23 had made "iussu principis aut senatus" meaningless. That this was not the case appears not only from Atkinson's analysis of the trial of M. Primus (pp. 202-3 above), but also from the arguments of Siler (Verfassung 276, 280-1), who shows that 'maius imperium' had no military content, and that "war eine rein bürgerliche Gewalt zur Aufsicht über die statthalterliche Verwaltung der Senatsprovinzen".1,2

The proposed lex Julia maieastatis of 27 B.C. does not account for all the substantive material in Digest (48,4,1-4,11). Ulpian (Dig. 48,4,1,1), apart from the rules which can be ascribed to the law of 27 B.C., discusses the following: "uno (sc. maieastatis aedae) tenetur is, cuius opera dolore malo consilium iniuriam est ... quo armati homines cum talis iudiciiussue in upe sint convenientur adversus rem publicam, loeave occupentur vel tempora" (PASSAGE A); "quae costu conventusve flat hominesve ad seditiinum conveniunt" (PASSAGE B); "nullave

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1 See also Stroux-Wenger (63.3); Salmon (470); Sattler (69).
2 There is no reason to say that the Augustan intervention in a senatorial province attested by the Edicts of Cyrene was in the military sphere.
3 Atkinson (456-9), following an entirely different line of reasoning from that of the author, finds that the lex Julia maieastatis was introduced in order to give Augustus sole control of levies and declarations of war, and so indirectly of the armed forces. She holds that "the real foundation of the Principate as a permanent institution was the Lex Julia Maiaestatis (of 18 B.C.)". She dates the lex to 19-17 B.C., on the ground that the trial of M. Primus had shown the need for clarification of the question of jurisdiction in matters of war and peace. When Augustus returned to Rome in 19 B.C., he began legislating, and the maieastas law was probably the first lex Julia to be introduced in 18 B.C. It received precedence because the first decade of his proconsular imperium was about to expire. With this law in operation, it was possible in 18 B.C. to grant Agrippa a proconsular imperium similar to that of Augustus, for the latter's exclusive control of war and peace furnished the required differentiation between two and peace furnished the required differentiation between two and war, nor with her reasons for the law's introduction, believes that her hypothesis is the first of its kind, and acknowledges it as the incentive which stimulated the independent line of investigation pursued here.
opera consilio malo consilium initur erit, quo quis magistratus populi Romani quive impertium potestatem habeat occidatur" (PASSAGE C); "quove quis contra rem publicam arma feret" (PASSAGE D); "quive milites sollicitaverit concitaverit, quo sedetio tumultus adversus rem publicam fierit" (PASSAGE E).

These categories are not introduced by an expression such as "lege Julia maiestatis tenetur is qui ...", as is customary. Ulpian's introductory words are: "Maiestas autem crimen illud est, quod adversus populum Romanum committitur, quo (sc. 'maiestatis criminis', not 'lege Julia') tenetur is ...") (48.4.1.1). It is most unusual for Ulpian to cite a statutory provision without naming the lex, senatusconsultum, or imperial constitution. In respect of the 'crimina publica' which he is known to have discussed in Books 7 and 8 of his 'de officio proconsulis' (Lenel, 2.975-8), the relevant law is named in the case of the lex Cornelia de siccariis et venufacis (Coll. 1.3; Dig. 48.6.4); the lex Julia de vi publica (Dig. 48.6.7); the lex Julia peculatus et de saeculigo et de residuis (Dig. 48.13.8.1); and the lex Cornelia de falsis (Dig. 48.10.9; Coll. 8.7). In the case of the lex Pompeia de pariicidio, the only excerpt from 'de officio proconsulis' is a brief discussion of a disputed point (Dig. 48, 9.5); and even then another jurist (Maecianus) is cited by name. Only in the case of maiestas does Ulpian seem to have omitted all reference to his source. It is true that truncation of Digest (48.4.1.1) by the compilers cannot be excluded. For example, the senatusconsultum which Ulpian cited on the lex Cornelia de falsis (Coll. 8.7) is omitted from the same except in the Digest (48.10.9.3); but even then the citation of the lex Cornelia itself is retained in the Digest excerpt. The absence of citation in Digest (48.4.1.1) is particularly striking if regard is had to the comprehensive list of acts
which Ulpian sets out. The evidence suggests that Ulpian
did not cite a lex Julia maiestatis in 'de officio proconsulis'.
He composed his own definition of the crime and then gave a
number of illustrations. The random order in which these are
set out is also significant. The first, concerning the execution
of hostages, relates to external affairs. Next come
A, B, C and D, which concern internal matters. Aiding the
enemy is a reversion to the external field, and the excerpt
concludes with E, which is internal rather than external.
This haphazard sequence does not appear to have been taken en
bloc from any one statute, and the suggestion is that Ulpian
selected his illustrations from more than one lex.

There is a striking similarity between A and a provision
of the lex Julia de vinculis (Paul. Sent. 5.26.1): "quaeve cum telo
in publico fuerit, tempora publica edavit publicum arme-
tis obsedavit clerum et occupaverit". Mommsen (Strasf
563.1,3; 564; 557) explains the close agreement between vis
and the "violent" form of maiestas by supposing that the crime
was maiestas against the instigators and ringleaders, and vis
against subordinates. Flore (342), rejecting this view, holds
that Sententiae (5.26.1) is spurious. Zumpt (2,1,270-3) argues,
rather plausibly, that the distinction between the two crimes
turned on whether maiestas populi Romani was involved:
Norbanus was acquitted of maiestas, although he had used force,
but would have been convicted on the same facts under the lex
Plautia de vi. Although Zumpt does not consider the effect

1 An idea of Ulpian's method when he dealt extensively with
a criminal topic in 'de officio proconsulis' can be gathered
from Callistus (15.2 - 'de mathematicis et vaticinatoribus'),
where he begins with a brief statement of the nature of the
crime (cf. Dig. 48,4,4.1.1), cites the earlier relevant legisla-
tion (absent from Dig. 48,4,3.1), gives a full exposition
of the substantive law (cf. Dig. 48,4,1.1) and penalties
(absent from Dig. 48,4,1.1), touches on changes in the law
(absent from Dig. 48,4,4.1.1), and cites imperial constitutions
(absent from Dig. 48,4,1.1).

2 For Ulpian's curious concentration on domestic matters,
in a work written for the guidance of provincial governors, see
Schiller (333-7).
of a plea of "maiestatem auxi", his argument amounts to saying that this plea was available on a charge of maiestas, but not on a charge of vis on the same facts. The difficulty, however, is Cicero (Dei. 29,70): "De vi quaeritis: quae lex ad imperium, ad maiestatem, ad statum patriae, ad salutem omnium pertinet". It is not possible to assume an indictment under the lex maiestatis when magistrates and senators were charged, and under the lex de vi against all other persons, for magistrates could also be charged de vi (Dig. 48.6.7). Furthermore, Caesar's maiestas law made the crime applicable to all classes (p. 175 above), so that from then on anyone could be charged either with maiestas or de vi. The position was probably similar to that whereunder, on the same facts, there could be a charge of maiestas or extortion (pp. 97-9 above). Given an act of violence, the lex de vi was probably preferred if there was a danger that the jury might be persuaded to return a verdict of "maiestatem auxi".

A, B, D and E, as examples of 'maiestas minuta per viam', would have been quite at home in Caesar's maiestas law. But there would have been no pressing reason for their inclusion in the law of 27 B.C., and the Romans did not legislate unnecessarily (p. 81 and n.1 above). It follows either that Ulpian took this material from Caesar's law, or that Augustus introduced a second law at some time after 27 B.C. The disturbances attending the consular elections from 22 to 19 B.C. (Syme 371-2) could have supplied the incentive for a "violent" maiestas law, but the silence of Suetonius and Dio (p. 285 above) is particularly significant in the light of their express mention (Suet. Aug. 34,1; Dio 54,17) of the lex de ambitu, for that law owed its introduction in 1 B.C. to the same disturbances (Knoeser, Straf 867,7). Faced with a known law of Caesar which readily accounts for A, B, D and E, and in the absence of any evidence of an equivalent Augustan lex, it should be assumed that Ulpian derived this material from Caesar's law.
G is a special case. Pollack (201 and n.l) points out that there is no suggestion in this passage of any special rule regarding assassination of the princeps. It should be noticed that the rule as stated by Ulpian is wholly Republican in form, but the date of its first introduction is not clear. It would not have been brought in under the Appuleian, Varian, or Cornelian laws, for in 63 B.C., the comitia, and not the questio, provided the forum for the trial of C. Rabirius (pp. 35-7 above). Furthermore, the lex Pedia of 43 B.C., would have been unnecessary if C had been included in Caesar's law. It is probable that C was introduced by the lex Pedia. In this regard it should be noticed that, although a "lex Pedia" is expressly attested by some sources (Vell. 2.69.5; Suet. Nero 3.1; Galba 3.2), others attribute the law to Octavian (Livy Per. 120; App. B.C. 3.14.95; Dio. 46.48.2; Plut. Brut. 27.3). If the law was instigated by C. Iulius Caesar (Oetavian), a variant tradition may have known it as a "lex Iulia". Indeed Augustus would have wanted his name to be associated with the law with which Res Gestae opens (Res Gestae 1). It has been suggested (pp. 187-8 above) that the lex Pedia was a maiestas law, so that it may very well have been known as a "lex Iulia maiestatis".

The foregoing suggestions do not account for all the material in Digest [48.4.1-4], for the following do not fit readily into the laws which have been assumed for either Caesar or Augustus. "quae si conscriptis vel recitaverit in tabulis publicis" (Dig. 48.4.2) (PASSAGE F); "quae privatae potestate magistratui quid scio dolui gesserit" (Dig. 48.4.3) (PASSAGE G); "item si confessum in iudicio reum et propter hoc in vinula coniecta esserit" (Dig. 48.4.4) (PASSAGE H). It may be argued that G and H are quite inconsequential in their respective contexts, having no conceptual connection with what goes before, and having the appearance of "odd lots" which have simply been tagged on in order to get rid of them. But F is documented, for Ulpian (Dig. 48.4.2) says of it: "nam et hoc capite primo lege maiestatis enumeratur".
The difficulty occasioned by G and H is perhaps not great, for it may be accepted that any act which constituted the crime of vis could also have been included in a statute dealing with ‘maiestas minuta per vim’. A recognized form of vis was "Vollziehung eines magistratischen Amts von Seiten eines dazu nicht befugten Beamten oder eines Privaten" (Mommsen, Straf 663); this is on all fours with the position contemplated by G. It is also possible to regard H as an example of the general rule laid down in G, for the release of a confessed criminal was clearly a usurpation of magisterial authority. It may be accepted that G and H are not irreconcilable with Caesar's law, from which it follows that Marcius and Senevola, like Ulpian, selected their material from more than one lex. It is less easy, however, to dispose of F. It may be argued that it is a short step from the exercise of authority by one who is not authorized, to the improper exercise of an authority which is in fact possessed. It would follow that the case mentioned in F contemplated a false entry by someone in an official capacity, who had access to the public records, and who was under a duty to make proper entries. It can also be pointed out that abuse of authority was in fact a form of vis (Dig. 48.6.7). But the argument is not entirely satisfactory, for in Digest (48.6.7) it is the special case of a magistrate doing violence to a citizen in contempt of provocatio, which does not warrant the assumption that vis covered the improper exercise of authority in general.

If F cannot be satisfactorily reconciled with Caesar's law, and if it does not by its nature commend itself as an ingredient of the Augustan law of 27 B.C., a further search should be made for a second Augustan lex. In this regard there is an avenue which merits exploration. A century ago Zumpt (2:1, 51-4, 70-92; cf. 131-2, 136, 194-5) argued that the judicatory law of C. Gratus not only laid down rules of criminal procedure, but also set out substantive categories of crimes. This theory has been restated by Henderson (passim,
and cf. p. 25 n.2 above). Although the theory has not been accepted for Gracchus' law, it is worthwhile considering whether there is any room for the application of a similar hypothesis to the lex Julia judiciorum publicorum, a general judiciary law which, on the majority view, was introduced (in 17 B.C.) by Augustus, rather than by Caesar. Although a strong body of opinion holds that this law was only a general code of criminal procedure, and that the substantive categories of individual crimes remained the subject of special laws, it is proposed briefly to test the possibility that in this statute, which contained at least 88 chapters (McFayden 220), there were chapters on particular crimes, including a chapter which consolidated the substantive categories of maiestas. The first piece of evidence is Digest (48.14.1.4): "si qui reus vel accusat orium domum iudicis ingrediatur, per legem iudiciarum in legem (sc. Iuliam) ambitus committit". The rule against visiting a juror was included in the Augustan judiciary law (Girard, Leges 330), and the lex Julia ambitus was Augustan (Arangio-Ruiz 110). It may seem that the lex de ambitu formed a chapter in the judiciary law, for the explanation (Girard, Leges 304,3) that the penalty of the ambitus law was merely borrowed by the judiciary law is strained. The typical expression, where one lex applied the penalty of another, was: "lege Pompeia de pariciidio cavetur, ut, si quis ... occiderit ... poena ea teneatur, quae est legis Corneliae de sicariis" (Dig. 48.3.1). And "in legem committere" (Dig. 48.14.1.4) suggests a contravention of the particular statute mentioned, rather than a "borrowing", as in: "divus Claudius edicto praecepit adiciendum legi Corneliae ut, si quis ... scripturum, proinde teneatur, ac si comississet in legem Corneliae" (Dig.

1 Augustan authorship is accepted by Wlassak (Process 1.173, 180-81, 187); Girard (Leges 304-52); Botond (448-9); Maes (Re 12,236); Volfmann (224-5); Arangio-Ruiz (105-9). The law is ascribed to Caesar by Hermann (Straf 128, 655) and McFayden (219-27).
2 Wlassak (Process 181-3); Girard (Leges 321-31, 358-60); Arangio-Ruiz (105-10).
Secondly, there are the curious duplications:

"Fames! quogue accusantes sine ulla dubitatione admittuntur" (Dig. 48,2,13) (J); and "Fames, qui ius accusandi non habent, sine ulla dubitatione admittuntur ad hanc accusationem" (Dig. 48,4,7) (K); "Vmilites quoque, qui causas alienas deferre non possunt, qui pro pace excubant, vel magis ad hanc accusationem admittendi sunt" (Dig. 48,2,13) (L); and "sed et militae, qui causas alienas defendere non possunt, quae qui pro pace excubent, magis magisque ad hanc accusationem admittendi sunt" (Dig. 48,4,7,1) (M); "servi quoque defersentes audientur" (Dig. 48,2,13) (N); and "servi quoque deferentes audientur et quidem dominos suas" (Dig. 48,4,7,2) (O). Passages J, L and N are from Martian (De Publicis iudiciis I), and appear in Digest (48,2 - 'de accusationibus et inscriptionibus'), a title which is largely concerned with the lex Julia iudiciorum publicorum. K, M and O are from Pudentinus (Pandecta XII), and appear in Digest (48,4 - 'ad legem Iuliam maestatis'). It may be felt that Martian and Pudentinus must be commenting on the same lex, namely the judiciary law, which may suggest that maestas formed a chapter in that lex.

On balance, however, it is not possible to disturb the view that the judiciary law did not include substantive categories. The decisive passage is Digest (48,4,1): "Non omnia indicia, in quibus crimen vertitur, et publica sunt, sed ex tantum, quae ex legibus iudiciorum publicorum veniunt, ut Iulie maestatis, Iulie de adulteris, Cornelia de sicariis et veneficis, Pompeia parricidi ... Cornelia de testamentis ... Iulie ambitius ...". The inclusion of two Cornelian laws and one Pompeian excludes the possibility that "quae ex legibus iudiciorum publicorum veniunt" means that the individual laws which follow formed part of a Julian judiciary law. In any event, such a derivation would have been expressed as "quae

1 "alienas deferre", Mommsen-Krüger (395,1).
ex leges judiciarum publicarum veniunt”. Furthermore, two of the laws mentioned, Julia de adulteriis and Julia ambitus, are known to have been introduced by Augustus as independent laws (Suet. Aug. 34.1).1

In the result, it does not seem possible to locate an Augustan maiestas law, other than the law of 27 B.C., so that the rule against false entries in public records (f) should be assigned to Caesar’s category of ‘maiestas minuta per vim’. It is therefore found that the substantive material in Digest (48.4.1-4, 10) consists of citations from the maiestas laws of both Caesar and Augustus, and possibly from the lex Pedia (Julia) as well.

In conclusion, three other problems raised by Digest (48.4) may be briefly noticed. Ulpian (48.4.11) says that the death of the accused before judgment extinguishes the charge, but adds: “nisi forte quis maiestatis reus fuit: nam hoc crimine nisi a successoribus purgatur, hereditas fisca vindicatur. plane non quisque legis Juliae maiestatis reus est, in eadem condicione est, sed qui perduellionis reus est, hostili animo adversus rem publicam vel principem animus: ceterum si quis ex alia causa legis Juliae maiestatis reus sit, morte crimine libetur”. It is generally agreed that there is no question here of the survival of perduellio as a separate crime distinct from maiestas, but only of its employment by Ulpian as a convenient way of distinguishing the more serious from the lesser forms of maiestas.2 Kühler (553) believes that “perduellionis” is an interpolation, and indeed the entire section “plane... liberetur” is suspect. Not

1 Digest (48.1.1) is against McFayden’s theory (219, 228, 69 following Horsen, Straf 128-9, 553) that the Julian laws de vi publica and de vi privata were, respectively, the same statutes as the public and private judiciary laws. The leges de vi are included among the various individual laws “cum ex legibus judiciarum publicarum veniunt”.
2 Rehn (500); Greenidge (Treason 237); Pollack (169.1); Brecht (Perduellio 213.47).
only is "plane" one of the typical signs of an interpolated passage (Wenger 584), but the phrase "adversus rem publicam vel principem" does not ring true, in the light of Ulpian's own 'definition' of maiestas as directed "adversus populum Romanum", without including the princeps" (Dig. 49.4.1.1). Furthermore, Digest (48.4.11) is misplaced, for it should have been grouped with the other excerpts from Ulpian, under the Sabirian mass 1 which heads the material in the title. Such a displacement is an indication that two titles have been combined (Wenger 584), so that it is a fair inference that Digest (48.4.11) is not "ad legem Julia maiestatis" at all. The important aspect of the passage, for the present purpose, is the reference to "legis Juliae maiestatis reus", for if the passage were authentic it would have a twofold significance. It would be an attestation by Ulpian of a specific lex Julia maiestatis, which would weaken the submissions which have been based on his failure to cite the lex in his 'de officio proconsulis'. And it would tend to support the opinion of Greenidge (Treason 236-7), that the lex Julia was divided into two sections, covering in part the same acts, but viewed separately, depending on whether they were or were not committed "hostili animo"; if Greenidge's findings were valid, it would be difficult to avoid a single consolidating Augustan statute, in substitution for all previous legislation. But the decisive argument against the authenticity of the passage, at least insofar as Ulpian is to be understood as intending to cite provisions of the lex Julia, has been advanced by Volterra (488-90). He shows that posthumous maiestas charges were first introduced by a constitution of Marcus Aurelius (Code J 9.8.6pr, 62), and were not, and could not have been, provided for in a law of Caesar or Augustus.

The precedent created by Marcus Aurelius was expanded under the Severi, and it was then that the contemporary classical jurists transmitted it: Ulpian (Dig. 48.4.11); Paul (Code J 8.5pr); and Marcian (Code J 9.8.6.2-4).

1 On Blubner's theory of "masses" see Jolowicz (493-4); Schulz (Legal Science 319-21); Wenger (593-4).
"Proximum sacrilegii crimen est, quod maiestatis dicitur" (Dig. 48.4.1.pri). If this statement was made by Ulpian in Book 7 of his 'de officio proconsulis' it does not, of course, mean that a term to this effect appeared in a lex Julia maiestatis (cf. Matthaeus 311). But it would tend to show that, as early as the third century A.D., the majesty of the princeps had acquired the force of a technical legal concept, in substitution for 'maiestas populi Romani'.

It is not, however, certain that the statement was made by Ulpian. In its primary meaning "sacrilegium" did not convey the notion of the English word "sacrilege", for it simply meant "das Furtum bezogen auf das Göttergut". As such it was dealt with by the lex Julia peculatus et de sacrilegis et de res sacr. (Dig. 48.13). In his commentary on this law, Ulpian, in the same Book 7 of his 'de officio proconsulis' (Dig. 48.13.7), discusses sacrilegium in terms which clearly show that he understood it as the theft of "res sacrae": "Sacrilegii poenam debebit proconsul ... statuere ... sed moderanda poena est usque ad beatarium damnationem eorum qui sancta facta templum effregerunt et dona dedi in nocte talum".

Why does Ulpian say that maiestas is "proximum" to the theft of "res sacrae", particularly as he then proceeds to 'defina' maiestas (Dig. 48.4.1.1) in terms which have nothing to do with theft or with "res sacrae"? If "proximum" is intended to convey a resemblance between the two crimes, Ulpian's statement is meaningless, and must be marked as a suspected interpolation. It may, however, be possible to retain the passage by interpreting "proximum" in a temporal sense as "next to, in point of time". The purpose of 'de officio

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1 For the secondary meaning, which became significant with the rise of Christianity, see Mevissen (Straf 559.4; 600.4; 760.7).
2 Mevissen (Straf 760); cf. Matthaeus (311-2); Pfeff (RE 1A.2,1578-80).
3 The difficulty does not seem to have been noticed by Lessl (2,975 and n.2), who assumes a title "de sacrilegio" (in De Officio Proconsulis VII), which is supposed to have dealt with sacrilegium in the sense of "sacrilege".
proconsulis' was to provide provincial governors with a succint restatement of the laws which they needed to know (Schulz, Legal Science 243-4), and it may well be that Ulpian found it convenient to follow a chronological method when he dealt with criminal law (Books 7 and 8 - Lenel 2.973-83). If maiestas was "proximum" to sacrilegium in a temporal sense, it means that immediately before he came to maiestas Ulpian had discussed sacrilegium. He had done so because sacrilegium was chronologically antecedent to maiestas, in the sense that the earliest quaestio which was set up 'de sacrilegio' was the quaestio maiestatis of 103 B.C., which investigated the plundering of the temple at Tolosa by Q. Servilius Caepio (pp. 44-8 above). The next quaestio in date order was the quaestio maiestatis, under the lex Appuleia of 103 B.C., and therefore maiestas was "proximum sacrilegio".

"Qui statuas aut imagines imperatoris iam consecratus conflaverint aliudve quid simile admiserint, lege lulia maiestatis tenentur" (Venuleius Saturninus, Dig. 48.4.6). This is the only excerpt in Digest (48.4) which, at first sight, suggests that imperial statues were dealt with by an actual lex Julia. The other references to the same subject expressly attest a decree of the Senate (48.4.4.1) and imperial rescripts (48.4.5). Kölner (552) takes the case postulated by Venuleius Saturninus as one of extensive interpretation, but the question needs discussion in view of the proceedings attested by the Second Edict of Cyrene, of 7-6 B.C. The general meaning of the Edict is that Publius Sextius Scaeva, the proconsul of Cyrenaica, sent Aulus Stlaccius Maximus, Lucius Stlaccius Macedo, and Publius Lacutanius Phileros as prisoners to Augustus.

1 This argument may be used in favour of 103 B.C., rather than 100, as the date of the lex Appuleia maiestatis.
2 For the text see Stroux-Wenger (10); Anderson (35).
3 For the linguistic difficulties, see Stroux-Wenger (35-7).
4 Laguerre (passim) holds that Scaeva was not the governor, but a delator, arguing that the excitation of Scaeva, on which the Edict lays much stress, would not have been needed for a governor who was merely doing his duty, but was necessary to protect an informer.
because they alleged that they had information concerning the safety of Augustus and the public welfare — ἐπεὶ τὴν ἁμορφὴν κοινωνίαν ἥν άκεφλήσαν τὰ τῆς δημοσίας ἱστορίαν ἄνθρωπον — and wished to speak of it. Augustus released them, as they had no such information, and as they made it clear to him that what they had said in the province was false. But Aulus Stilaccius Maximus, who was accused by the Cyrenaic envoys of having removed statues from public sites, including one which the city had inscribed with Augustus' name, was ordered to remain in Rome until Augustus had investigated the matter.

The removal of the statue has been explained as a case of maiestas (Anderson, 39; Stroux-Wenger, 72.2), but the juristic basis of the charge should be further considered. It is clear that the quaestio maiestatis did not try the case, for Augustus dealt with it in his imperial criminal court: ἐπεὶ τοῦ θεοῦ τοῦ κράτους διαγόν. Aulus Stilaccius seems to have been on a frolic of his own, as far as this particular incident was concerned, for the other two would not have been unconditionally released if there had been any suggestion of a plot, in which the removal of the statue was an element. The charge looks very much like an "inert thought" on the part of the Greek envoys from Cyrenaica, who apparently appeared before Augustus when the three accused were arraigned. Having failed on the main count, the Greeks seem to have brought up the escapade of Aulus Stilaccius, in a last attempt to secure a conviction. As the Stilacci were Roman citizens (Anderson 39), the entire case may well have been an incident in that vendetta between Cyrenaic Greeks and Roman citizens, which seems to be attested by the First Cyrene Edict. If the lex maiestatis had specifically provided for the case of the statue, the Greeks would have prepared their brief on that charge as well, before going to Rome. In that event the separate trial of Aulus Stilaccius would have been disposed of at the same time, instead of being remanded.

1 So Anderson (59). Stroux-Wenger (11, 36) prefer: "They made it clear that the statement which they were alleged to have made in the province had been falsely attributed to them."
for further investigation. The basis on which Augustus entertained the second charge was probably the principle of "violated majesty". Although the title of 'pater patriae' had not yet been officially conferred when Stilacius was charged in 7-6 B.C., it was already in common use, and was particularly employed as an inscription on provincial statues, (Hor. Carm. 3.24.27-8; cf. p. 259 above; cf. also Alföldi 2.113). It was very possibly a statue inscribed to Augustus as "pater urbi" which Stilacius had removed, and Augustus was not unwilling to receive the Cyrenaican complaint.

The legal basis on which the three Roman citizens were originally sent to Augustus is not clear. At first sight it seems that information "about the safety of the princeps" fell under the ban on consulting astrologers and soothsayers "de salute principis vel summa rei publicae" (Paul Sent. 5.21.3; Ulpian Coll. 1.15.2) - πρὸς τὴν βεβαιότητα καὶ τῷ δυνατῷ χρόνῳ (Second Cyrene). There are, however, two objections to a charge of this nature in 7-6 B.C. The earliest legislation against the consultation of astrologers seems to have been a senatusconsultum of 17 A.D., judging by Ulpian’s well-documented discussion of the topic (Coll. 1.15.2). This would have been the decree (Tac. Ann. 2.32.5) which followed the trial of Libo Drusus (Tac. Ann. 2.27-32). And there is no suggestion in the Second Cyrene that the accused had consulted astrologers, but only that they had information, or said that they had it. There is much merit in the suggestion (Stroux-Wenger 72.2) that μή should be added at the end of line 45 (Second Edict). The position then would have been that the accused, when confronted by the governor with the demand that they disclose this information, refused to do so. This would have made it a straight case of τὰ ἐνδούλασεν, for the governor would then have been entitled to treat them as possible accomplices in a suspected conspiracy.
CONCLUSIONS

In regard to the two propositions which the thesis has attempted to defend, it is felt that "the theory of the little laws" has fared reasonably well. The balance of probability seems to lean rather distinctly in favour of the view that the Appuleian, Varian, Sullen, and Caesarian laws did not go beyond the respective categories which, on the evidence, should be allocated to them. A similar finding in the case of the Augustan law is untenable only if there is sufficient reason to say that all the substantive statutory material in the juristic sources derives from a single lex maiestatis. If this conclusion were inevitable, the single statute would have to be identified as Augustan rather than Caesarian, for two reasons. Firstly, the probability that Caesar's law should be limited to "maestas minuta per vim" disqualifies it as a general statute. Secondly, at least part of the lex Julia maiestatis of the juristic sources must be Augustan, if the proposed identification of the law of 27 B.C., as attested by Dio, with the provisions of a lex Julia maiestatis, as attested by Marcius and Ulpian, is valid. The problem largely depends, however, on the validity of the attempt which has been made to identify elements of three different laws in Digest (48.4). It is not possible to be dogmatic on this issue, but it may be felt that the arguments advanced leave it at least an open question as to whether a single statute or several statutes should be assumed in respect of the legislative material referred to "a this title of the Digest.

It is felt that the four other "little laws of maiestas" which have been postulated may have been correctly identified. The question is mainly whether or not breaches of these laws were referred to the quaestio maiestatis, and it is submitted that the evidence favour that quaestio rather than any other. In addition, the categories prescribed by the lex Papia, the lex Licinius Iulius, the lex Hirita, and the lex Pedia are essentially maiestas categories.
The author is both reasonably satisfied, and somewhat dissatisfied, with "the theory of the unchanged 'maiestas populi Romani'". On the one hand it is felt that, as far as the enquiry has been taken, it may have thrown some light on the thorny problems of the constitutional positions of Caesar and Augustus, insofar as those problems can be approached by way of the crimen maiestatis. Furthermore, the finding that there was no transformation of the concept of 'maiestas populi Romani' as the technical focal point of the 'crimen maiestatis populi Romani imminutae' may have clarified certain aspects of the crime. It may also be felt that the distinction which has been proposed between the crimes of "diminished maiestas" and "violated majesty" assists in understanding the apparent anomalies in the concept of the 'domus Caesaris'.

On the other hand, the scope of the study has imposed limitations on the development of the theme that the concept of "violated majesty" was parallel to that of "diminished maiestas", but independent of it. It has been noticed in passing that the two concepts seem to have coalesced at some time subsequent to the Augustan period, but the further pursuit of this question has not been possible within the framework of the thesis. It is felt, in particular, that an investigation of "violated majesty" from Tiberius to Domitian may have interesting results, and the author hopes, at another time, to develop the preliminary survey which he has made in this regard.

The major areas in which the author believes that he may have made some contribution are as follows:

(a) The two propositions whose defence has been undertaken;
(b) the theory as to the origin of the crimen maiestatis;
(c) the theory as to the date, content, and surrounding circumstances of Caesar's maiestas law;
(d) the theory as to the association of defamation and maiestas by Augustus;
(e) the theory as to the date, content, and surrounding circumstances of Augustus' maiestas law.
It is believed that the following minor aspects may also be original:

(i) The demonstration that the "uncertainty" of the lex Appuleia maiestatis was confined to one aspect only;

(ii) the detection of the significance of the plea of "maiestatem auxi";

(iii) the suggestion that the expression "maiestas" was appropriated by the Senate in an attempt to circumvent the lex Appuleia;

(iv) the suggestion that the trial of Sex. Titius was 'lege Appuleia';

(v) the analysis of the circumstances leading to the lex Varia maiestatis;

(vi) the explanation of the execution of Varius under his own law;

(vii) the analysis of the attempt to extend the lex Cornelis maiestatis, at the trial of C. Cornelius;

(viii) the explanation as to why Ammianus Marcellinus attests the laws of Sulla as the source of torture in maiestas cases;

(ix) the explanation of the difference between the lex Cornelis maiestatis and the lex Julia repetundarum;

(x) the analysis of the prosecution of Vatinius, and the attempted prosecution of Caesar;

(xi) the solutions proposed to various problems arising out of the trials during Caesar's dictatorship;

(xii) the solutions offered to various problems arising out of the conspiracies against Augustus;

(xiii) the solution, adapted from the work of others, which is offered to the problem of defamation under Sulla;

(xiv) the explanation as to why Ulpian says that "maiestas" is "proximus" to sacrilegium;
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