Review Article

The Princess of Inscriptions: *Senatus Consultum de Cn. Pisone Patre* and the Early Years of Tiberius' Reign

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Werner Eck, Antonio Caballos and Fernando Fernández, *Das senatus Consultum de Cn. Pisone Patre* (Vestigia 48). Munich: C.H. Beck, 1996, xiv + 329 pp., 20 pls.

If the *Monumentum Ancyranum* containing the *res gestae divi Augusti* has rightly been called the queen of inscriptions, we can now claim the title of princess of inscriptions for the *senatus consultum de Cn. Pisone patre*. The 176-line inscription is a complete text of a *senatus consultum* (which in itself is a sensation) recording the judgement of the senate in the trial of Gnaius Calpurnius Piso, who was accused, with others, of the murder of Germanicus and of *maiestas* and took his own life before the end of the trial. The decree gives the official version of the dramatic events described, in great detail, by Tacitus in books II and III of the *Annales*.

The story of this extraordinary document is by now familiar to many. The 6 (or perhaps 7) copies of the decree, inscribed on bronze, emerged, through unauthorized searches with metal detectors, in the late 80s near Seville in the Roman province of Baetica; they were then acquired by the Archeological Museum in Seville. Such a high number of copies in a single province clearly shows the importance attached to the subject-matter of the document and the desire to publish it as widely as possible. Copy A contains practically the whole text, copy B large parts of it that make good the insignificant losses of text in A; other copies are more fragmentary. The text of the decree has now been published, with a commentary, first in a Spanish edition and then in a German one (the subject of this review), by Eck, Caballos and Fernández. But already for several years before this publication, in 1996, the document had been widely discussed among scholars and at seminars in many parts of the world, thanks to the editors' generous policy of sharing their treasure with other scholars and students of antiquity and discussing it with them, and also thanks to W. Eck's preliminary publications. Meanwhile, the editors were working on the full publication (in its two versions) — and eventually produced what is undoubtedly a masterpiece.

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This book is much more than a commentary — or, rather, this is what an exemplary commentary on a great inscription should look like: first-class expertise in epigraphy, prosopography and political history, meticulous attention to detail combined with a broad historical view — all this applied, with excellent judgement and formidable skill in analysis and synthesis, to an exciting piece of ancient historical drama which comes to us straight from the Rome of Tiberius, in the early years of his reign. As H. Flower points out in her review, the book is unusual in that only a relatively small part of it is structured as commentary on individual *lemmata* taken from the text; the rest of it consists of a series of essays dealing with the different sections of the text and the issues arising from them.[1] Each of those essays is, in its own right, a fine contribution to the study of various crucial issues of the history of the period. The book has already had two extensive reviews; I permit myself to devote what follows to a discussion of several important historical issues arising from the *senatus consultum.*

1. The problem of chronology

This question bears on the very nature of the text at our disposal and on the reliability of Tacitus; it is not surprising that it has given rise to controversy. The date of 10 December is given in the inscription as the day on which the *s.c.* was passed (l. 1). In Tacitus' narrative, on the other hand, the *ovatio* celebrated by Drusus is placed immediately after the completion of the trial (*Ann.* 3.19). The date of the *ovatio* is known from the *Fasti Ostienses;* it is 28 May. If we accept Tacitus' sequence of events, we must suppose that our text is not in fact a direct record of the decisions taken at the conclusion of the trial. Rather, it would constitute a record of a decision, taken several months later, to publish the results of the proceeding in the senate concerning this cause célèbre, in Rome and 'in the most frequented city in each province ... [and] in the winter quarters of each legion' (ll. 170-173). The decision to publish the *s.c.* in this unparalleled way is, of course, of great significance in itself. It testifies to the extrordinary resonance caused by the affair, and to the efforts by the powers that be to present their version of the events to what may be called 'the court of world public opinion'. Moreover, the text speaks first of 'haec senatus consulta', in plural (l. 169), to be published, inscribed on bronze, together with the speech delivered by the Princeps at the beginning of the trial, wherever Tiberius Caesar Augustus sees fit; and then of 'hoc senatus consultum', to be published in a similar way in the provinces and winter quarters of the legions. It is therefore reasonable to suggest

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1 H.I. Flower, *Bryn Mawr Classical Review* vol. 8 no. 8 (1997), 705-12. See also M. Griffin, 'The senate's story', *JRS* 87 (1997) 249-63 (with an English translation of the *s.c.*).

— as the editors do — that the decisions on the particular questions submitted to the senate by the Emperor were recorded in several separate decrees, whereas our text is a 'composite' version of those decrees framed especially for world-wide publication. But it is natural to assume that all those matters were settled at the conclusion of the trial — rather than that the senate waited for more than half a year before it decided to publish those documents. The editors argue at length, and, in my view, very persuasively, that this was indeed the case (pp. 109-21). Thus they reject the chronology implied in Tacitus' narrative and insist that the trial ended at the beginning of December. The detailed treatment of this subject, covering every aspect of the problem and answering various possible objections, is exemplary. Miriam Griffin, in her review in the *JRS*, suggests the opposite — that the trial was concluded before 28 May. Her strongest point is that it would have been unseemly for Drusus to celebrate the *ovatio* which he had been accorded jointly with Germanicus before the trial of his alleged murderer, especially bearing in mind the extraordinary intensity of the people's mourning. I shall return to this point later.

The editors rightly argue that it is highly improbable, on political grounds, that a 'file' as sensitive as that on Germanicus' death should have been reopened more than half a year after it was closed. 'Es ist auch unvorstellbar, dass Tiberius nach mehr als einem halben Jahr die Staatsaffare nochmals auf der Tagesordnung des Senats haben wollte. Ihm mußte vielmehr daran gelegen sein, die beendete Sache ruhen zu lassen' (p. 110). Griffin suggests that the motive for Tiberius' later decision (and, of course, it could only have been his) to have the decrees published was 'that, as Tacitus says, the rumors about Germanicus' death continued after the trial (3.19), including complaints that the treatment of Piso and his family had been too lenient and that the Emperor and his mother were responsible'. She also suggests that popular reactions to the anniversary of Germanicus' death on 10 October influenced Tiberius to reverse his original decision not to publish the senatorial decrees on this affair (p. 260). But it seems unthinkable that Tiberius would have adopted such an apologetic posture — precisely because the issue was so sensitive, and because he himself (together with Livia) was an object of dark suspicions. It is one thing to publish all the relevant documents as widely as possible at the conclusion of the trial, so that justice may be seen and not just done, and the proper lessons from the affair may be learned by all; this would look like a natural thing to do (in such an exceptionally celebrated case) for someone who had nothing to hide and at the same time did not feel obliged to stress this fact. But it is quite another thing to make such a decision half a year later, in the face of persistent hostile rumors and after an outburst of popular emotions at the anniversary of the young prince's death. This would have amounted to a public and official acknowledgement, on Tiberius' part, that he knew that he was being accused in this affair, and that

these accusations were so serious and persistent that they now had to be countered by publishing the documents of the trial. This seems quite improbable.

It is true that Tacitus, in reporting Tiberius' opening speech in the senate at the beginning of the trial, makes him admit that he may be the object of some unspecified suspicions: 'Nemo Drusi lacrimas, nemo maestitiam meam spectet, nec si qua in nos adversa finguntur' (*Ann.* 3.12) We cannot be sure that Tiberius actually said such a thing — much less that he finished his speech on such an ominous note (this rather looks like a Tacitean innuendo). In any case, the step which Griffin attributes to Tiberius would have been a much stronger, and much more awkward, admission that his good name was in need of defence.

Moreover, one wonders how the publication of this text could have rebutted the charge that the treatment of Piso's family had been too lenient, due to interference on the part of the Emperor and his mother. The *s.c.* acknowledges, in the plainest way possible, that Piso's wife Plancina was, despite her guilt ('qui pluruma et gravissima crimina obiecta essent'), saved from punishment by Livia's pleas on her behalf (ll. 109-120); by pleading on behalf of Piso's younger son Marcus, Tiberius secured *inpunitas* to him (l. 100). 'The regime' was — or at least desired to look — self-confident enough to take credit for clemency (towards Piso's family) as well as severity (towards the main culprit, Piso himself). But to publish such an account half a year after the completion of the trial, under the pressure of hostile public opinion, would have made very poor counter-propaganda.

The editors rightly argue (p. 111) that the only conceivable reason — or pretext — for publishing the documents of the trial long after its end would be to mark the first anniversary of Germanicus' death (10 October). It could then be presented as homage to his memory (rather than as an awkward attempt to refute hostile rumors). But what could have occasioned the publication two months after the aniversary?

The editors stress (pp. 111-2) that the *relatio* of Tiberius, at the beginning of the document, in which he asks the senate to rule on the substantive points arising from the trial of Piso (and others), can in any case be safely dated to the second half of the year 20. In this *relatio* (as well as in the *subscriptio* at the end of the document) the Emperor is said to be in his XXII *tribunicia potestas* (ll. 5; 174) — that is to say, after 26 June. Likewise, in the *gratiarum actio* to the *domus Augusta,* Nero Caesar, Germanicus' son, is called *iuvenis* (rather than *puer*), which signifies that, at the time the text was composed, he had already assumed his *toga virilis.* This, according to Fasti Ostienses, happened on 7 June. However, according to the reconstruction of the events offered by Griffin, Tiberius' title in the *relatio* should pose no problem: at a session called on 10 December 'Tiberius put to the senate the *relatio* in the document, a *relatio* very similar if not verbally identical to the one he had earlier put to them at the conclusion of the trial'; the senate then decided to publish 'the original decrees' in

Rome and the 'composite one' in the provinces (p. 255). But if the issue at the session of 10 December was the Emperor's proposal to publish the documents from the trial of Piso which had taken place half a year earlier, why was not his *relatio* phrased accordingly? Why, instead, did Tiberius put before the senate this pseudo-*relatio,* purporting to ask it to rule on matters settled long ago, and force it to pass a pseudo-decree which waived anew the punishment of Plancina, re-interdicted Piso's *comites* from fire and water etc.? At the end of a trial it would not be unnatural to express its results in several documents, each composed for distinct purposes, and each including the formulae of legal sanction. But to re-enact, in this way, an earlier decision half a year later would have been extremely awkward — and quite unnecessary. Instead, we should expect a decree providing explicitly for the publication of previous decisions; in the inscription itself this would probably precede the text of the original decrees — or the 'composite' text framed for the occasion. But even if we are to assume that the senate, at the session of 10 December, actually voted on a 'composite' text which embodied the decrees passed half a year earlier, it still seems quite improbable that Tiberius' *relatio* on that day could then have been the one with which this inscription begins — inviting the senate to pass judgement on the accused.

Other considerations are perhaps less decisive, either way. The editors argue, listing the various events which had to precede the trial, that the chronology implied in Tacitus' account is implausibly rushed (113-5), whereas Griffin finds that the long delay between the death of Germanicus and the trial of Piso (assuming that it only took place in December) is even more implausible, since the feeling that Piso was delaying his return to Rome deliberately could only have increased the prejudice against both him and Tiberius, decreasing the chances of a fair trial. The editors, on the contrary, hold that Tiberius wanted the trial postponed in order to let the emotional reaction to Germanicus' death subside, and may have given Piso a hint to take his time before returning to Rome. Both reconstructions are possible,[2] and in fact we cannot be sure what exactly Tiberius' considerations were; nor is it clear that he assessed correctly the emotional reactions of the public in this extraordinary affair.

The strongest objection, on Griffin's part, to the idea that the trial took place in December is that it 'would have been extremely tactless' for Drusus to celebrate, on 28 May, the *ovatio* which he had been voted jointly with Germanicus, before the trial of his alleged murderer (259). Perhaps it was tactless; but the decision in this matter would naturally lie with Tiberius, not with Drusus, and Tiberius' policy had been, emphatically, for quite some time before the end of May, one of 'back to normalcy'. He was clearly uneasy with the prolonged popular mourning for Germanicus and the hysterical character it assumed. The

2 Cf. A.J. Woodman and R.H. Martin, *The Annals of Tacitus, Book III* (Cambridge 1996) 71-2 n. 3.

editors note that Tiberius had already called on the populace to bear the loss of Germanicus with fortitude and return to the normal way of life: 'Let them return, therefore, to their usual occupations, and as the Megalesian Games would soon [4-10 April] be exhibited, resume even their pleasures (*voluptates*)' — Tac. *Ann.* 3.6.[3] The *ovatio* of Drusus may well have been part of Tiberius' policy of normalisation. As the editors note (p. 116), other solemn official events, connected with the family of Germanicus, were soon to follow: on 7 June Nero Caesar assumed his *toga virilis;* a *congiarium* was distributed to the populace on this occasion; 'per id tempus' (*Ann.* 3.29) Tiberius obtained for the young man from the senate a decree expediting his political advancement (as had been done for him under Augustus) and a pontificate. Thus public opinion was reassured that the standing of Germanicus' family, as part of the imperial house, remained unimpaired. Tiberius may well have thought that there was no reason to postpone any further the long overdue celebration in his son's honour. While it may still be thought that the *ovatio* of Drusus was different from the measures in honour of Germanicus' son, and that it would have been more tactful for it to be postponed until after the trial, one should not be surprised if Tiberius saw things differently. What is perhaps surprising is that Tacitus should have failed to comment on Tiberius' tactlessness — if he was aware of it. One should probably assume that he was not. It seems therefore more likely that Tacitus is genuinely mistaken in the matter of the *ovatio* (perhaps having failed to check its date) than that he put it after the end of the trial for artistic effect.[4]

2. The punishment of Piso's *comites* and the question of senatorial jurisdiction

A brief reference, in the *s.c.*, to the punishment of two of Piso's friends and accomplices (whose names are not mentioned by Tacitus) raises several important questions. 'Visellio Karo et Sempronio Basso comitibus Cn. Pisonis patris et omnium malificiorum socis ac ministris aqua et igne interdici oportere ab eo praetore, qui lege maiestatis quaereret, bonaque eorum ab praetoribus, qui aerario praeessent, venire et in aerarium redigi placet' (ll. 120-124).

What punishment did the *comites* actually suffer? Many scholars now hold that since the time of Augustus the 'interdiction from fire and water' came in practice (at least in some cases) to signify execution — contrary to the opinion of Mommsen, who held that it was a severe form of banishment.[5] The editors do not take sides in the controversy; they note that the text of the *s.c.* does not

3 Cf. Suet. *Cal.* 6.2; see on this Woodman and Martin (n. 2), 104-5.

4 This is suggested by Woodman and Martin (n. 2), 73f.

5 References to this controversy are cited by the editors on p. 232; nn. 738, 739.

make it clear whether the *comites* were merely exiled or executed (p. 232). But this is a question of considerable historical importance (not to mention its vital importance for the two gentlemen concerned), and one is tempted to offer an answer. The editors mention the fact that Tacitus (*Ann.* 3.38.2) relates a case, under Tiberius, of a man who was interdicted from fire and water — on a charge of *maiestas* — and this clearly meant exile (to a specified location);[6] moreover, they note that Ulpian (15.2.1) distinguishes between the death penalty (to be imposed on non-citizens) and the interdiction (for Roman citizens, for the same offence), citing a senatorial decree passed in 17 AD, three years before the trial of Piso. In this case it seems to me unlikely that, if the trial of Piso had ended with the execution of two of his *comites,* Tacitus would have failed to report this fact. In fact, even ignoring their exile looks strange enough; but that Tacitus, who marks the end of the story of the trial with the words 'is finis fuit in ulciscenda Germanici morte' (3.19), should have failed to report the fact that two of Piso's accomplices were executed (and, perhaps, missed the opportunity to contrast their fate with that of Plancina) is very hard to believe.[7] My conclusion is that 'interdiction from fire and water' of Piso's *comites* should be taken to mean exile.

If so, I cannot share the editors' assumption that Piso himself, had he not committed suicide, would have received the same punishment which his *comites* suffered (p. 100). It is very hard to imagine that Piso, convicted of all the crimes listed in the *s.c.*, would not have been sentenced to death. This is in fact indicated in the *s.c.* itself: 'Quas ob res arbitrari senatum non optulisse eum se debitae poenae, sed maiori et quam inminere sibi ab pietate et severitate iudicantium intellegebat subtraxisse' (ll. 71-73). There is perhaps an element of rhetoric in this, but there seems to be little room for doubt that Piso would have been executed. That the main culprit should be punished more severely than his humble *comites* does not seem unnatural. On the other hand, one notes that their property is confiscated, and none of it is conceded to their children (assuming they had any), as in the case of Piso. It was important to save a noble family from destruction, but no one bothers to undo (or mitigate) the effects of confiscation when equestrian *comites* are dealt with. This was most certainly not an egalitarian society.

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6 See on this Woodman and Martin, *op.cit.* (n. 2), 321. Tac. *Ann.* 4.4.21 is another clear example of the interdiction, under Tiberius, signifying an aggravated form of banishment; cf. *Ann.* 6.18.1. See on this P. Garnsey, *Social Status and Legal Privilege in the Roman Empire* (Oxford 1970) 112-3, with a list of cases in n. 1.

7 He would have been even more unlikely to ignore the execution of two senators, but the editors assume (rightly, in my view) that the two *comites* were Roman knights (p. 229).

The two *comites* are the only ones who are actually condemned and punished, since the part of the *s.c.* which deals with Piso is more in the nature of a posthumous denunciation than of a sentence (although it includes penal measures such as the confiscation of his property), while the punishment of his wife and son is remitted. Thus, for the first time, we now have the exact formula of a senatorial condemnation: the senate instructs the praetor who presides over cases under the law of *maiestas* — that is to say, the president of the *quaestio perpetua de maiestate* — to interdict the two men from fire and water. In my view, this may indicate the legal basis of the imperial senate's competence in criminal matters. At a seminar at the Hebrew University, during Professor Eck's visit to Jerusalem in 1994, I suggested to him a parallel between this passage and the case of Cornelius Gallus under Augustus as reported by Dio (53.23.7): after various charges had been brought against him, the senate decreed 'that he should be convicted in the courts, exiled, and deprived of his estate'; the man then committed suicide (καὶ ἡ γερουσία ἅπασα ἁλῶναί τε αὐτὸν ἐν τοῖς δικαστηρίοις καὶ φυγεῖν τῆς οὐσίας στερηθέντα, καὶ ταύτην τε τῷ Αὐγούστῳ δοθῆναι καὶ ἑαυτοὺς βουθυτῆσαι ἐψηφίσατο). This may have been how the senatorial jurisdiction developed — from the purely formal, legalistic point of view: the senate did not in fact pass a judgement, but instructed the competent criminal court (or the president of this court; I will return to the distinction) to pass it. This suggestion was not accepted by Professor Eck at that time, and the editors reject the parallel with Cornelius Gallus on the grounds that, in his case, the senate's decision was a recommendation, and the courts still had to take action, whereas in the case of the two *comites* 'war mit dem Spruch des Senats alles entschieden' (p. 231 n. 732). Griffin tends to accept both the parallel with Dio 53.23.7 and its wider implications: 'This opens the door to a more radical interpretation, namely, that the senatorial court never passed final judgement but, having held an investigation resulting, *as with any senatorial decision*, in the giving of *sententiae* and the passage of *senatus consulta*, it handed over those it judged deserving of conviction to the regular courts, whose deliberations would in these cases be highly perfunctory'[8] (p. 256). I wish to present some arguments in support of this theory.

It is well-known that the senate, which had never been a court of law under the Republic, functioned as a court and passed capital sentences from the early Principate onwards. But there are different views as to the legal basis for the senatorial jurisdiction. Some have suggested that a special law (unknown to us) was passed, at some stage, which explicitly gave this power to the senate. Others have argued that the senate acted as a 'consular court', the consuls serving as the actual judges — by virtue of their *imperium*, which entailed capital jurisdic-

8 Though I am not sure that one can speak even of perfunctory deliberations in this case — see below.

tion — and the senate sitting as their *consilium* (in a case like that of Piso, the *imperium* in question must then have been that of the Emperor, who presided over the senate). Some suppose that the senate simply usurped this power.[9] None of these explanations is quite satisfactory. Most constitutional changes under the Principate were introduced neither by changing the law nor by open illegality, nor yet by creating new institutions, but by making use of old names, institutions and laws, while filling them with a wholly new content. It was possible to introduce the most revolutionary changes into the way the Roman state was governed with relatively little change in legislation, principally because the republican 'checks and balances' which had restrained the use of power were removed in practice, though not, as a rule, in positive law. There was, as far as we know, no law which prevented a tribune from vetoing an action taken by the Emperor — such a veto was simply inconceivable. It was equally inconceivable that an Emperor's candidate should lose an election, though even the *lex de imperio Vespasiani* (clause IV) merely states that the Emperor's candidates in any election shall be 'dealt with' *extra ordinem.*[10] The Emperor's support for a candidate was, from the purely formal point of view, merely a recommendation; moreover, Dio bears witness to the fact that in the third century even the election by the senate was still only a recommendation, and the candidates still had to be formally elected by the people (or the plebs, meaning that even the distinction between electoral assemblies was observed — 58.20.3-4).[11] As to the force of such 'recommendations', no one could have been in doubt — they were as good as binding, for all intents and purposes. This, no doubt, was how *senatus consulta* came under the Empire to be regarded as having the force of law: not because this was provided for by some 'enabling legislation' (cf. Gai. *Inst.* 1.4),

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9 See on this, e.g., C.W. Chilton, 'The Roman law of treason under the early principate', *JRS* 45 (1955) 73-81; A.H.M. Jones, 'Imperial and senatorial jurisdiction in the early Principate', *Historia* 3 (1955) 464-88; H.F. Jolowicz and B. Nicholas, *Historical Introduction to the Study of Roman Law* (Cambridge 1972) 3rd ed., 402, n. 6 (with bibliography); R.J.A. Talbert, *The Senate of Imperial Rome* (Princeton 1984) 460-4 (with bibliography on p. 460, n. 1).

10 'eorum comitis quibusque extra ordinem ratio habeatur' — Clause IV. See on this P.A. Brunt, 'Lex de imperio Vespasiani', *JRS* 67 (1977) 104 n. 48.

11 See on this Talbert, *op.cit.* (n. 9), 342. It is sometimes suggested that the assembly was only convened in order 'to hear the announcement (*renuntiatio*) of the results of the elections made by the senate' (Jolowicz and Nicholas (n. 9), 326, n. 9) rather than to ratify the senate's choice (thus Talbert, *ibid*; T.E.J. Wiedemann, 'Tiberius and Nero', ch. 5 in *CAH* II, 1996, 206). But the establishment of special centuries for the *destinatio* of consuls and praetors which, as we know from the *Tabula Hebana* and *Tabula Siarensis*, went on after 14 AD, when elections were transferred to the senate (Tac. *Ann.* 1.15), contradicts this theory. Cf. Plin. *Paneg.* 63.5: '*sperata suffragia*'.

but simply because no one dared to challenge or disobey them. 'In their outward form the *senatus consulta* of the second century AD are still mere directions to magistrates; a clear indication that no express transfer of legislative power to the Senate ever took place'.[12] The outward form of the *s.c. de Cn. Pisone patre* now makes it possible, in my view, to advance the same argument with regard to senatorial criminal jurisdiction.

In our case, the senate expresses the opinion (*censuerunt*) that the praetor, who is the president of the appropriate *quaestio* and a holder of *imperium,* should interdict (*interdici oportere*) the two men. In form, this is a piece of advice, a direction, given by the senate to the competent magistrate — which is what a *senatus consultum* is supposed to be. The question of the praetor refusing to follow such 'advice' could of course never have arisen, any more than the question of the praetors of the *aerarium* refusing to confiscate the condemned men's goods — or the *curatores locorum publicorum iudicandorum* ignoring the fact that it 'has pleased' (*placere*) the senate that they should demolish Piso's house (ll. 106-108).[13] But the action of the praetor was still needed in order to place the *comites* under legal interdiction; they were not considered formally interdicted simply by virtue of the senate passing the decree (just as the candidates needed the formal sanction of the people in order to be legally elected).[14] This discrepancy between the formal language of the law and the realities of power, *openly acknowledged,* is characteristic of the Principate but not unique to it: in today's Britain, the laws are 'enacted' by the Queen 'with the advice and consent' of the Houses of Parliament.

The *relatio* of the Emperor asks, in the case of Piso and his relatives, 'qualis causa ... visa est'; in the case of the *comites*, the question is 'quid ... iudicaret

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12 W. Kunkel, *An Introduction to Roman Legal and Constitutional History* (Oxford 1973) 2nd ed.; trans. J.M. Kelly; cf. Brunt (n. 10), 112. Talbert (n. 9), 464 argues that senatorial criminal jurisdiction 'slowly emerged' from the senate's dealings with quasi-judicial matters; 'contemporaries were not concerned to find a strict legal basis for it'; both the judicial and the legislative functions of the senate were accepted because they enjoyed the approval of the Emperor. Politically, this, no doubt, is what happened; but both the senate's judgements and its legislative decrees were couched in the appropriate legal language of advice to competent magistrates.

13 The advice offered to Piso's elder son Gnaius, to whom half of his late father's confiscated goods are given, is so exquisitely polite that only a heart of stone could have ignored it: 'that he, under the obligation of so great a favour, would be behaving rightly and appropriately if he changed his first name, that of his father' (ll. 98-100).

14 An Emperor, however, illogically but inevitably, was certainly regarded as a full-fledged Emperor even before his election was sanctioned by the *comitia*, though it might take weeks — see Brunt (n. 10), 97-106.

senatus'. The editors explain the difference by pointing out that in the former case the senate is asked for 'eine Meinungsäußerung', while in the latter a legal judgement is required (p. 138). Although the decisions with regard to Piso's family are not purely declaratory, and contain operative legal measures (mainly on the subject of Piso's property), it is indeed very likely that the use of the term *iudicare* here has to do with the fact that the *comites* were Roman citizens on whom a capital punishment was about to be inflicted. While Griffin (p. 256) is right to point out that *iudicare* is also used in the *s.c.* in a clearly non-technical sense (expressing the senate's flattering 'judgement' on the behaviour of Tiberius and Germanicus — ll. 148-150; 167-168), it is obvious that senatorial decisions in judicial cases were normally thought of as judgements and called so — just as the electoral decisions of the senate were called elections, despite the fact that they still had to be formally confirmed by the people (so much so that almost no trace of the 'true' formal elections is left in the sources).

By 20 AD the senatorial jurisdiction was a well-established fact. If the case of Cornelius Gallus in 26 BC was a precedent in this respect, it may then have seemed strange to some that the senate should give instructions to the criminal courts — though others may actually have regarded this procedure as a welcome change from proscriptions, arbitrary executions and *hostis*-declarations. To say, as the editors do, that the senate's decision in Gallus' case was a recommendation, and that the criminal courts still had to take action, is certainly correct — but, again, only in the purely formal sense. The fate of Gallus was sealed by the senate's vote as effectively as that of the two *comites* would be — the senate not only predetermined his conviction but also specified the punishment. Admittedly, there is a significant difference between the two cases — in the latter, the decision of the senate is addressed not to the *maiestas* court as a whole but to its president, the praetor. It may be that, as Griffin suggests, in the case of Gallus the fact 'that no instructions to particular magistrates are given may ... be put down to the impressionistic character of our sources' (p. 256). In fact, we cannot know whether, and how, the exact procedure employed in 20 AD (after the passing of the decree) differed from the one envisaged in 26 BC (before Cornelius Gallus had taken his own life). But it is quite possible that a further development took place between those two dates, which rendered the role of the *quaestio* even more perfunctory by removing the *iudices* from the proceedings: it was now deemed sufficient for the president of the court alone (who, it should be remembered, was a magistrate with *imperium*) to rubber-stamp the senate's decree. In any case, Tacitus relates a case in 21 AD where a man accused of *maiestas* was condemned by the senate and immediately (*statim*) executed (*Ann.* 3.51). If so, there was evidently no time to convene the *quaestio maiestatis* for any deliberation — however perfunctory.

3. Tacitus and the *acta senatus*

It has long been a subject of scholarly debate whether, and to what extent, Tacitus consulted the *acta senatus* at first hand and made use of them in his writing. This question is obviously of great importance in assessing the value of his testimony on various points.[15] The editors argue — rightly, in my view — that, by comparing the *s.c.* with Tacitus' account of this affair, one is led to the conclusion that he did consult the *acta senatus* (p. 295). They note that, although Tacitus' general view of Piso is strongly critical, his description of particular events — both in Syria and at Piso's trial — is considerably less biased than that of the *s.c.*; the historian repeatedly presents, on various points, what must have been Piso's side of the story. This side is totally suppressed in the *s.c.*, and the editors rightly point out that the entire written tradition which Tacitus could have consulted must also have been favourable to Germanicus and hostile to Piso (mainly because it was hostile to Tiberius and Livia). Therefore, any details, related by Tacitus, that contradict the totally one-sided 'official version' which finds expression in the *s.c.* are likely to have been derived from the *acta senatus*, which must have reflected the arguments of the defence as well.[16] I believe that the way in which Tacitus deals with this affair not only provides strong support for the idea that he consulted the *acta senatus*, but confirms the impression that Tacitus is reliable and meticulous in presenting factual details even when these favour someone to whom he is openly hostile. After all, those who have argued that the picture of Tiberius' reign presented by Tacitus is distorted rely heavily, and almost exclusively, on facts related by Tacitus himself, while they reject his judgements and in particular his innuendoes.

It is nowhere recorded what exactly the *acta senatus* contained; there are widely divergent views on how detailed these reports were. This important question, too, may be affected by the available evidence on the trial of Piso. According to Woodman and Martin, it is likely that, in the case of a major political trial like that of Piso, 'at least the names of the main speakers for both prosecution and defence were recorded, along with all formal motions put to the senate'; but we do not know whether verbatim records of the debates were made, even in

15 See R. Syme, *Tacitus* (Oxford 1958) 282-3 and passim; A. Momigliano, *The Classical Foundation of Modern Historiography* (1990) 110 f.; Talbert (n. 9), 326-33, with bibliography on p. 326, n. 1.

16 Of course, Tacitus may well have found the *s.c.* itself, as well as Tiberius' opening speech, in the *acta senatus*, but he may also have found them elsewhere, since they were widely published. As Woodman and Martin (n. 2) point out (p. 115), we do not know whether the documents inscribed in Rome survived the fire of 69.

the case of principal speakers.[17] Tac. *Ann.* 15.74 shows that rejected *sententiae* (in a non-judicial meeting) were recorded in the *acta.* Having been elected consul and preparing his *gratiarum actio*, Fronto writes to Marcus Aurelius, expressing the wish that 'my praise should not lie hidden away in the *acta senatus*, but come into the hands and under the eyes of men' (*Ad M. Caes.* 2.1.1). 'Though it might imply a fairly full report, this remark still does not clarify further the exact form in which a *gratiarum actio* would appear in *acta senatus*'.[18] It may be thought that Augustus' decision 'ne acta senatus publicarentur' (Suet. *Aug.* 36) indicates that the *acta* provided a fairly extensive record of the proceedings. If Augustus was anxious to suppress awkward information, he was probably thinking of speeches (even if these were recorded in an abridged and edited form); he had nothing to fear from the publication of decrees or of the technical details of debates, and probably little from the publication of *sententiae.*

Tacitus' account of the trial includes various details which do not appear in the *s.c.*, such as the names of four accusers, references to the style and content of their speeches, trivial and inconsequential charges concerning Piso's conduct in office in Spain, motions at the end of the trial which were rejected or mitigated by Tiberius and the Emperor's explanations. At least some of these matters could not appear, or are very unlikely to have appeared, in Tiberius' opening speech. It is possible to ascribe all this information to unknown literary sources which Tacitus used. But the editors' line of argument, according to which all information favourable to Piso is likely to have been derived from the *acta senatus,* is particularly persuasive in the case of Tacitus' detailed account of how the charge of poisoning was successfully refuted (3.14). This information should reflect the arguments of the defence and, indeed, those of the accusers themselves, who, says Tacitus, failed to sustain this charge plausibly ('quod ne accusatores quidem satis firmabant'). We know that one of the accusers, P. Vitellius, published his speech, and that it dealt with the charge of poisoning (Plin. *NH* 11.187), but it is highly unlikely that all the information on this charge and its refutation, related by Tacitus in 3.14, depends on this speech.[19] Some of it must have come from the *acta*, and it must have been contained in speeches or testi-

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17 Woodman and Martin (n. 2), 115; cf. Talbert (n. 9), 313f.

18 Talbert (n. 9), 314. See there also Talbert's inconclusive discussion of Plin. *Epist.* 9.13.14 and 23; 7.29; 8.6. Talbert concludes that it is impossible to determine whether the *acta senatus* were a verbatim account of proceedings, or an edited record, whether in direct or in indirect speech, or a mixture of both — 316; 321.

19 According to Pliny, Vitellius claimed that Germanicus must have been poisoned because his heart would not burn; Piso was able to counter this claim by the argument that naturally diseased hearts tended not to burn as well. Tacitus does not mention this; he speaks of other grounds on which the charge was shown to be wholly implausible.

monies (cf. ll. 23-25), not in *sententiae* at the end of the trial. If so, the *acta senatus* must have been detailed enough to provide this kind of information.

4. The charge of murder.

The accusation that Piso murdered Germanicus, which is so prominent in Tacitus' account of the affair, barely appears in the *s.c.* It is presented not as a proven fact but merely as a suspicion expressed by the dying Germanicus: 'quoius mortis fuisse causam Cn. Pisonem patrem ipse testatus sit' (l. 28). This should cause no surprise, since the charge of poisoning was, according to Tacitus, refuted. As the editors point out, Piso and his accomplices were charged under the law of *maiestas*, which is clearly indicated by the content of the accusations and by the fact that the praetor of the *maiestas* court is instructed to interdict the two *comites* (p. 149). They also reasonably assume that, if the charge of murder had been proved, it would have been subsumed under *maiestas*, because of Germanicus' official position (p. 154, with reference to Ulp. *Dig.* 48.4.1.1). H. Flower, in her review of the book, finds the editors' treatment of this subject unsatisfactory and argues that it appears from the *s.c.* that Piso was not officially charged with murder at all, since there is virtually nothing there on this subject; nor was there any need of this charge, since Piso was easily found guilty 'on a classic charge of *maiestas*'. Tacitus may well have found 'a discussion of a possible murder' in the records of the trial, since it was a Roman custom to accompany official charges with various fanciful accusations and gratuitous attacks on the defendant's character. According to Flower, the *s.c.* 'reveals how Tacitus has chosen to shape his narrative and its slant with a focus on the rumors of murder which fascinated the public at the time' thus giving the false impression that the discussion of those rumors featured prominently in the trial.[20]

If this theory is accepted, Tacitus' reliability as an historian is gravely impeached, for it would mean that he has given us a wholly distorted picture of the proceedings in the senate — including the opening speech of Tiberius, which explicitly presents the charge of murder as a crucial issue at stake (3.12.1). This is quite improbable. It is very unlikely that such an accusation as the murder of the Emperor's son could have been introduced into the debates simply as an exercise in invective and not as part of the official charges. The speech of Vitellius mentioned by Pliny deals with the charge of poisoning, using 'forensic' arguments, which Piso is said to have countered with 'forensic' arguments of his own; the issue was evidently debated in earnest at the trial. Flower holds that 'it is somewhat problematic to imagine formal "charges" that disappeared from the

20 Flower (n. 1), 709.

record because they were not proved'. On the contrary, this, in my view, is precisely how we should have expected the *s.c.* to reflect the fact that the charge of murder could not be proved. An explicit acquittal was not to be expected: there was no room, in this text, for any statement favourable to Piso (quite apart from the fact — related by Tacitus — that many senators still harboured a suspicion against him on that score — 3.14). And the issue of murder could not be simply ignored, given the state of public opinion. The best way (and, in the circumstances, the one calculated to blacken Piso's name as far as possible) was to record the fact — which could not of course have been concealed — that Germanicus himself had suspected Piso of foul play, and leave the matter at that, emphasising Piso's other crimes.

Flower wonders 'if Tiberius could have afforded a full scale murder trial in the explosive atmosphere after Germanicus' death'. But it seems that what he could not have afforded, in this atmosphere, was precisely *not* to hold a trial in which the charges of murder, which were on everybody's lips, would be aired and given their day in court. There is no reason to doubt the testimony of Tacitus in this matter.

5. The imperial ideology and the definition of *maiestas*.

The whole tenor of the *s.c.* is unmistakably 'monarchist', reflecting — early in Tiberius' reign — a thoroughly 'monarchic' political culture and ideology. The adulation of the Emperor is boundless. The Divine Augustus and Livia (Iulia Augusta) are given their due. Livia's powerful influence in the state (and in the trial) is unabashedly acknowledged (ll. 113-120). The concept of the imperial family (*domus Augusta)* — as a reigning house and as a dynasty — finds expression explicitly and repeatedly. The senate hopes that the immortal gods will devote their care to Drusus, who is to succeed to his father's position (*paterna statio*) in the state (ll. 128-130). As the editors point out (p. 240), the notion of the Princeps' son (or sons) succeeding the *statio paterna* goes back to Augustus, and is mentioned in the context of Tiberius' accession, but it has up to now been known only from literary sources; it is now attested in a decree of the senate. The *s.c.* confirms that the legitimacy of the regime was based in large measure on the fact that it had extinguished the civil wars and served as a guarantor of internal peace (ll. 13-15; 45-47). Strong emphasis is put on the special bonds not just between the army and the Emperor, but between the army and the whole imperial family: the soldiers are enjoined to 'continue to manifest the same loyalty and devotion to the *domus Augusta*, since they know that the safety of our empire depends on the protection of that house', and to follow those commanders 'who have with the most devoted loyalty honoured the name of the Caesars,

which gives protection to the city and to the empire of the Roman people' (ll. 160-165).

At the same time, the *s.c.* shows that the formal involvement of the People in the affairs of state was still more common than one would have gauged from Tacitus (and other literary sources). The *maius imperium* in the East had been bestowed on Germanicus by a law ('lex ad populum lata' — l. 34); Tacitus mentions, in this context, only a *senatus consultum* (2.43.1). The editors reasonably assume that the formulae of the senatorial decree on Germanicus' *imperium* were 'taken over' by the law verbatim (p. 160). Tacitus was evidently not interested in formalities of this kind; similarly, when speaking of the investiture of the various Emperors, he refers to senatorial decrees and consistently ignores the formal 'ratifications' by the *comitia*.[21]

The concept of *maiestas* underwent a 'monarchic' development during Tiberius' reign, and came, by stages, to cover any attack on the dignity of the Emperor and of the imperial house. This process, and the role played in it by Tiberius himself, are a subject of scholarly debate. The full implications of the *s.c.* for this debate merit a discussion which is far beyond the scope of this review. Here I will make a few remarks on what seems to me to be the main point. The *s.c.* proclaims that, by his insubordination to Germanicus, Piso showed disrespect towards the majesty of the imperial house and also towards public law ('neclecta maiestate domus Augustae, neclecto etiam iure publico'), since Germanicus was a holder of the *maius imperium* bestowed on him by a *lex lata* (ll. 32 f.). According to the editors, the reference to *maiestas domus Augustae* as well as to public law clearly indicates that Piso was judged guilty of a 'zweifache Verletzung der *lex maiestatis* ... Der Princeps und seine Familie, die für die *res publica* stehen, wurden durch Pisos Verhalten schwer betroffen, ebenso aber auch das *ius publicum*, weil Piso seine Aufgaben als Amtsträger gegenüber einem anderen Amsträger verletzte' (p. 149).[22]

That Piso was condemned under the law of *maiestas* cannot of course be doubted, not only because the praetor in charge of *maiestas* trials is instructed to interdict Piso's *comites,* but also because the list of Piso's misdeeds, which starts with the phrase just quoted, includes classic 'republican' cases of *maiestas*: waging a civil war (by trying to retake the province by force after Germanicus' death) and attempting to instigate a foreign one (with Parthia) without legal authority (ll. 37-38; 45-46). But I do not think that that phrase in ll. 32-33 should be taken to mean that an injury to the majesty of the *domus Augusta* was automatically tantamount to the crime of *maiestas*. Not that the word 'majesty'

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21 Cf. Brunt (n. 10), 95 and n. 4.

22 Cf. p. 162: ll. 32-33 show that Piso was condemned under '*lex (Iulia) maiestatis*, nach der sowohl Vergehen gegen den Princeps und seine 'Familie' als auch Vergehen gegen die Pflichten von Amtsträgern verfolgt werden konnten.'

could have been accidental in such a context; but the process that would eventually transform the 'republican' crime of treason against the state into a 'monarchic' lèse-majesté was, in 20 AD, still uncompleted.

First, the very phrase — 'neclecta maiestate domus Augustae, neclecto etiam iure publico' — suggests that the two points are not identical; if an injury to *maiestas domus Augustae* constituted, *ipso facto,* the crime of *maiestas,* there would be no room for a distinction between it and a violation of *ius publicum.* I would suggest the following reading of this passage: Piso's behaviour was not only insolent and outrageous, in that it was directed against the Princeps' son, but actually unlawful and treasonable, since Germanicus was also his légal superior, invested with a *maius imperium* by a special law. This reading is at least possible, though those who framed the decree may well have wished it to be ambiguous on this point. The ominous word *maiestas* hints at the possibility of regarding any affront to the imperial family as treasonable, but Piso's condemnation does not hinge on this notion. It should be remembered that the text of the *s.c.* is not just a legal judgement, but, as the editors point out, a 'politisch-moralischen Verurteilung Pisos' (p. 163). Legal charges and moralistic denunciations are intermingled throughout the text, and it is not quite clear where misbehaviour ends and treason starts (especially in the case of Piso's dealings with the soldiers).

Tiberius' opening speech, as reported by Tacitus, lends no support to the notion that an affront to the Princeps' son was tantamount to treason. 'Illic [Piso] contumacia et certaminibus asperasset iuvenem exituque eius laetatus est an scelere extinxisset, integris animis iudicandum. Nam si legatus officii terminos, obsequium erga imperatoris exuit eiusdemque morte et luctu meo laetatus est, odero seponamque a domo mea et privatas inimicitias non vi principis ulciscar ...' (3. 12). Tiberius stresses the distinction between personal and family matters and crimes against the state; remarkably, even expressing joy over the death of the Emperor's son is still a 'personal' matter. Piso, as Tiberius goes on to make clear, should be punished by the senate if he has committed murder, or if he has tampered with the loyalty of the armies or initiated a civil war (even a dereliction of official duty on Piso's part is not automatically regarded as a capital offence). Now it is quite natural that the tenor of the Emperor's speech is markedly more 'republican' than that of the *senatus consultum*; but it seems unlikely that the decree was meant to contradict the Emperor's statement (assuming it was his) directly, on such a crucial point.

When Piso's son Marcus was, according to Tacitus, urging him not to retake Syria by force, he assumed that until that point Piso had not yet irrevocably compromised himself: 'nihil adhuc inexpiabile admissum ... discordiam erga Germanicum odio fortasse dignum, non poena' (2.76). Marcus' understanding of *maiestas* was, apparently, quite similar to that formulated in Tiberius' opening speech.

Indeed, according to Tacitus — who is certainly not disposed to belittle the gravity of the development which the concept of *maiestas* underwent under Tiberius — there was no precedent, in 20, for equating an affront to the imperial family (as opposed to offences against the divine Augustus) with treason. Even the status of personal attacks on the Emperor himself was, apparently, not quite settled by that time. In 17 Tiberius rejected charges of *maiestas* relating to verbal attacks on himself and his mother (having shown, in the latter case, some hesitation — 2.50). On the same occasion he refused to regard as *maiestas* an act of adultery by the granddaughter of Augustus' sister, although the accusers certainly claimed that such an injury to the 'majesty of the imperial house' was treasonable: 'Caesarique conexa adulterio teneretur'. This refusal is all the more remarkable since the notion of *maiestas* through adultery involving a woman of the imperial family may well have been based on Augustan precedents. In 22 Tiberius would still reject, despite sycophantic protests in the senate, a charge of *maiestas* against a man 'quod effigiem principis promiscum ad usum argenti vertisset' (3.70). Earlier in the same year, the proconsul of Asia had been convicted for *maiestas* on charges including 'violatum Augusti numen, spretam Tiberii maiestatem'; but the exact nature of his offence is not explained (3.66). Finally, in 25, Cremutius Cordus was prosecuted for *maiestas* and forced to commit suicide on the unheard-of charge of having praised Brutus and Cassius; his defence, as reported by Tacitus, starts with 'verba mea, p.c., arguntur ... neque haec in principem aut principis parentem, quos lex maiestatis amplectitur' (4.34).

Thus the process of the imperial 'privatisation' of *maiestas* appears to have been completed by 25 AD. But in 20 we are, apparently, still in the very midst of it — with the senate leading the way, as might well have been expected. The *domus Augusta* is, unmistakably, a reigning house, on whose protection 'the safety of our empire depends'; this concept naturally implies that an attack on its dignity is a crime against the state — but this is nowhere expressly asserted. On the contrary: in order to condemn for *maiestas* someone who has defied the Princeps' son and gloated over his death, it is necessary to invoke, painstakingly, Germanicus' status as a superior official, sanctioned by a statute, and Piso's actions are described in classic terms of 'republican' treason. At the same time, the dignity of the imperial house is defined as *maiestas* — a dire warning to anyone who should think of tampering with it.

Reading the *senatus consultum de Cn. Pisone patre* we hear the living voice of the imperial regime, early in the reign of Tiberius — with its nuances and undertones, its official lies and equivocations. The distant past speaks to us directly, dispensing with mediators. At the same time, the authority of Tacitus, the greatest mediator of them all, is confirmed and enhanced. This is a fascinating docu-

ment of enormous historical importance — and the book devoted to it is a remarkable achievement well worthy of its theme.

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