

XXI.—A Tacitean Pattern in Narrating Treason-Trials

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When the reader of Tacitus' *Annals* is intent, not upon the delectation and enjoyment to be derived from an incomparable work of creative art,¹ but primarily upon learning what happened and why, one of his greatest exasperations is the unsatisfying reports which the historian sets down of the criminal trials, and especially of the very numerous trials for treason. The present writer, after an extended and considerable experience of that particular exasperation,² believes that there can be discerned a similar pattern common to a large number of Tacitus' accounts of trials, and that recognition of this pattern may make it possible to clarify somewhat the interpretation of certain obscure cases by comparison with others of which our knowledge is larger. We shall be here concerned only with actual trials, not with cases in which the indictment was quashed; only with trials which issued in conviction; only with trials not *in camera* but in the Senate; only with cases where the charge is stated, or implied, to be *maiestas*.

There is one case of which Tacitus gives far fuller and more detailed an account than of any other; this is the case of Gnaeus Calpurnius Piso in A.D. 20. A large part of *Annals* II comprises narrative of Piso's conduct in his province of Syria and his relations with Germanicus, for which he will subsequently be brought to trial. But Tacitus' report of the actual proceedings may be resumed briefly as follows.³ Fulcinus Trio demanded of the con-

¹ B. Walker, *The Annals of Tacitus, A Study in the Writing of History*, Manchester University Press, 1952, 257.

² Especially, *Criminal Trials and Criminal Legislation under Tiberius*, Middletown, 1935; but also, "The Conspiracy of Agrippina," *TAPA* 62 (1931) 141-168; "Two Criminal Cases Tried Before Drusus Caesar," *CP* 27 (1932) 75-79; "Der Prozess des Cotta Messalinus," *Hermes* 68 (1933) 121-123; "Ignorance of the Law in Tacitus and Dio," *TAPA* 64 (1933) 18-27; *Studies in the Reign of Tiberius*, The Johns Hopkins University Press, 1943, *passim*; "A Criminal Trial of A.D. 70 (Tacitus, *Histories* 4.44)" *TAPA* 80 (1949) 347-350; "The Tacitean Account of a Neronian Trial," forthcoming in *Studies Presented to David Moore Robinson*, II. Of the cases to be discussed below, those of Tiberian date will be found treated from a different point of view in my *Criminal Trials*, where the index of defendants will locate them.

³ *Ann.* 3.10-19.

suls the indictment of Piso. Members of Germanicus' staff protested that Trio had no part in the business. He then won the right to prosecute Piso's earlier career. Tiberius was petitioned to hear the case in his own court; with advice of his suite, he remitted the case without prejudice to the Senatorial Court (*Ann.* 3.10). Piso obtained the advocacy of Manius Lepidus, Lucius Piso and Livineius Regulus, after failing to win Lucius Arruntius, Publius Vinicius, Asinius Gallus, Aeserninus Marcellus and Sextus Pompeius. The Roman populace was excited and expectant (3.11). Tiberius, presiding when the Senate convened as Court, addressed the House, rehearsing Piso's career, summarizing the charges, and enjoining a full and impartial trial (3.12). Two days were allotted to the prosecution; there would follow adjournment for six days; the defense would be allowed three days. Trio presented his argument that Piso had maladministered his province of Spain (some years previously). Servaeus, Veranius and Vitellius charged the murder by poisoning of Germanicus, treasonable tampering with the loyalty of his army in Syria, and the waging of civil war in and against the province (3.13). The defense successfully repelled the charge of murder, but signally failed to overcome the accusations of treason. The Senate was obdurate on Germanicus' murder, in spite of the evidence, and Tiberius was implacable on the treason. The populace was utterly hostile to Piso, demonstrating riotously. Piso was escorted home under military guard (3.14). His wife, Plancina, having the influence of Livia in her favor, gradually separated her case (we now learn that she was co-defendant) from her husband's. Piso, discouraged by this, yet returned to the Court; the prosecution was renewed; Piso encountered hostility from the Senators, impartiality from Tiberius. Returned home, he committed suicide (3.15). According to an oral tradition, Piso had held documents relevant to the case which Sejanus deceived him into withholding, and Piso died not by suicide but by execution, but the historian will not vouch for either item. Tiberius lamented Piso's suicide and asked details of his last hours from, probably (there is a lacuna), one of Piso's sons, who read a last statement from the defendant protesting his innocence and loyalty, exonerating his sons Gnaeus and Marcus, but silent about Plancina (3.16). Tiberius declared Marcus Piso not guilty and, speaking for Livia, urged clemency for Plancina. This provoked vehement public criticism. Two days were spent on

this travesty of a trial, with Tiberius urging the sons to defend their mother. The consul, Aurelius Cotta, moved that Piso's name be erased in the Fasti, that half his property be confiscated, the other half granted to young Gnaeus who must change his praenomen, that Marcus be deprived of senatorial rank, allowed five million sesterces, and banished for ten years, that Plancina be pardoned (or acquitted?) in response to Livia's appeal (3.17). Tiberius modified this sentence: that Piso's name not be erased in the Fasti, that Marcus be pardoned, and granted his father's property. Valerius Messalinus moved a commemorative statue of gold in the temple of Mars Ultor, and Caecina Severus, an altar to vengeance; Tiberius vetoed both. Messalinus moved a vote of thanks to Tiberius, Livia, Antonia, Agrippina and Drusus; Lucius Asprenas added Claudius (3.18). A few days later Tiberius moved the award of priesthoods to Vitellius, Veranius and Servaeus; he promised his commendation for magistracies to Trio (3.19).

From this narrative can be elicited the most essential data for an intelligible interpretation of the case, viz.: 1) the terms of the indictment, *repetundae*, murder, and *maiestas*; 2) the bases of those charges, respectively, maladministration of Spain, the poisoning of Germanicus, and explicitly described activities in Syria, obviously recognizable as high treason; 3) some indication, if no more, of the argument of the case by prosecution and defense, and of the evidence; 4) the verdict; 5) a statement of the sentence; and 6) a record of the rewards to the prosecutors. There are perplexities and problems enough, even so; but the account is so much more satisfactory than that of any other trial in the whole of the *Annals*, that it appears relatively almost exemplary.

Before surveying other narratives of trials, we may make some general remarks, by anticipation, upon the comparison between them and the foregoing outline of the Pisonian trial. Tacitus very commonly omits the first item altogether, the identification of the indictment. This, however, can usually be deduced without great difficulty from his statement of the charges (if there is such) and reference to the *Digest*. And sometimes, instead of naming the indictment, he inserts a speech which apparently represents the demand for indictment. The second item, the basis of the indictment, we shall find is often reduced to the trivial charges⁴ with-

⁴ This was ably discussed many years ago by F. B. Marsh in his "Tacitus and Aristocratic Tradition," *CP* 21 (1926) 289-310, and his *The Reign of Tiberius*, 289-295.

omission of the major counts, thus destroying the justification for prosecution, or often suppressed altogether. Such depreciation of the grounds for accusation will appear very characteristic of Tacitus. Even more commonly any report, even the slightest, of the evidence and testimony is entirely lacking; then the record of the case has a beginning and an end, perhaps, but assuredly no middle. When the verdict is "guilty," that need not be, and rarely is, separately stated, since it is obviously implicit in a report of the sentence imposed. Record of the rewards given to prosecutors appears only occasionally; when it does, it may be very useful and significant.

It may also be mentioned at this point, to advantage, and it should be most emphatically noted, that whenever trial proceedings continue after the defendant's suicide, the indictment is, as we know from Ulpian,⁵ either *repetundae* or the most heinous of *maiestas*, all other charges being extinguished by death. Tacitus' idea,⁶ ubiquitously cited, that suicide obviated confiscation and assured burial and the execution of testamentary disposition, is completely erroneous, refuted not only by Ulpian but by numerous accounts in the historian's own writing.⁷ Since cases of *repetundae* are generally quite evidently so described by the narrative, one is enabled to recognize many a case as of high treason by the mere circumstance that the trial process is not halted by the suicide of the defendant.

This is perhaps the place to mention also the large presumption which underlies the whole of the following argument and discussion. We have to do with a period which was characterized by the reign of law. And Schulz has shown that not until Justinian was the Emperor above the law.⁸ The present writer maintains the position taken in another connection several years ago, that "he is much less ready than many apparently are to assume that while Rome was engaged in contributing to world civilization preëminently a system of law with orderly procedure thereunder, her very rulers stood in frequent and defiant exception."⁹ He would by no means deny that there could be occasional miscarriage of justice; courts are human agencies, and fallible. But he would unhesitatingly

⁵ *Dig.* 48.4.11; 48.16.15.3; 48.2.20.

⁶ *Ann.* 6.29.

⁷ Cf. "Ignorance" (note 2 above), 18-22.

⁸ Fritz Schulz, "Bracton on Kingship," *EHR* 60 (1945) 136-176, esp. 153-162.

⁹ *TAPA* 68 (1947) 156 f.

deny that any defendant was ever tried without an indictment based on charges which were defined by law. Paulus cites a model indictment for adultery, states that the *Lex Iulia (iudiciorum) publicorum* prescribed in general terms for indictment on any criminal charge, and adds that if the indictment is not in proper form, it is not valid and there is no trial. Paulus writes:¹⁰ "Libellorum inscriptionis conceptio talis est. 'Consul et dies. Apud illum praetorem vel proconsulem Lucius Titius professus est se Maeviam lege Iulia de adulteriis ream deferre, quod dicat eam cum Gaio Seio in civitate illa, domo illius, mense illo, consulibus illis adulterium commisisse.' Utique enim et locus designandus est in quo adulterium commissum est, et persona, cum qua admissum dicitur, et mensis: hoc enim lege Iulia publicorum cavetur et generaliter praecipitur omnibus qui reum aliquem deferunt: neque autem diem neque horam invitum comprehendet. Quod si libelli inscriptionum legitime non fuerint, rei nomen aboletur, et ex integro repetendi reum potestas fiet." And this is confirmed, if need be, by passages in Tacitus and Pliny: e.g., the trial of Annianus Faustus under Otho, when one might really expect some irregularities — "Et propria vi Crispus incubuerat delatorem fratris sui pervertere traxeratque magnam senatus partem, ut indefensum et inauditum dedi ad exitium postulerent. Contra apud alios nihil aequo reo proderat quam nimia potentia accusatoris: dari tempus, edi crimina, quamvis invisum et nocentem more tamen audiendum censebant";¹¹ the recurrent phrases such as "tamquam adversus receptos iam reos," "recipi Caesar inter reos vetuit," "receptus est reus," "neque recepti sunt inter reos."¹² When Pliny attacked, without naming, Publicius Certus in the Senate, members of the House shouted "Quis est ante relationem reus?"¹³ But there is no need further to labor what should be axiomatic.

With the account of the trial of Piso analyzed above, let us now compare the narrative Tacitus gives of the prosecution of Marcus Scribonius Libo Drusus four years earlier.¹⁴

Libo was accused of conspiring to bring about a revolution (*moliri res novas*) (*Ann.* 2.27). Tacitus relates that Libo's friend Firmius Catus, a senator, enticed him deceitfully into traffic with

¹⁰ *Dig.* 48.2.3.pr., 1.

¹¹ *Tac. Hist.* 2.10.

¹² *Ann.* 2.74; 3.70; 4.21; 13.10.

¹³ *Pliny Ep.* 9.13.7.

¹⁴ *Ann.* 2.27–32.

astrologers and interpreters of dreams, reminded him of his distinguished ancestry and his relation to the imperial princes, and encouraged him to extravagance and debt, meantime gathering witnesses. Catus failed to get Tiberius' ear through Vescularius Flaccus, but finally made contact with Fulcinius Trio, who lodged indictment with the consuls for trial by the Senatorial Court. The summons to the Senate to convene called the business urgent and dangerous (2.27-28). Libo put on mourning; his relatives refused any aid; he came to court ill or pretending illness, leaning on his brother and suppliant to Tiberius, who received him quite unmoved. The Emperor read the indictment and the names of the prosecutors, who were Trio and Catus, Fonteius Agrippa and Gaius Vibius. The prosecutors could not agree on how to share their function equitably, and Libo had no counsel, so Vibius would present the charges individually and seriatim, without any set piece of oratory. He now produced documents showing that Libo had inquired of the astrologers whether he would have the wealth to pave the Appian Way to Brundisium with coins. There was more of the same sort, stupid, foolish, and, if regarded charitably, pitiful. There was also, in Libo's handwriting, a list of names, imperial and senatorial, with notations which the prosecutors averred were ominous and mysterious. Libo denied his handwriting and his slaves were questioned under torture on the identification of his autograph. Libo asked adjournment to the next day, returned home, and addressed entreaty to Tiberius by the hand of his relative Publius Quirinius (2.29-30). Tiberius replied that the appeal should go to the Court. Libo's house was surrounded by the military. He dined and committed suicide. The prosecution continued without the least relaxation. Tiberius swore he would have spared the defendant his life, however guilty (2.31). Libo's property was divided among the accusers and praetorships were granted to those who were senators. Cotta Messalinus moved that Libo's family be prohibited the display of his image in funerals, and Gnaeus Lentulus that they be forbidden use of the name Drusus; Pomponius Flaccus moved a thanksgiving of some days, and Lucius Piso, Asinius Gallus, Papius Mutilus and Lucius Apronius, dedicatory gifts to Jupiter, Mars and Concordia, and the entry in the *Fasti* of 13 September, the date of Libo's suicide (2.32).

The *Fasti Amiternini* under date of 13 September have the

entry: "Feriae ex s.c. q.e.d. nefaria consilia quae de salute Ti. Caes. liberorumq. eius et aliorum principum civitatis deq. r.p. inita ab M. Libone erant, in senatu convicta sunt."¹⁵ As Marsh showed long ago, this official version of the case is corroborated not only by the quasi-official Velleius but also by Seneca, Suetonius and Dio.¹⁶ To the present writer it is unimaginable that anyone familiar with Marsh's presentation could accept Tacitus' version of the episode against the other sources.

Tacitus' account of the case of Libo includes all six of the essential desiderata contained in the exemplary account of the trial of Piso. There is a single significant, but very significant, difference. Reporting the basis of the indictment, Tacitus has minimized the gravity of Libo's activities with consummate rhetorical skill, by dwelling upon the trivialities, which the prosecutors may well have discoursed upon in order to prejudice the Court, but which Tacitus can dismiss as venial folly, and by passing very lightly and quickly over the only evidence which he mentions pointing toward a conspiracy to assassinate Tiberius, his heirs and other nobles.

In his account of the trial of Libo, then, is illuminatingly exemplified that depreciation of the *grounds* of accusation which, it was said above, will be found characteristically Tacitean.

The case next to be considered presents much greater difficulty, that of Publius Clodius Thrasea Paetus and others in A.D. 66. The reader of Tacitus' lengthy narrative¹⁷ receives the impression that here is a very full and detailed account of the trial of Thrasea. Actually upon analysis of the story this proves to be a grand illusion. As briefly as may be, we summarize Tacitus' report.

Nero finally attacks virtue personified in Thrasea and Barea Soranus. His long-standing antipathy toward both had the additional reasons in the former case 1) that Thrasea had walked out of the Senate's debate on Agrippina, 2) that he had slighted the *Juvenalia*, but sung a tragic role in a festival at Padua, 3) that he had moved some leniency for Antistius Sosianus, convicted of libel against Nero, and 4) that he had absented himself when divine honors were voted to Poppaea, and from her funeral. Cossutianus Capito rehearsed all this, prompted by his own vicious character

¹⁵ *CIL* I², p. 244.

¹⁶ F. B. Marsh, "Tacitus and Aristocratic Tradition," *CP* 21 (1926) 289-310.

¹⁷ *Ann.* 16.21-33.

and a private grudge against Thrasea (*Ann.* 16.21). Capito added also 5) that Thrasea had not taken the oath on New Year's Day, 6) that, although *XVvir*, he had not attended the undertaking of the *vota*, 7) that he had never sacrificed for Nero's health and heavenly voice, 8) that, formerly tireless in his attention to the most ordinary business of the Senate, he had now not entered the House for three whole years, 9) that, instead of attending the Senate when it convicted Lucius Silanus and Antistius Vetus of treason, he had been serving his clients in their private suits. This was secession, factionalism, and, if he gained followers, civil war. What Cato had been to Caesar, he was to Nero. He had admirers who copied his manner, to the despite of Nero. He alone cared naught for Nero's health, art, or success, but rejoiced in his grief. To deny Poppaea's divinity accorded with refusal of the oath to Augustus' and Julius' *acta*. He scorned religion, he defied the law. The gazette was everywhere read carefully to learn what Thrasea had now refused to do. Let us either return to the *ancien régime* or remove this leader and sponsor from those who wish to do so. There were his like even in the old days. To overthrow the government they put forward the claims of liberty; if they succeed, they will assault that very liberty. Let Nero not write the indictment of Thrasea, but allow the Senate to decide his fate. (Thrasea has not yet been indicted; this all purports, it seems, to be a speech demanding such indictment.) Nero spurs Capito on and assigns Eprius Marcellus to collaborate (16.22). (Observe now, dear reader, the complete change of subject.) Ostorius Sabinus had indicted Barea Soranus for his proconsulate of Asia, where he aggravated his offense to Nero by justice and conscientiousness, and by his efforts to open the harbor of Ephesus and by indulging Pergamum's defiance of Nero's freedman's requisitions of *objets d'art*. But what was charged was friendship with Rubellius Plautus (executed for treason in 62) and the effort to win Asia's support of an attempt at revolution. The trial was planned to coincide with the state visit of Tiridates for his coronation (16.23). Rome prepared to welcome Nero and Tiridates; (now back to Thrasea) Thrasea is forbidden to attend. He writes to Nero asking the charges against him, which he will clear if he has opportunity. Nero is bitterly disappointed that Thrasea has not abased himself and extolled the Emperor's glory, and orders the Senate to convene (16.24). (Again the narrative is interrupted while) Thrasea confers with his friends and considers

their arguments pro and con whether he should attend his own trial (16.25–26). Troops filled the whole vicinity of the Curia when the Senate assembled. A quaestor delivered the speech from the throne, which named no one but inveighed against the dereliction of public duty for the amenities of private life. This weapon the accusers seized (16.27). Now Capito and Marcellus shout that the vital interest of the State is at stake. The Senators have spinelessly allowed Thrasea's rebellion, Helvidius Priscus' identical insanity, Paconius Agrippinus' inherited hatred of the Emperors, and Curtius Montanus' composition of vicious libels. (Thus three new defendants belatedly appear in the case.) The Senate lacks an ex-consul, the *vota* a priest, and the oath of allegiance a citizen, unless Thrasea is a traitor and an enemy of the State. If he is not that, let him move in the House correction of what he disapproves and not tacitly condemn everything alike. Does he disapprove of world peace and bloodless victory? Let him remove his life from this State which he no longer loves nor even wants to see (16.28). (Again the narrative pauses while) Tacitus imagines the Senators' imaginings of the worthy Thrasea, Helvidius, whose only crime was to be Thrasea's son-in-law, Agrippinus, whose guilt was to be son of an innocent victim of Tiberius, and Montanus, who would be exiled for the innocent expression of his poetic talent (16.29). (Again now the complete change of subject.) Ostorius Sabinus commences his prosecution of Soranus with the friendship of Rubellius Plautus and the defendant. The latter had appropriated his governorship of Asia to his own glorification, not to the common weal, and had raised seditions in the cities of his province. All this was old stuff. But new and involving his daughter (again an additional defendant makes a tardy entrance) was the charge that the daughter had had traffic with astrologers. Now Servilia had done exactly this out of pure affectionate devotion to her father and the innocence of her young heart. All that she had asked, however, was whether the family would survive, Nero be placable, and this trial not end in catastrophe. So Servilia is haled into Court and the two face each other before the consuls, the grand old man and the nineteen year old daughter, but lately desolated by the exile (for high treason) of her husband, Annius Pollio (16.30). She is inexorably examined on her consultation of the astrologers and protests her father's innocence and her sole guilt of that activity (16.31). Soranus in turn protests that she was not in Asia with

him, that she was too young to know Rubellius Plautus, that she was innocent of her husband's treason. Then witnesses were called. One, Publius Egnatius Celer, roused as much wrath as the savage prosecution had inspired pity. He was client of Soranus, bought to work his friend's downfall. Under the guise and pretense of Stoicism here was a dreadful warning of how viciously depraved a man can be (16.32). By contrast, Cassius Asclepiodotus, a very wealthy Bithynian, maintained unimpaired his devotion to Soranus, and was exiled, suffering confiscation of all his property. (Another defendant is introduced barely in time to be sentenced.) Thrasea, Soranus and Servilia were granted choice of the manner of death. Helvidius and Paconius were banished from Italy. Montanus was pardoned but forbidden public career. Eprius Marcellus and Capito received rewards of five million sesterces apiece, and Ostorius a million two hundred thousand with the quaestorian insignia (16.33).

Tacitus has, then, put together into one confused and confusing narrative the cases of seven defendants. How much of what we need to know, according to the criterion which we established on the basis of the trial of Piso, does the historian actually tell us about each of the seven?

First, Thrasea. There is no statement of the indictment; we are left to infer that it was treason from the lengthy catalogue of charges which were its basis. These charges are set forth in three separate passages, the first a statement by the historian initially in his own person ostensibly, but then referred to a speech by the subsequent prosecutor, the other two elaborately rhetorical set-pieces which purport to be speeches respectively by Capito in demanding indictment and by Capito and Marcellus together in the trial. Concerning evidence or testimony not a word. There is no separate statement of the verdict, but that is implicit of course in the report of the sentence. And the rewards granted to the prosecutors are stated, which is quite exceptional; they are very large.

The charges on which the indictment rested, as they may be deduced from the three passages just referred to, demand study and comment. They were serially numbered above, p. 285 f. The first four Tacitus sets down seemingly in his own character, but then declares that Capito did not allow these to be forgotten. Now the withdrawal from the Senate when it was debating the entering of Agrippina's birthday among the *dies nefasti*, occurred in

A.D. 59; Tacitus records it in his account of that year and comments: "sibi causam periculi fecit, ceteris libertatis initium non prae-buit."¹⁸ That is to say that an action which drew no penalty at the time is prosecuted seven years later. In that same year of 59 the *Juvenalia* had been instituted, and Tacitus narrates their celebration¹⁹ without mentioning either that Thrasea slighted them or that anything befell him at that time or in that connection. Again, Tacitus would have us believe that an action is prosecuted only seven years after. This writer has grave doubts. Thrasea's motion at the trial of Antistius Sosianus, also, comes right out of Tacitus' earlier narrative,²⁰ A.D. 62. It has been argued elsewhere²¹ that whatever the case of Antistius in 62 was, it was not the case Tacitus has recounted, for that is a rhetorical composition erected upon sources which are identifiable at least in part. One wonders whether these three charges ever formed any part of Capito's orations, or whether they are simple Tacitus. And how very curious it is that Tacitus makes no mention of Thrasea's authorship of the laudatory biography of Cato!

All the nine charges which are enumerated fall into one or the other of two categories: such withdrawal from attendance on public functions as the Romans called *secessio* (Tacitus puts that word in Capito's speech),²² or conduct which cast reflection, slight or contempt on Nero's majesty, the sort of actions which moderns are accustomed to think of as *lèse majesté*. *Secessio* the Romans reprehended and deprecated, but it was *not* treason. And the present writer essays elsewhere²³ to demonstrate that from Julius to Justinian the evidence is overwhelmingly against the prevalent understanding that the Roman Emperors prosecuted as treason any abuse, criticism, slight or contempt. When they took any action at all, it was in the form of private and personal *renuntiatio amicitiae*. We have read that Thrasea was forbidden attendance upon Nero while he entertained Tiridates. Three years before, Nero had not allowed Thrasea to come to Antium after Claudia's

¹⁸ *Ann.* 14.12.2.

¹⁹ *Ann.* 14.15.

²⁰ *Ann.* 14.48.5-7.

²¹ "The Tacitean Account of a Neronian Trial" (note 2 above).

²² Cf. Walter Allen, Jr., "A Minor Type of Opposition to Tiberius," *CJ* 44 (1948/9) 203-206.

²³ *Lèse Majesté under the Roman Emperors*, in preparation.

birth, but a reconciliation had come shortly after.²⁴ In these charges reported by Tacitus, then, there is nothing to justify the indictment of Thrasea for treason. The continuation of Capito's purported speech demanding indictment is in the same vein until we reach the statement: "aut transeamus ad illa instituta, si potiora sunt, aut nova cupientibus auferatur dux et auctor" — "deprive those who wish to return to the *ancien régime* of their leader." And "frustra Cassium amovisti si gliscere et vigere Brutorum aemulos passurus es."²⁵ This was in A.D. 66, the next year after the suppression of the Pisonian conspiracy against Nero's throne and life. The law of treason comprehended the person "cuius opera consilio malo consilium initum erit"²⁶ as well as the one who wielded the dagger. Miss Toynbee has strongly suggested²⁷ that certain of the Stoics, who, while not disposed unfavorably toward monarchy, disapproved vehemently the throne's present unworthy occupant, were connected with the conspiracy of 65. Can there be much doubt that Thrasea had been "advocating the overthrow of the government by force and violence?"

The prosecutors Capito and Marcellus were awarded each five million sesterces. Tacitus has not recorded the rewards to the prosecutors of the Pisonian conspirators the preceding year; but nineteen years before, two of the lesser prosecutors of Valerius Asiaticus received a million and a half, and a million, respectively.²⁸ It is unimaginable that the prosecution for which Capito and Marcellus were so handsomely rewarded, was anything but a case of high treason.

Tacitus in narrating Thrasea's case has magnified numerous charges of a very trivial nature, which Capito may have rehearsed with the intention of prejudicing his audience of juror-Senators, and minimized the real basis of the treason charge, all with inimitable rhetorical skill, and all in the same pattern as his account of the trial of Libo. Just as there was probably accessible to him a family tradition of the Scribonii to excuse Libo,²⁹ so there was

²⁴ *Ann.* 15.23.

²⁵ *Ann.* 16.22.7-9.

²⁶ *Dig.* 48.4.1.1.

²⁷ J. M. C. Toynbee, "Dictators and Philosophers in the First Century A.D.," *Greece and Rome* 13 (1944) 43-58.

²⁸ *Ann.* 11.4.5 f.

²⁹ So Marsh, *op. cit.* (note 16 above) 300 ff. I would differ with Marsh's con-

surely available in Tacitus' circle³⁰ a version of Thrasea's trial which glozed over his treason and portrayed him as a martyr to tyranny.

Of Thrasea's three co-defendants Tacitus' account is exiguous in the extreme. Capito's speech at the trial attributed to Helvidius Priscus the "same madness" as Thrasea's; to Paconius Agrippinus the "inheritance of his father's hatred of the Emperors;" and to Curtius Montanus the composition of "detestanda carmina."³¹ Capito's listeners, according to Tacitus, pictured Priscus as guilty only of his relation to Thrasea, Agrippinus, only of his father's sad fate, and Montanus as an upright youth writing innocent poetry.³² That is *all* we are told, except for their sentences. Priscus and Agrippinus, of course, were famous Stoics.³³ They were convicted and banished from Italy.³⁴ Obviously the conviction and the sentence are not justified by their offenses as Tacitus has described them; that is the historian's intent; he is recounting the history of a tyrant and the story he tells must sustain the thesis. By minimizing some and omitting more he has reduced their cases to triviality. In the judgment of the Senatorial Court they differed from Thrasea in degree only, not in kind. Curtius Montanus, Tacitus seems to intimate, had provoked Nero's jealousy by his talent as a poet.³⁵ As basis for prosecution in a court of law this is patent absurdity. The condition of his pardon, that he have no public career,³⁶ is appropriate to his having been associated with treason; the guilt was slight and he was pardoned for his father's sake. One wonders at this, when the father is found four years later honoring the memory of Galba's son and heir, Piso, and inveighing against Regulus;³⁷ he appears thus as a member of the general group with whose treasonous activity his son is here involved in some degree.

clusions only so far as to admit the possibility that Tacitus chose the Scribonian version not by error of historical judgment but because it supported his thesis.

³⁰ Cf. C. W. Mendell in *YCS* 5 (1935) 35.

³¹ *Ann.* 16.28.2.

³² *Ann.* 16.29.2 ff.

³³ Cf. on Priscus, *Tac. Hist.* 4.5; M. Antoninus, 1.14; on Agrippinus, *Arr. Epict. Diss.* 1.1.28; 1.2.12; fr. 56.

³⁴ *Ann.* 16.33.3.

³⁵ *Ann.* 16.29.4.

³⁶ *Ann.* 16.33.4.

³⁷ *Tac. Hist.* 4.42.

The shortcomings of the account of Barea Soranus are slightly different. Again there is no statement of the indictment; that it was high treason is readily deduced from Tacitus' report of the charges on which it was based. Here he employs another device of not infrequent occurrence.³⁸ The charge, he says, which was openly avowed was friendship with Rubellius Plautus and an attempt to rouse the province of Asia to revolt; but the historian knows the *real* reason for attacking Barea was that he had tried to open up the harbor of Ephesus, and he had not punished Pergamum for its resistance by force to Acratus' requisitions.³⁹ The latter presents an insoluble chronological difficulty, and the former is not distinguished for plausibility. Barea's proconsulship was A.D. 61/62;⁴⁰ Acratus' mission to the province, according to Tacitus⁴¹ himself, was after the great fire of 64. As for the public works, Tacitus remarks elsewhere⁴² that a canal projected in Germany failed of execution because of Nero's jealous fears. But in view of that Emperor's record of road-building and other works of public utility,⁴³ one is entitled to doubt that he would regard as treason such operations by a provincial governor whose allegiance was not suspect. Has Tacitus, then, tried to substitute in his reader's mind obviously refutable charges for the real charge which could not be denied, by calling the former real and the latter only ostensible? That is approximately what he has done, we shall see, in the Tiberian case of Gaius Silius. At any rate, when we come to Ostorius Sabinus' speech for the prosecution, Ephesus, Pergamum and Acratus go unmentioned, and Sabinus speaks only of what Tacitus has called merely ostensible charges, the friendship of Rubellius Plautus, the effort to make his proconsulate serve his own glorification rather than the public good, the instigation of sedition in the cities of Asia.⁴⁴ Our third desideratum, the evidence, is limited to the denunciatory characterization of one witness, Eg-natius Celer. The verdict of guilty is implicit in the sentence of

³⁸ Cf. pp. 295, 301, 302.

³⁹ *Ann.* 16.23.1 f.

⁴⁰ S. J. De Laet, *De Samenstelling van den romeinschen Senaat*, Antwerp, 1941, 241; cf. David Magie, *Roman Rule in Asia Minor*, Princeton, 1950, 1422.

⁴¹ *Ann.* 15.45.3 f.

⁴² *Ann.* 13.53.3 f.

⁴³ Platner-Ashby, *A Topographical Dictionary of Ancient Rome*, 595; *CIL* 2.4652, 4657, 4683, 4719 (= *ILS* 225), 4734 (= *ILS* 227), 4884, 4888, 4926-4928, 6236; 3.346, 6123 (= *ILS* 231); 10.8014; 12.5459, 5469, 5471 (= *ILS* 228), 5473-5475.

⁴⁴ *Ann.* 16.30.1.

death. The prosecutor is rewarded with one million two hundred thousand sesterces and the insignia of the quaestorship; he had been a knight. The monetary award approximates those of two decades before to some of the prosecutors of Valerius Asiaticus.⁴⁵ Tacitus here asserts that Celer gave false testimony which had been bought and paid for, repeating thus what he had recorded some years before in his *Histories*.⁴⁶ For early in A.D. 70 Celer was indicted by Musonius Rufus for his part in this case and convicted. That is plainly to say that the conviction of Barea was miscarriage of justice. Once allow that injustice can occur — and of course one must, for courts *do* err in judgment, yield to prejudices, fail to establish facts — and one may go on to ask whether the miscarriage of justice was in Barea's case or in Celer's four years later. In the interval a revolution had occurred, in fact several revolutions. Now Musonius and others were trying to avenge certain elder friends of theirs who had been convicted under Nero, and their hopes ran high until Mucianus stopped the movement by raising legal impediment to Helvidius Priscus' indictment of Eprius Marcellus.⁴⁷ But by then Celer had been convicted and, one supposes, deported, for that was the penalty prescribed by law. Was his conviction just? Tacitus' brief account of the case includes one most interestingly significant item. According to the historian's report, Musonius inveighed against Celer, who, worthless and guilty, could not be protected, for the memory of Barea was holy; Celer had been a professor of philosophy, then witness against Barea, betraying and violating friendship, of which he had professed to be the teacher.⁴⁸ When the case was tried, Celer was convicted and the shades of Barea given satisfaction. "Iustum indicium explesse Musonius videbatur: diversa fama Demetrio Cynicam sectam professo, quod manifestum reum ambitiosius quam honestius defendisset."⁴⁹ Now Demetrius was the very distinguished and highly esteemed philosopher with whom Thrasea passed his last hours, friend also of Musonius, Celer's prosecutor. He seems to have been exiled after Thrasea's death and since restored.⁵⁰ It is difficult to imagine *why* he should defend Celer unless because,

⁴⁵ *Ann.* 16.33.4; cf. p. 290 and note 28 above.

⁴⁶ *Ann.* 16.32.2 f.; *Hist.* 4.10, 40.

⁴⁷ Cf. "A Criminal Trial of A.D. 70" (note 2 above) and *reff.* there.

⁴⁸ *Tac. Hist.* 4.10.

⁴⁹ *Hist.* 4.40.

⁵⁰ *PIR*² D, 39.

in conscience, he must, somehow having knowledge that Celer's testimony had been veracious. Is Tacitus surely right that Demetrius, *not Musonius*, acted "ambitiosius quam honestius"? The historian's concluding comment is: "Ipsi Publio neque animus in periculo neque oratio subpeditavit."⁵¹ This can happen to an innocent defendant as well as to a guilty. This writer strongly suspects that the miscarriage of justice occurred in the later case, not in the earlier.

Of Barea's co-defendant, Cassius Asclepiodotus, Tacitus tells us so little⁵² — that he was wealthy, that he was loyal to Barea, that he was exiled — that we can judge nothing of that case of and by itself. It is possible to say only that if the foregoing interpretation of Barea's case is correct, it creates a certain presumption of the justice of Asclepiodotus' conviction.

Concerning the last of the group of seven, Barea's daughter Servilia, we have much more information⁵³ than of any other except the two principals, but the difficulty of its interpretation is great. There is no statement of the indictment. Its basis is said to be a consultation of the astrologers which has taken place since Barea's trial commenced, for the trial's outcome is alleged to have been the subject of the question to the seers. According to Tacitus and to the testimony he puts in the defendant's mouth, the fact of the consultation was admitted. The defense is that the questions asked were utterly innocent. Barea is represented as maintaining that his daughter had not accompanied him to his province and was too young to have been associated with any treason of Rubellius Plautus. These claims are plausible, at least, of events four to five years ago and a defendant now in her twentieth year. Barea said also that his daughter was not involved in her husband's treason. Is this perhaps a clue to the truth? Why is this mentioned if Servilia is defendant because she has consulted astrologers about the outcome of the instant trial? Her age does not positively exclude complicity with her husband in the Pisonian conspiracy of the preceding year. This writer dares no more than some very tentative suggestions. Has Tacitus obscured the case by recording only the trivial, prejudicial charges, omitting the graver, or has he even substituted former for latter? Was Servilia actually

⁵¹ Tac. *Hist.* 4.40.

⁵² *Ann.* 16.33.1.

⁵³ *Ann.* 16.30.2–32.2.

accused of a part in the Pisonian conspiracy? Finally, a century later, at least, any consultation of astrologers with reference to the Emperor was a capital offense.⁵⁴ At any rate, the Senatorial Court in 66 took very grave view; Servilia, like her father, received death sentence.⁵⁵

The case of Gaius Silius and his wife, Sosia Galla,⁵⁶ in A.D. 24 has been earlier studied by this writer from a different point of view.⁵⁷ It is now to be shown that Tacitus' account of it exemplifies the pattern and the devices presently under discussion.

Tacitus tells the story thus. Silius and his wife were members of the party of Agrippina, which Sejanus was endeavoring to destroy. Their friendship for Germanicus was their ruin. Silius had commanded the army of Upper Germany from A.D. 14 to 21 and received *insignia triumphalia* in the war to put down Sacrovir. Many believed that he had aggravated his offense to Tiberius by intemperate boasting that if his troops had not remained loyal, Tiberius would have lost his throne, for here was a debt too large for Tiberius to pay. And Tiberius hated Sosia because of her devotion to Agrippina. The consul Visellius Varro indicted Silius and Sosia, cloaking his subservience to Sejanus under guise of avenging his father's quarrel with Silius, and Tiberius refused the defendant's plea for postponement until the prosecutor should have left office. The Senate convened. Silius made no defense beyond protesting that he was the victim of tyranny. The prosecution charged Silius with treason in the war with Sacrovir, and extortion after the victory, Sosia with complicity. He was undoubtedly guilty of extortion, but he was tried for *maiestas*. He committed suicide, but trial continued; his property was confiscated; Sosia was exiled on motion of Asinius Gallus, and half her property confiscated, though Manius Lepidus had moved that only a quarter of her goods be taken to meet the legal reward to the prosecution.

The historian has here substituted for the real charge of conspiracy with Agrippina an easily refutable charge of complicity with Sacrovir three years before, and a sort of *lèse majesté* still

⁵⁴ Paul. *Sent.* 5.21.3; cf. *Collat.* 15.2.3; Tert. *Apol.* 35.12.

⁵⁵ *Ann.* 16.33.2.

⁵⁶ *Ann.* 4.18-20.

⁵⁷ *TAPA* 62 (1931) 141-144; *Crim. Trials* (note 2 above) 75-78; cf. "Notes on the Gallic Revolt, A.D. 21," *CW* 36 (1942/3) 75 f.

longer ago, and the admission of guilt on a charge which was not indicted. All that is left of the actual charge is that Silius' friendship with Germanicus and Sosia's devotion to Agrippina were the cause of disaster to them.

The second trial of the orator Cassius Severus in the same year is recounted by Tacitus in five lines.⁵⁸ His offense was the continuation in his Cretan exile of the same activities for which that sentence had been imposed, and he was now deported to Seriphos. Now, his earlier trial had occurred in A.D. 8 and is briefly recorded by Tacitus,⁵⁹ who states that Cassius Severus' libelous writings against noble ladies and gentlemen were prosecuted by Augustus under the law of *maiestas*, and that his was the first *such* trial under that law. That case is of paramount importance in the study, already referred to, of *lèse majesté*.⁶⁰ The writer believes he has proved that Augustus did not prosecute that or any similar case as *maiestas* and, equally, that Tiberius never did the like. If Severus was not tried for libel in A.D. 8, he was not tried for libel in 24, for Tacitus says the charges were the same. But the year 8 seems to have been the date, or the approximate date, of the conspiracy involving the younger Julia and Lucius Aemilius Paulus. And the year 24 coincides with the conspiratorial activities of Agrippina and her supporters in the next generation of the Julian family, and was the year of Silius' and Sosia's conviction.⁶¹ Complicity in those treasonous movements would explain identical charge against Severus in both trials, and prosecution for *maiestas* and sentence of exile, as libelous writing positively will not.

In the strange case of Vibius Serenus,⁶² also of the same year, Tacitus' principal interests are the accusation of father by son, and that Tiberius, he alleges, is satisfying an eight years' grudge. The elder Serenus was brought back from exile in Amorgus (sentenced the preceding year for *vis publica* in his proconsulship of Spain⁶³) to face charges by his son that he had made a plot against Tiberius, that he had despatched agents to Gaul to incite rebellion, and that Caecilius Cornutus, an ex-*praetor*, had supplied the money.

⁵⁸ *Ann.* 4.21.

⁵⁹ *Ann.* 1.72.

⁶⁰ Note 23 above. The date of the first trial, A.D. 8, not 12, is discussed there.

⁶¹ Cf. "The Conspiracy of Agrippina" (note 2 above).

⁶² *Ann.* 4.28-30.

⁶³ *Ann.* 4.13.

Serenus asserted Cornutus' innocence, and demanded the names of his fellow-conspirators, since he could not have acted alone. The younger Serenus then named Gnaeus Lentulus and Seius Tubero, trusted *amici Caesaris*, the former aged and the latter in ill health. "Sed hi quidem statim exempti." At this point, it appears, the trial begins, indictment of Lentulus and Tubero having been denied, of Serenus and Cornutus, granted. Cornutus committed suicide. Serenus' slaves were examined, and the evidence went against the prosecutor; he fled, was overtaken at Ravenna, and brought back to continue the prosecution. Tiberius made no secret of his old resentment at Serenus' protest that he alone of Libo's accusers had not received reward. The Emperor now recalled that incident, "medium tempus varie arguens, etiamsi tormenta pervicacia servorum contra evenissent." At this point Tacitus has suppressed pertinent evidence in the case, blandly announcing that there was such, in conflict with the testimony he has reported. Serenus was convicted; after a motion of death sentence was defeated, and after some controversy over the place of exile, he was returned to Amorgus. In this case Tacitus has recorded clearly the basis of the indictment and the sentence, but by suppressing part of the evidence has made the case appear a miscarriage of justice, since what evidence he reports favored the defense.

Tacitus' account⁶⁴ of the trial of Cremutius Cordus in A.D. 25 consists of the statement of indictment, not specifically particularized, based on the unprecedented charge that he had praised Brutus and called Cassius the last of the Romans; the names of his accusers, identified as henchmen of Sejanus; the assertion that Tiberius received his defense "truci vultu"; a considerable speech, purportedly Cordus', citing numerous precedents, both Greek and Roman, for the immunity of literary authors' criticism or praise of the living, let alone of the dead; Cordus' withdrawal from the Senate-House and his suicide, determined upon before his speech; and the vote of the Senate that Cordus' books be burned. Seneca's references⁶⁵ to the case provide us some check on Tacitus.

Columba, followed by Ciaceri, long ago denied the historicity of the speech attributed to the defendant by Tacitus, on the ground that Seneca shows the suicide preceded reception of the indict-

⁶⁴ *Ann.* 4.34 f.

⁶⁵ *Sen. Cons. Marc.* 1.2; 22.4.

ment.⁶⁶ One may be confident that the speech is pure Tacitus. Marsh,⁶⁷ comparing Tacitus' version with his accounts of Libo and Piso, concluded that only the opening, trivial and prejudicial charges had been made before the suicide halted proceedings and forestalled the presentation of the more serious charges which Cordus was unwilling to face. But evidently proceedings did not end, for the Senate condemned Cordus' books to be burned; and if proceedings continued after the defendant's suicide, then the case was one of high treason, for it can hardly have been of *repetundae*.⁶⁸ Again Tacitus has recorded only what may well have been said by the prosecutors in their effort to prejudice the jury, and omitted the real charges on which the indictment rested.

Most especially striking and exceedingly interesting is the trial of Votienus Montanus in A.D. 25. Since Tacitus' account is brief⁶⁹ and one of the most outstanding examples of the pattern we are discussing, the passage may advantageously be set before the reader in the original. "Postulato Votieno ob contumelias in Caesarem dictas, testis Aemilius, e militaribus viris, dum studio probandi cuncta refert et, quamquam inter obstrepentes, magna adseveratione nititur, audivit Tiberius probra, quis per occultum lacerabatur, adeoque percussus est, ut se vel statim vel in cognitione purgaturum clamitaret precibusque proximorum, adulatione omnium aegre componeret animum. Et Votienus quidem maiestatis poenis adfectus est." That is all. This is the case in which Marsh saw the only clear, certain instance in Tiberius' reign of punishment for slander.⁷⁰ But the case requires another perusal. Tacitus' narrative makes us spectators in attendance upon the preliminary hearing, at which the indictment of Votienus is asked. In support of that demand for indictment a soldier-witness, Aemilius, offers testimony which includes evidently a most violent attack on Tiberius personally. There is a perfect furore in the Senate, and Tiberius, hearing in public the slanders customarily uttered in private, in the greatest agitation shouts that he will clear himself either instantly or during the trial. Now, this is exactly

⁶⁶ M. Columba, "Il Processo di Cremuzio Cordo," *Atene e Roma* 4 (1901) 361-383; E. Ciaceri, *Processi Politici e Relazioni Internazionali*, Rome, 1918, 301 f.

⁶⁷ F. B. Marsh, *The Reign of Tiberius*, 290-293.

⁶⁸ Cf. p. 282 above.

⁶⁹ *Ann.* 4.42.

⁷⁰ Marsh, *op. cit.* 173, 61 and note 1, 115 and note 1; *Crim. Trials* (note 2 above), 90 f.

what Tiberius had promised eleven years before, as Suetonius informs us, at the commencement of his rule: "siquidem locutus aliter fuerit, dabo operam ut rationem factorum meorum dictorumque reddam; si perseveraverit, in vicem eum odero."⁷¹ This was the same policy that Julius and Augustus had followed before him.⁷² It is to say, if someone attacks him, he will reply and justify himself; if the attacker then persists, he will (not prosecute but) employ a private *renuntiatio amicitiae*. And the evidence is overwhelming for Tiberius (as for Augustus) that slander and libel were not prosecuted. Let it now be emphasized again that we are thus far attending the preliminary hearing, with the trial, at which Tiberius will answer the slanderous attacks, still in the future. The greatly agitated Emperor is with difficulty calmed by his friends and the others present. And with the next phrase, in the twinkling of an eye, we have arrived at the execution of the sentence! In the interval over which Tacitus has drawn the curtain a good deal has taken place: indictment of Votienus has been allowed; speeches by prosecution and defense have been delivered; witnesses have testified and evidence has been taken; perorations have been spoken; the Court has arrived at a verdict of guilty; there have been motions on the sentence to be imposed; and a vote of the House has banished Votienus to the Balearics (as we know from Jerome⁷³). Tacitus says the indictment was "ob contumelias in Caesarem dictas." Abundant other evidence, not a little of it from Tacitus himself, demonstrates that insulting the Emperor was not an indictable offense under Tiberius.⁷⁴ In place of the actual indictment (one guesses that it was treason), and its actual basis, Tacitus has substituted what was no crime (as he could and should have known) but supported his thesis that Tiberius' government was a tyranny.

The identical pattern with a leap in the narrative from preliminary hearing (or, at most, the reception of the indictment) to the rendering of the verdict, recurs in the case of Claudia Pulchra,⁷⁵ A.D. 26. Domitius Afer accuses Claudia of shameless immorality, adultery with one Furnius, a poison plot and magic incantations

⁷¹ Suet. *Tib.* 28.

⁷² Cf. *L'Ère Majesté under the Roman Emperors* (note 23 above).

⁷³ Hieron. *ab. Abr.* 2043.

⁷⁴ Cf. "An Incident of the Opposition to Tiberius," *CJ* 47 (1951/2) 114 f., and *L'Ère Majesté*.

⁷⁵ *Ann.* 4.52.

against the Emperor. About ten lines later we read that Claudia and Furnius were convicted. In between we have seen the ever hot-headed Agrippina, now infuriated by this hazard to her cousin, search out Tiberius and find him engaged in sacrifice to Augustus; have heard her berate him for sacrificing to the Divus while persecuting his descendants; for his divine spirit was not in the mute image; *she* was the true image, blood of his heavenly blood; the attack was really upon her, not upon Claudia, the only reason for whose ruin was that, forgetful of the fate of Sosia, she loved Agrippina not wisely but too well; and have heard Tiberius retort with a Greek quotation: "Was she wronged because she did not rule?" But during the same interval, while we have been in the company of Agrippina and Tiberius, an indictment for adultery and high treason (presumably, rather than intent to murder by poison) has been admitted, there has been a trial, with speeches by prosecution and defense, and witnesses and evidence. And when Tacitus brings us back to the trial, the two defendants are being convicted. He does not even bother to record the sentences.

Tacitus' most emphatic interest in the case of Titius Sabinus,⁷⁶ A.D. 27/28, is that it took place on New Year's Day, and the next, an elaborate tale of an alleged *agent provocateur*. Very briefly the story he tells is this. New Year's Day, 28, was befouled by Sabinus' removal to prison because of friendship for Germanicus and devotion to Agrippina and her children. Four accusers, all ex-praetors and dependents of Sejanus, one of whom acted as *agent provocateur*, built the case against him on the basis of outspoken criticism and insult of Sejanus and Tiberius. All this in detail was reported by letter to Tiberius (on Capri). The Emperor's despatch to the Senate on New Year's Day adverted upon Sabinus, charging that he had tampered with the imperial freedmen and plotted against the Emperor, and called for "vengeance." (Note that Tiberius' charge is indictable, that ascribed by Tacitus to the accusers is not.) "Nec mora, quin decerneretur; et trahebatur damnatus" with his head hooded and his throat strangled, but shouting that this was the inauguration of the New Year, he was the immolation to Sejanus — a rhetorical triumph, and a historical *reductio ad absurdum*. The historian then imagines the rhetorical cogitations of the fleeing bystanders, and records a letter from Tiberius thanking the Senate for punishing an enemy of the State.

⁷⁶ *Ann.* 4.68-70.

Tacitus has maximized the trivial and prejudicial charges, minimized the real, and reduced the whole proceedings between indictment and execution of sentence to the four words, "nec mora quin decerneretur." But we know from his own earlier references⁷⁷ that Sabinus was one of Agrippina's adherents active in her support, and from the Elder Pliny⁷⁸ that his trial was connected with that of her son Nero.

Quintus Servaeus and Minucius Thermus were indicted in A.D. 32, Tacitus says,⁷⁹ "modeste habita Seiani amicitia; unde illis maior miseratio. Contra Tiberius praecipuos ad scelera increpans admonuit C. Cestium patrem dicere senatui quae sibi scripsisset, suscepitque Cestius accusationem." This prompts a highly rhetorical denunciation of delation by senators and the next we hear of the case, the defendants have been convicted and have turned State's witnesses. We never learn what Cestius had written Tiberius, and what he told the Court. It would have been useful to us.

Of Considius Proculus in A.D. 33 we learn his indictment, *maiestas*, the name of the prosecutor, Quintus Pomponius, and that he was convicted and executed (and his sister Sancia exiled) as soon as he was brought to trial.⁸⁰ Of the basis of the charge, of the trial process, not a word. Tacitus is more interested in the fact that Considius was arrested in the midst of his birthday party!

Similarly, concerning the Pompei Macri, father and son, and the latter's sister Macrina, we have the most exiguous information.⁸¹ Two suicides and exile, respectively, we are told, followed charges that their ancestor, Theophanes of Mytilene, had been an intimate of Pompey, and that the Greeks had deified him. Patently these allegations are not indictable, but that is the extent of Tacitus' report. Such facts might intelligibly find place in the prosecution's narration of the defendants' background, no more.

When Mamercus Aemilius Scaurus was a second time indicted in A.D. 34, the cause of his ruin, according to Tacitus,⁸² was Macro's hatred, who had denounced a tragedy by Scaurus as containing veiled, allusive attack on Tiberius. But the charges on which

⁷⁷ *Ann.* 4.18 f.

⁷⁸ Pliny *NH* 8.145.

⁷⁹ *Ann.* 6.7.

⁸⁰ *Ann.* 6.18.

⁸¹ *Ibid.*

⁸² *Ann.* 6.29.

indictment was based were adultery with Livilla and "magorum sacra." Other sources,⁸³ while not more satisfying, enable us to determine that the indictment was *maiestas*, as "magorum sacra" might hint. But Tacitus again has represented the actual charges as merely ostensible, and as the real cause what was not even indictable.

The cases of Granius Marcius and Tarius Gratianus exemplify the irreducible minimum of report: indictment for *maiestas*, and suicide and execution, respectively.⁸⁴ Such a record serves no useful purpose except Tacitus' thesis that there was a tyrannous succession of prosecutions.

Similar were the suicide of Trebellenus Rufus and the execution of Sextius Paconianus, but of the latter Tacitus adds that the cause was poetic attacks upon Tiberius written in prison.⁸⁵ We have denied that libel was an indictable offense. Interestingly enough, the present passage follows by only some half dozen lines Tacitus' own record of Tiberius' insistence on the free publication of the denunciation of himself in Fulcinus Trio's will!⁸⁶

With the case of Vibullius (or Vibulenus) Agrippa in A.D. 36 Tacitus has surpassed himself;⁸⁷ for here are mentioned only the prosecutor's peroration and the defendant's execution when death by suicide had already occurred. But before the defense was made there could be no verdict and hence certainly no execution.⁸⁸

The case of the brothers Petra in A.D. 47 is another in which Tacitus⁸⁹ alleges a different real cause from the ostensible charge indicted. The Petrae, the historian explains, had permitted their home to be used for the adulterous intrigue of Poppaea and Mnester. Now, this was an offense indictable under the *Lex Iulia de adulteriis*,⁹⁰ but, Tacitus continues, the charge which was actually brought against one brother and was disastrous to both, was a dream and

⁸³ *Dio* 58.24.3-5; *Suet. Tib.* 61.3; *Sen. Suas.* 2.22; *Contr.* 10.pr.3.

⁸⁴ *Ann.* 6.38.

⁸⁵ *Ann.* 6.39.

⁸⁶ *Ann.* 6.38.

⁸⁷ *Ann.* 6.40.

⁸⁸ Not to weary the reader with repetitious comment, it may be noted here that other cases which show variations of the general pattern are the following: Antistius Vetus (A.D. 21) *Ann.* 3.38; Lucius Piso (24) 4.21; Lucianus Latiaris (32) 6.4; Julius Africanus (32) 6.7; Seius Quadratus (32) 6.7; Geminus, Celsus, and Pompeius (32) 6.14; Tigranes IV (36) 6.40; Acutia (36) 6.47; Albucilla (37) 6.47 f.

⁸⁹ *Ann.* 11.4.

⁹⁰ *Dig.* 48.5.9(8).pr.; 48.5.10(9).1; 48.2.2.3.

his interpretation of it. Two versions are reported by Tacitus: 1) Petra had seen Claudius wearing a crown of ears of grain but with the ears reversed, and interpreted this as forecasting a grain shortage; 2) the crown was of vine leaves which were white and portended that Claudius would die when autumn came. Tacitus does not name the indictment, but it is possible to make plausible conjecture. Obviously a person could not be indicted for having a dream, but if Petra publicly interpreted his dream, that might well be quite a different matter. If he predicted a famine, that was certainly calculated to produce, if it did not actually bring on, rioting by the city populace. If he predicted the Emperor's demise at an early date, that might provoke revolutionary plotting. Either could perfectly reasonably be construed as treason. Any association of the two brothers, as perhaps in spreading the forecasts, would render both liable. Tacitus seems to mean by "*ipsi fratrique perniciem adlatam*" that death sentence was imposed. Whether or not this interpretation is acceptable, Tacitus' reduction of the narrative to the charge and the sentence is responsible for the obscuration of the case.

There is fuller narrative of the case of Decimus Junius Silanus Torquatus in A.D. 64.⁹¹ Here Tacitus does not name the indictment, but it was evidently treason. For he gives as the cause of Silanus' end the distinction of the Junian family and that he was great-great-grandson of Augustus. The accusers charged that he was so profligate as to have no hope except in revolution and had organized his freedmen on the model of the imperial bureaucracy. There is perhaps a hint of taking testimony in the mention of the seizure of some of the freedmen. When conviction appeared imminent, Silanus committed suicide. Nero afterward asserted that he would have spared the defendant's life. In this trial one may perhaps doubt that Silanus' profligacy and the organization of his freedmen was *all* that was put forward by the prosecution; Tacitus may have made some selection. And report of testimony and evidence has been reduced to no more than a suggestion.

More interesting again is the account under A.D. 65 of Gaius Cassius Longinus and his wife's nephew, Lucius Silanus, nephew also of the Silanus Torquatus of the preceding case. They were accused, Tacitus says,⁹² "*nullo crimine*" except that they were

⁹¹ *Ann.* 15.35.

⁹² *Ann.* 16.7-9.

outstanding, Cassius for long-established wealth and austerity of character, and Silanus by his distinguished ancestry and the restrained manner of his youthful life. So Nero sent a despatch to the Senate, asserting that both must be removed from the State, and charging that Cassius had among his ancestral portraits that of the liberator Cassius inscribed "*duci partium*," in an effort to sow the seeds of civil war and disloyalty to the Caesars; that not content with thus using the memory of the hated name, he had taken under his tutelage the noble, young, and hot-headed Silanus, to be put forward as the leader of the revolution. (This is in obvious and diametrical contradiction of the earlier "*nullo crimine*.") Then the same charges were laid against Silanus as against his uncle the year before, the freedmen organized into bureaucratic departments, charges futile and false, says Tacitus, because Silanus was frighteningly warned by his uncle's fate. (Or did he expect to succeed where his uncle had failed?) Then, the narrative continues, there were introduced into the House informants, so-called, suborned to charge Cassius' wife, Lepida, and Silanus with incest and witchcraft. Two senators and a knight were involved as accessories (to the incest and witchcraft, or the treason? Probably the former, in view of what follows). They evaded conviction by appealing to the Emperor, and then escaped because he had much more important concerns. The Senatorial Court decreed exile for Cassius and Silanus, leaving Lepida's disposition to Nero. (We do not know what that decision was.) Cassius was deported to Sardinia, and Silanus, supposedly on the way to Naxos, was imprisoned at Barium. There he endured his unworthy fate "*sapienter*" until his executioner arrived; he declined suicide, resisted forcefully and died at length with all his wounds in front (which comports oddly with his "*philosophical*" endurance of his imprisonment).

The account of this treason trial, then, contains no separate statement of the indictment, contradictory statements of the charges on which it was based, no word concerning the testimony and evidence, and, implying the verdict, a record of the sentence. The first statement of the charges, the defendants' eminent character and standing, resembles the initial characterization of Thrasea and Soranus as "*virtue personified*." One is surprised that Tacitus does not remind his reader that Cassius had said seven years before that there must be some limit on festival days in

honor of Nero's victories, or there would be no working days;⁹³ for we have seen the same sort of things recalled out of past years as the alleged basis of the indictment of Thræsea.⁹⁴ The second version of the charges against Cassius commences with reference to the cult of the liberators. This cult has had, at the date of the present case, a history of over a century; at numerous points in that period it can be demonstrated that anyone was at perfect liberty to idolize Brutus and Cassius and Cato. And as for the time of Nero, for example, nothing happened to the author of the *Pharsalia* until he joined the Pisonian conspiracy.⁹⁵ But could any prosecutor, possibly, imaginably, deliver an oration denouncing Gaius Cassius for treasonous conspiracy *without* saying that he was his great-grandfather (?) all over again? By reporting this Tacitus has made the whole accusation seem trivial nonsense, and can then go on, conscientious historian, to record the substance in the charge.

The year is A.D. 65. Opposition to Nero is rife. The large conspiracy centered about Piso has just been put down.⁹⁶ There will be another the next year, though it is very obscure to us, led by Vinicianus.⁹⁷ It is not improbable that, like the philosopher Thræsea, the able, distinguished jurist, who a generation ago had himself been as close to the throne as brother-in-law to the Emperor's sister,⁹⁸ should instigate and encourage a rival to an unworthy Emperor; and Lucius Silanus is no unlikely selection, with Augustus' blood in his veins; and Silanus may be very willing to avenge a father, removed by Agrippina as possible rival to her son,⁹⁹ and an uncle, suicide the preceding year under indictment for treason.¹⁰⁰

In the immediately following case of Lucius Antistius Vetus, his mother-in-law, Sextia, and his daughter, Pollitta, Tacitus has very evidently only two interests, the one the shocking horror that Vetus and his freedman client are of equal standing before the law,

⁹³ *Ann.* 13.41.5.

⁹⁴ Cf. p. 289 above.

⁹⁵ Note 74 above. If the *Pharsalia* had not been published *in toto*, parts were surely known through *recitatio*.

⁹⁶ *Ann.* 15.48-74.

⁹⁷ Suet. *Nero* 36.

⁹⁸ Cf. *Ann.* 6.15; Suet. *Cal.* 24.1.

⁹⁹ *Ann.* 13.1.

¹⁰⁰ Cf. p. 303 above.

the other the highly estimable Stoic manner of the defendants' death. It is, then, not surprising that his narrative contains virtually nothing on the trial. He tells the story thus.¹⁰¹ The three met death, hated by Nero because by merely living they reproached him for the death of Rubellius Plautus, Vetus' son-in-law. The Emperor found opportunity to reveal his savagery when Vetus' freedman, Fortunatus, passed from embezzling his patron's property to bringing accusation against him; associated with him was Claudius Demianus, whom Vetus as proconsul of Asia had sent home in bonds and Nero had released in reward for this prosecution. When the defendant learned that he was matched against his own freedman, he departed to his estate at Formiae; there a military guard was thrown round him. His daughter was there, saddened by the threatened danger and still in mourning for her husband, Rubellius Plautus, treasuring his clothes spattered with blood of his execution, and eating no more than to sustain life. At her father's urging she went to Naples (Nero evidently being in residence there). Denied audience, she assailed the Emperor at his every appearance with shouted demands that he give a hearing to her innocent father and not deliver up his one-time consular colleague to a freedman. Nero remained unmoved. She reported to her father that he should abandon hope and do what he must. News arrived that senatorial trial was preparing, and an unhappy verdict. Friends advised him to make the Emperor heir to most of his estate and thus assure the residue to his grandchildren. But he scorned to befoul a life lived "*proxime libertatem*" by servility now and gave everything to his slaves. There follows description of the suicide of all three. Then — they were accused after burial and the sentence was death "*more maiorum*." Nero vetoed that, and granted them death "*sine arbitro*." These mockeries were added after their deaths were already accomplished, concludes Tacitus.

All this tells us of the trial only that there *was* a trial, that there was suicide, that there was a sentence, which Nero somewhat modified by *intercessio*. What the indictment was, on what charges it was based, what was the evidence for the charges — of all this not one word. That the indictment was *maiestas* is shown by the fact that suicide did not halt the trial proceedings. But, worse, one cannot be really sure that all three were defendant!

¹⁰¹ *Ann.* 16.10 f.

It will be recalled that Tacitus says first that the three died because Nero hated them for their relation to Plautus. This of course proves nothing about the indictment. Then, having reported that the accuser was Vetus' freedman, he says, "quod ubi cognitum reo" — singular. At this point there is one defendant, Vetus, or let us rather say one accused person, for the indictment has not yet been received, it appears. Next, when Vetus, in his home at Formiae, is surrounded by a military guard, his daughter is yet free to go to Naples in an effort to get audience with Nero and, unsuccessful, to come again to Formiae with her gloomy news and advice. Was she then defendant? One does not know for certain, but is surely entitled to doubt. Her mourning for the executed Plautus could be indicted;¹⁰² but was it? Then, news that trial preparations were under way. Trial of Vetus? Trial of Vetus and Pollitta? Trial of all three? Again one cannot tell. Now all three commit suicide together. But this also is no sure indication that all were under indictment. For how often did close and devoted women relatives take their own lives in company with their men! Most familiar, only, are the Arriae, mother and daughter, Fannia and Seneca's wife, Paulina. Finally there is clear plural at the end: "accusati post sepulturam decretumque ut more maiorum punirentur." But is it trustworthy? Or has Tacitus by negligence — or intent — transferred the plural from suicide to indictment?

Those commentators who explain, nay justify, Vetus' indignation at having his own freedman as an accuser, by referring to Tacitus' account of the debate in A.D. 56 on restricting freedmen, and to the *Digest*¹⁰³ as forbidding freedmen to bring criminal charges against their patrons, should have read farther in the *Digest*. They might have learned there that *anybody* could bring a charge of treason — soldiers, women, freedmen, slaves, *famosi*,¹⁰⁴ all the persons who could bring no other criminal accusation. It should not even require the witness of the *Digest* to know that. It is the logic of necessity that one place *no* restriction on the revelation of treason. Is it possible that *Tacitus* did not know this? It would not be the only thing that he could and should have known, but did not.¹⁰⁵

¹⁰² Cf. *Crim. Trials* (note 2 above), 140; F. Vittinghoff, *Der Staatsfeind in der römischen Kaiserzeit*, Berlin, 1936, 46, 50.

¹⁰³ *Ann.* 13.26 f.; *Dig.* 48.2.8.

¹⁰⁴ *Dig.* 48.4.7.pr.-2.

¹⁰⁵ Cf. "Ignorance" (note 2 above).

The passage regarding Vetus' friends' advice about his will is at least in some degree suspect. For it is one of several somewhat similar expressions of Tacitus' ideas about wills, confiscations, suicides and Roman Emperors, which are susceptible of disproof in some contexts though not actually in this one.¹⁰⁶ We can only wonder whether the grandsons, whose inheritance, if Tacitus' account is true, was limited to the three couches retained for the suicides, considered Vetus so noble and admirable as Tacitus thought him!

Another prosecution by a freedman of his patron, recorded in the next chapter of the *Annals* is passed over by Tacitus without comment on that circumstance;¹⁰⁷ the narrative comprises two sentences only. Publius Gallus, because he had been the intimate of Faenius Rufus (convicted in the Pisonian conspiracy) and no stranger to Vetus (of the preceding case) was interdicted fire and water. His freedman accuser received the reward of seat in the theatre among the tribunician couriers. This brief record includes: no statement of the indictment, which was evidently treason; Tacitus' opinion of its basis, and we have seen the historian sometimes clearly oppose his opinion to what the prosecutor represented, though there is in the present case no implausibility involved in Tacitus' statement; of testimony and evidence, as so frequently, not a word; the sentence, implying verdict of guilty; and the prosecutor's reward. The trial of Gallus seems to be a somewhat belated aftermath of the Pisonian conspiracy, the defendant being associated with one of the rather prominent figures in that plot. Is it also indicated that Vetus was indicted for complicity in the same conspiracy rather than because of his connection with Rubellius Plautus, whose execution was now three years past?

The next year occurred the trial of Publius Anteius and Ostorius Scapula, to which Tacitus devotes more than a page without telling us anything about it. The story he narrates is this.¹⁰⁸ Antistius Sosianus in exile, aware that there were large profits in prosecution and that Nero was prone to executions, made the promising acquaintance of Pammenes, an astrologer with very good connections, but

¹⁰⁶ *Op. cit.*; "The Roman Emperors as Heirs and Legatees," *TAPA* 78 (1947) 140-158, esp. 140 note 3, and 150.

¹⁰⁷ *Ann.* 16.12. It is usual to regard the "liberto et accusatori," *Ann.* 16.12.2, of this case, as identical with "Fortunatus libertus," 16.10.2, of the preceding case; so, e.g., Stein, *PIR*² F, 480. No cogent reason for the identification appears.

¹⁰⁸ *Ann.* 16.14 f.

sharing Sosianus' exile. Now Pammenes was in regular communication with Anteius and receiving remittances from him. But Sosianus knew that Anteius, as former adherent of Agrippina, was hateful to Nero, and that his wealth was such as to excite the Emperor's cupidity. So he intercepted Anteius' letters and stole Pammenes' notebooks, containing Anteius' horoscope and all the astrologer's forecasts of things to come, finding therein, by happy coincidence, complete horoscopic material on Ostorius Scapula as well. Thereupon he wrote to Nero that he possessed vital information pertaining to the Emperor's safety, which he would present if given brief respite from exile. Warships were despatched to bring Sosianus at once to Rome. As soon as his information became public ("vulgato eius indicio" does *not* sound like the courtroom, but rather the street-corner tavern) Anteius and Ostorius were realized to be not defendants but condemned men. Nobody would witness Anteius' will, except by authority of Tigellinus, who had already advised Anteius to lose no time in executing a testament. Anteius swallowed poison, but it was too slow-acting and he severed his veins. Ostorius was on the border of Liguria, whither his executioner was sent; there was not a moment to lose for Ostorius had a great military reputation out of Britain, and Nero was panic-stricken in consequence of the Pisonian conspiracy the year before. For Ostorius, severed veins were too slow, and he sought a slave's assistance in cutting his throat.

Half of this is the preparation of the case, and the elaboration is reminiscent of the cases of Libo and Titius Sabinus.¹⁰⁹ The other half is given to the suicides. No indictment, no charges particularized and specific, no witnesses, no testimony, no verdict, no sentence except inferentially with regard to Ostorius — that is, no indication of trial process whatsoever. Tacitus would have us believe, no doubt, that there was no trial, for the whole thesis of the *Annals* is tyranny. But Tacitus himself has told us, of the year before, that Nero after trial *in camera* of the Pisonian conspirators had made public the record of the whole proceedings.¹¹⁰ Is it credible that Anteius and Ostorius were not tried? Tacitus' last mention of Anteius is in A.D. 55; by the influence of Agrippina he had been designated governor of Syria, but was never allowed to

¹⁰⁹ Cf. pp. 283 f., 300 above.

¹¹⁰ *Ann.* 15.73.1.

leave Rome for his province.¹¹¹ If we can believe that Nero still hated him for his connection with Agrippina eleven years later and seven years after her death, then surely we can equally well believe Anteius might still plot Nero's assassination after eleven years, or otherwise engage in treason.

This narrative pattern, whose slightly variant forms have here been subject of discussion, we have called "Tacitean," for the *Annals* afford probably the best material for its study; and it is not the present purpose to extend the inquiry beyond the *Annals*. But it may be briefly indicated that the rhetorical devices which constitute the pattern are not confined to Tacitus alone, but appear, for example, in Suetonius, and that their effects must be reckoned with. Consider again for a moment the case of Mamerus Scaurus in A.D. 34.¹¹² We know from Tacitus and Dio that Scaurus' tragedy on Agamemnon was not an item in the *indictment*. But suppose we knew the case only by Suetonius. The biographer, without even naming Scaurus, writes: "Omne crimen pro capitali receptum, etiam paucorum simpliciumque verborum. Obiectum est poetae, quod in tragoedia Agamemnonem probis lacessisset."¹¹³ What then shall we say of the cases of Isidorus the Cynic and the actor Datus under Nero, which *are* known to us only from Suetonius?¹¹⁴ He says that Nero banished them from Rome and Italy, Isidorus because he said that Nero sang well the woes of Nauplius but used ill his own goods,¹¹⁵ Datus because he so pantomimed a song as to make allusion to the deaths of Claudius and Agrippina. Or take the case of the younger Helvidius Priscus under Domitian; we have information of sorts from Pliny, Tacitus and Suetonius.¹¹⁶ But the only statement of the basis of the indictment is Suetonius' "quasi scaenico exodio sub persona Paridis et Oenones divortium suum cum uxore taxasset." What shall we say of that case?

In upwards of a score of trials for treason, involving rather more than that number of defendants, we have seen Tacitus obscure the character of the cases by minimizing this, maximizing that, omitting

¹¹¹ *Ann.* 13.22.2.

¹¹² Cf. p. 301 above.

¹¹³ *Suet. Tib.* 61.3.

¹¹⁴ *Suet. Nero* 39.3.

¹¹⁵ Cf. "Isidorus the Cynic and Nero," *CW* 39 (1945/6) 53 f.

¹¹⁶ *Pliny, Ep.* 9.13; 3.11.3; 7.30.4; *Tac. Agr.* 45; *Suet. Dom.* 10.

the other, substituting the refutable for the undeniable, asserting the real to be only ostensible and putting forward as actual and real the result of his own prejudiced thinking. These rhetorical devices and expedients, learned in the orator's profession where Tacitus had made himself an acknowledged master, enabled him, as historian, to sustain the thesis that the whole history which he narrated in the *Annals* was the record of one long tyranny exercised by a succession of tyrants.¹¹⁷ And not Tacitus alone wrote history in this manner carried over from the experience and practice of the law-court. The student of the early Empire's history must take into account the effects of such historiography.

¹¹⁷ Cf. now the important work of B. Walker, cited above note 1; but also, T. S. Jerome, "The Tacitean Tiberius," *CP* 7 (1912) 265-292, and *Aspects of the Study of Roman History*, London, 1923, chaps. 15-17 (Jerome's critics found it easy to refute some details, but a large part remains unassailable); I. S. Ryberg, "Tacitus' Art of Innuendo," *TAPA* 73 (1942) 383-404; D. M. Pippidi, "Tacite et Tibère," in *Autour de Tibère*, Bucharest, 1944, 11-87.