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THE SENATE, THE COURTS, AND THE *SC de Cn. Pisone patre**

The origins and nature of the judicial role of the senate in cases which under the republic were the business of the permanent *quaestiones* have been the subject of long debate, and a satisfactory explanation has yet to be found for the change that had undoubtedly taken place by the reign of Tiberius.[1] The discovery and publication of the senatorial decree which concluded the investigation into the charge brought in A.D. 20 against Cn. Piso following the murder of Germanicus,[2] in addition to the wealth of new material it provides for the political history of the period and the understanding of the methods of the historian Tacitus, allows an insight into the relation of the senate to the *quaestio maiestatis* which may prove useful in unravelling some of the puzzles which have troubled scholars hitherto.

I

Towards the end of his account of the year A.D. 15, Tacitus records that the emperor Tiberius, despite his attempts to show himself as acting in a reasonable and unautocratic manner, failed to convince his contemporaries, because he had reintroduced the *lex maiestatis*.[3] The particular incident to which the historian draws attention is not a trial, but the approach to the emperor by the praetor, Pompeius Macer, asking whether the *maiestas* courts should be brought back. Tiberius is said to have responded that the *leges* must be implemented, spurred on by his irritation at scurrilous poems directed against himself and Livia.[4] In the next two chapters, Tacitus gives instances of two cases to which the law was applied, those of the equestrians Falanius and Rubrius, accused of demeaning the divine Augustus, and of Granius Marcellus, praetor of Bithynia, accused by his own quaestor, Caepio Crispinus, of telling immoral stories about Tiberius and by Romanus Hispo of setting up his own statue above those of the Caesars and replacing the head of a statue of Augustus with that of Tiberius. The first case is mentioned because, according to Tacitus, it marked the beginning of the disastrous practice which later was to engulf and ruin the whole of the state; and the second because it showed for the first time the way in which men like Hispo could create themselves a career by bringing such charges.[5] Tiberius' answer to Pompeius Macer is thus shown to introduce the grisly series of *maiestas* hearings which disfigure and characterize

* I would like to thank several friends and colleagues with whom I have discussed this question, and in particular Duncan Cloud, Michael Crawford, Werner Eck, Jean-Louis Ferrary, and Olivia Robinson. It should not be assumed that all agree with what follows.

[1] See the useful summary of views in R. J. A. Talbert, *The Senate of Imperial Rome* (1984), pp. 460–4. For a careful and still valuable examination of the whole question of senatorial 'judicial' procedure, see F. de Marini Avonzo, *La funzione giurisdizionale del senato romano* (Milan 1957).

[2] W. Eck, A. Caballos, and F. Fernández, *Das senatus consultum de Cn. Pisone patre* (*Vestigia* 48, 1996).

[3] Tacitus, *Ann.* 1.72.3: *legem maiestatis reduxerat*. A similar phrase occurs in Pliny, *Pan.* 11.1, who states that *dicavit caelo Tiberius Augustum, sed ut maiestatis legem induceret*, which suggests, wrongly, that Tiberius first introduced the statute.

[4] Tacitus, *Ann.* 1.72.4: *mox Tiberius, consultante Pompeio Macro praetore an iudicia maiestatis redderentur, exercendas leges esse respondit*. Suetonius, *Tib.* 59, provides instances of such verses.

[5] Tacitus, *Ann.* 1.73.1, 74.2.

Tacitus' account of the emperor's reign in the first six books of the *Annals*.

Whatever judgement one might wish to make about Tacitus' picture of Tiberius, this account of the beginnings of the *maiestas* trials seems clear enough; but it contains within it an unexplained anomaly, which relates also to the whole question of the emergence of the senate in the first century A.D. as the place within which cases of *maiestas* and other serious charges were heard and decided. The immediate problem is easily put: why was it the praetor, Pompeius Macer, who consulted Tiberius on this question? The obvious answer is that it was a praetor, who, under the *leges de maiestate* from the *lex Appuleia* of the late second century B.C. down to the *lex Iulia* of Julius Caesar,[6] presided over the *quaestio de maiestate* which tried such cases. In the context of the beginning of the reign of Tiberius, it would not be surprising for a praetor charged with this responsibility to consult the emperor about the handling of cases which were likely to concern him so closely. The difficulty with this obvious answer is that it appears oddly at variance with the context, both historical and literary, in which Pompeius Macer's question is posed. Historically, the trials *de maiestate* in the following years of Tiberius' reign and those of his successors did not take place, so far as our sources allow us to see, in the *quaestio de maiestate*, but before the senate, presided over by the consuls; and it has been held that there is no mention of this quaestio after this exchange in A.D. 15.[7] Of the two cases which follow in Tacitus' account, those of Falanius and Rubrius and of Granius Marcellus, the latter certainly was in the senate, while the former appears to have been about to take place there before Tiberius intervened to stop it.

This might suggest that the link between Pompeius Macer's question and the outbreak of trials which ensued was, in the strict sense of the word, accidental, and that the praetor merely provided the opportunity for the emperor to express the view that he expected such cases to be tried, irrespective of the court before which they came.[8] The difficulty with this solution is that it makes nonsense of Tacitus' carefully constructed presentation of the origins of the 'reign of terror' through the implementation of the *leges maiestatis*, which he clearly traces to the exchange between Macer and Tiberius. It may be, of course, that Tacitus was ignorant of the legal niceties (which would be surprising for one who practised at the Roman bar[9]) or merely careless, but neither explanation is satisfactory.

There is a further point to be observed before leaving this brief account, and one which relates to the larger question of the origins of the senatorial courts. Tiberius' response, according to Tacitus, was that 'the *leges* must be implemented' (*exercendas esse leges*). Such an answer makes perfectly good sense when made to the presiding

[6] See the brief history of the *leges de maiestate* in J. D. Cloud, 'The Constitution and the Criminal Law', *CAH* ix^2 (1994), 491–530, at pp. 518–520.; O. F. Robinson, *The Criminal Law of Ancient Rome* (1995), pp. 74–78. On the identity of the *lex Iulia*, see J. E. Allison and J. D. Cloud, 'The Lex Julia maiestatis', *Latomus* 21 (1962), 711–31 and J. D. Cloud, 'The Text of D 48.4, *ad legem Iuliam maiestatis*', *ZSS* 80 (1963), 206–32.

[7] Talbert, *The Senate of Imperial Rome*, p. 466. Talbert acknowledges (*loc. cit.*) the possibility that the trial of Antistius Vetus from Macedonia in 21 (Tacitus, *Ann.* 3.38.2–3) took place before a *quaestio*, but properly observes that this is conceivable and no more than that. There is no indication in Tacitus' account as to where this hearing was held.

[8] Thus Henry Furneaux, in his edition of the *Annals I–VI* (1884), p. 246, concluded that 'from this answer to the praetor it is to be gathered that, besides the numerous trials for 'maiestas' held before the senate, which alone are reported by Tacitus, other persons, apparently of lower rank, must have been tried under this law before the courts.' So too Eck *et al.*, *Das senatus consultum*, pp. 231, n. 737

[9] Thus Pliny, *ep.* 2.11.2, where both men were involved in the prosecution of Marius Priscus in 100.

officer of the *quaestio*, since the *quaestiones* had been set up by *leges*. It is less clear what relevance this might have to the senate, especially since, according to many scholars, one of the advantages of the transfer of hearings to that body was that the senate was not bound by the laws in the same way that the *quaestiones* were.[10] Yet despite this distinction, the legal basis on which the senatorial process operated is regularly referred to as the *lex maiestatis*. Thus it was this *lex* that Tiberius is said to have brought back in the passage already mentioned, a passage closely paralleled in Pliny's panegyric on Trajan.[11] Later there is explicit reference by Tacitus to the *lex maiestatis* as the basis of the prosecutions under Tiberius,[12] and the legal sources similarly discuss the charge under the heading of the *lex Iulia maiestatis*.[13] In this case, as indeed with all other instances of senatorial jurisdiction, the assumption of all our sources is that the source of law for trials before the senate was the *lex* which had provided for the setting up of the *quaestio* under the republic. As the legal sources show, the extension of the application of such laws as that of *maiestas* was achieved by interpretation of the old statute, not by the creation of new ones.[14]

This is both undoubted and surprising. The *leges maiestatis*, assuming that they were at all like the other statutes on law-courts that we know from the republic, will have included precise requirements about the setting up and running of the *quaestio* which would try the offence.[15] The nature of the court was just as much a part of the statute as the description of the behaviour which it was designed to punish, and indeed was specified in far greater detail. If, as appears to have happened, the same law was being operated by a quite different court within a year or two of A.D. 15, it would be expected that this radical shift would have required a piece of legislation of its own to accomplish it.[16] There is, however, no trace whatsoever of any such legislation. Current views of hearings before the senate in the early principate provide no explanation of this profound but silent change.[17]

II

Underlying this difficulty about the application of statutes, designed to create *quaestio* procedures, to processes which took place within the senate, is the larger question of the senate as court. Under the republic, the senate had no such role. It might be involved in setting up judicial processes, as it did in 171 B.C., when appealed to by representatives of the two Spanish *provinciae*, providing for boards of five

[10] Thus Talbert, *The Senate of Imperial Rome*, pp. 470–2, 487; O. F. Robinson, 'The Role of the Senate in Roman Criminal Law during the Principate', *Journal of Legal History* 17 (1996), 130–43, at p. 130.

[11] Tacitus, *Ann.* 1.73.2: *nam legem maiestatem reduxerat*; cf. Pliny, *Pan.* 11.1 (see above n. 1).

[12] Tacitus, *Ann.* 2.50.1, 4.34.3

[13] *Pauli sent.* 5.29; *D.* 48.4; *Cod. Theod.* 9.5; *Cod. Just.* 9.8; *Inst.* 4.18.3.

[14] So A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (1972), pp. 106–7.

[15] The clearest example is the *lex repetundarum* from the *tabula Bembina* (*Roman Statutes*, Law 1), but fragments of many similar statutes have survived (thus *Roman Statutes*, Laws 3, 4, 5, 6, 7, 8, 12, 16, and perhaps 20 and 21).

[16] This was indeed argued by H. Siber, *Römisches Verfassungsrecht in geschichtlicher Entwickling* (1952), p. 290, and A. H. M. Jones, 'Imperial and Senatorial Jurisdiction in the Early Principate', *Historia* 3 (1955), 464–88, at pp. 487–8 (= *Studies in Roman Government and Law* [1960], pp. 67–98, at 97–8).

[17] Hence the frustration of modern scholars in attempting to explain the change, for example Talbert, *The Senate of Imperial Rome*, pp. 462–4; Robinson, *The Criminal Law of Ancient Rome*, pp. 7–9.

recuperatores to hear the claims for restoration of extorted monies and appointing patrons for the provincials.[18] Under Augustus, an essentially similar process is provided by the *SC Calvisianum*, given in the fifth of the so-called Cyrene Edicts, dated to 4 B.C.[19] The senate could also be involved, either directly or by instructing a magistrate to act, in the settlement of disputes between cities in the Greek world, and several instances from the second century B.C. are attested in the epigraphic record.[20] In none of these cases, however, did the senate act as a court, administering Roman law. The only occasions on which it appears to have come to decisions itself, *qua* senate, were those involving non-Roman communities which appealed to it, and this can best be understood as a part of its role as the body controlling foreign policy.[21]

Given this background, the emergence of the senate as the normal context for the hearing of cases of *maiestas* and also of *res repetundae* is remarkable, and has been the subject of careful scrutiny by scholars, who have come to very different conclusions. Thus for Jochen Bleicken,[22] the origin of senatorial trials is to be found in the practice of the senate under the republic, when faced with an emergency, to pass a decree (the *senatus consultum ultimum*), calling upon the consul to ensure that the state took no harm, a measure that was not infrequently followed by the declaration of an individual or individuals as public enemies (*hostes*), which allowed for their summary execution. This, according to Bleicken, provided the basis for the power which the senate exercised under the principate, when by means of a senatorial decree it condemned an accused person. Certainly the mechanism, as Tacitus describes it, is that of a *senatus consultum*, and on at least one occasion he employs the language of the *senatus consultum ultimum* when putting into the mouth of the emperor the obligation (as Tiberius saw it) for the consul to undertake a prosecution before the senate.[23] Further, in one case in which the senate was involved, that of Salvidienus Rufus during the triumviral period in 40 B.C., it does appear that something very like this took place. Cassius Dio states that Salvidienus, who had been one of Octavian's closest associates, was accused by Caesar himself in the senate, and killed as being an enemy both of himself and of the people, and that the care of the city was entrusted to the triumvirs, with the traditional charge that the city should take no harm.[24]

There are, however, several difficulties in Bleicken's interpretation of the origin of senatorial courts. As Wolfgang Kunkel noted, in an acute and thorough investigation of the topic,[25] under the republic the *senatus consultum ultimum* and the pronouncing of an individual as a *hostis rei publicae* was tantamount to a declaration of civil war,

[18] Livy 43. 2.1–11.

[19] R. K. Sherk, *RDGE* no. 31; J. Oliver, *Greek Constitutions of Early Roman Emperors from Inscriptions and Papyri* (1989), no. 12.

[20] Magnesia v. Priene (*Syll.*[3] 679); Narthacium v. Melitaea (*Syll.*[3] 674); Lacedaemonia v. Messene (*Syll.*[3] 683); Priene v. Samos (*Syll.*[3] 688); Hierapytna v. Itanos (*Inscr. Cret.* III.4.9 and 10), See A. J. Marshall, 'The Survival and Development of International Jurisdiction in the Greek World', *ANRW* 2.13 (1980), 626–61.

[21] This is also the role of the senate in the appeal of the city of Oropus in 73 B.C. against the actions of *publicani* in taxes on lands belonging to the god Amphiaraus, contrary to the exemption given by Sulla (Sherk, *RDGE* no. 23).

[22] J. Bleicken, *Senatsgericht und Kaisergericht—eine Studie zur Entwicklung des Prozeßrechtes im frühen Prinzipat* (*Abh. Akad. Göttingen, phil.-hist. Kl.*, 3 Folge, nr. 53, 1962)

[23] Tacitus, *Ann.* 4.19.2: *nec infringendum consulis ius, cuius vigiliis niteretur ne quod res publica detrimentum caperet*. Tacitus notes this as an instance of Tiberius' use of antiquated terminology to conceal new villainies (*scelera nuper reperta priscis verbis obtegere*).

[24] Cassius Dio 48.33.3.

[25] W. Kunkel, *Über die Entstehung des Senatsgericht* (*Sitzb. Bayer. Akad. Wiss., phil.-hist. Kl.*, Heft 2, 1969) [= *Kleine Schriften* (1974), pp. 279–323].

and this was not only an unlikely basis for the role of the senate under the restored republic of Augustus and his successors, but had nothing to do with the law as such at all. An examination of the best-known such case, that of the debate over the fate of the conspirators in the Catilinarian conspiracy of 63 B.C., shows that Cicero's argument against the claim by Caesar, that Roman citizens should not be dealt with in this fashion, was precisely that the conspirators were not citizens because they had been declared *hostes* and therefore outside the law.[26] Whether Cicero is right or not, the point is that neither he nor Caesar believes that what is happening in the senate is the trial of citizens. The death of Salvidienus Rufus in 40 B.C. was no doubt a similar case of an individual being declared a *hostis* and not a trial under the *lex maiestatis*, and to be expected in the troubled circumstances of the triumvirate. When in 26 B.C. the senate debated the case of C. Cornelius Gallus, the *praefectus* of Egypt, accused of disloyalty to Augustus, the senate did not condemn Gallus, so Cassius Dio states, but voted that the courts should condemn him and deprive him of his estate, which should be given to Augustus. Gallus committed suicide before the senate's decrees could be implemented.[27] Kunkel's conclusion, after a careful examination of cases under the first two emperors, is that the jurisdiction of the senate was not based in republican precedents but a development of the early principate and particularly of Tiberius.[28]

Of the two, there can be little doubt that Kunkel's view has more to recommend it than that of Bleicken, but Kunkel also leaves unanswered the question as to how this came about, and how the apparent continuity between the senatorial procedures and that of the *quaestiones*, seen in the repeated references to the *lex maiestatis* in the sources, is to be explained. For a possible answer to this, we must now turn to the new evidence from the *SC de Cn. Pisone patre*.

III

The *SC de Cn. Pisone patre* begins, as is normal for *senatus consulta*, with the formal notification of the date of the meeting of the senate and the names of the witnesses to the inscribing of the decree, followed by an account of the business brought before it (the *relatio*).[29] On the occasion recorded in this inscription, the meeting which took place on . . . *IIII eid. Dec.* of the year A.D. 20, the *relator* was the emperor, Tiberius Caesar Augustus. He asks the senate to express its opinion on the matter of the suicide of C. Piso pater; on the matter of M. Piso and of Plancina, respectively C. Piso's younger son and wife; and to express a judgement about Visellius Karus and Sempronius Bassus, Piso's associates (*comites*). The first three items of business are expressed in the same way: the senate is asked to state *qualis causa . . . visa esset*. In case of the fourth item, what the senate is asked to do is described using the verb *iudicare*, which, as the editors point out, cannot be, in a document of this sort, simply a literary variation but must represent a request that the senate in some sense 'judge' the case of these two men.[30]

[26] Kunkel, *Senatsgericht*, pp. 7–9 [= *KS*, pp. 270–2]; Cicero, *in Cat.*, 4.5.10.

[27] Kunkel, *Senatsgericht*, pp. 14–20 [= *KS*, pp. 277–84]; Cassius Dio 53.23.7–24.1. Suetonius' account (*Div. Aug.*, 66.1–2) is different from Dio's but compatible with it. Ammianus, 17.4.5, has a garbled version of the story.

[28] Kunkel, *Senatsgericht*, pp. 61–4 [= *KS*, pp. 320–3].

[29] The text with a German translation can now be found in Eck *et al.*, *Das senatus consultum*, pp. 38–51. For the *relatio*, see lines 4–11.

[30] *quid de Visellio Karo et Sempronio Basso, comitibus / Cn. Pisonis patris, iudicaret senatus* (lines 10–11). See Eck *et al.*, *Das senatus consultum*, pp. 137–8.

This same distinction is also evident in the record of the senate's response which occupies the remainder of the inscription. Piso's crimes are enumerated in detail (lines 12–70), followed by instructions that his death should not be mourned, even in his own family, that statues and images of him should be suppressed, and that all his property (with the exception of an estate in Illyria, granted by Augustus, which should be returned to Tiberius) should be sold publicly (lines 71–90). Further dispositions relate to Piso's two sons, to whom their father's property is in effect restored in the name of the *princeps* and the senate, and his daughter, for whom a dowry is provided (lines 90–105). After a brief note about an unfinished house belonging to Piso, which is to be demolished, a further section deals with Piso's widow, Plancina, who is granted mercy, on the recommendation of the emperor and his mother (lines 109–20). Then, before a long section, expressing the senators' sympathy and gratitude to the emperor and his family (lines 123–65), the decree deals with the matter of Visellius Karus and Sempronius Bassus, in just over three lines of text:

120 *Visellio Karo et Sempronio Basso comitibus Cn.*
121 *Pisonis patris et omnium malificorum socis et ministris aqua et igne interdici oportere*
122 *ab eo pr(aetore), qui lege{m} maiestatis quaereret, bona(que) eorum ab pr(aetoribus), qui aerario*
123 *praeesse<n>t, venire et in aerarium redigi placere.*

['As to Visellius Karus and Sempronius Bassus, associates of Cn. Piso and collaborators and assistants in all his evil deeds, the senate decides that they should be prohibited from water and fire by that praetor who is to conduct trials under the *lex maiestatis*, and that their goods should be sold by the praetors who are to be in charge of the treasury, and the proceeds deposited in the treasury.']

Not only is the style of this pronouncement different from those which have preceded it, but the formulation and the effect is also different. Whereas the sections which relate to Piso and his family simply state what should happen to the status and the property of those concerned, in the case of Visellius and Sempronius an instruction is passed to magistrates of the Roman people (the praetors in charge of the *quaestio maiestatis* and of the treasury respectively) about what they are to do. The question which presents itself is why this section should be different, and in particular why reference should be made here to the praetor in charge of the *quaestio maiestatis*.

One obvious solution might be that the senate was not in a position to exercise judgement under the *lex maiestatis* and that the senate was therefore able to do no more than recommend to the praetor concerned that he receive a charge against these men in his court. After careful consideration of the evidence of the inscription, the editors conclude that this cannot be the case.[31] They note that the nature of the penalty of *interdictio aqua et igni* shows that the case of the two *comites* is decided according to the *lex maiestatis*[32] and draw attention to the fact that in Tiberius' *relatio* the senate is asked to judge (*iudicaret*) the matter (line 11), and that in the passage cited it appears to be giving a verdict which leaves no room for the praetor to act in his court, much less to put the question to a jury. They argue therefore that the praetor is, at least on this occasion, simply acting as the person charged with carrying out the sentence delivered by the senate in accordance with the *lex*, in the same way as the praetors in charge of the *aerarium* are to do, and that the description of him as *qui lege{m} maiestatis quaereret* is simply descriptive, and does not imply the involvement of the *quaestio* as such.

[31] Eck *et al.*, *Das senatus consultum*, pp. 230–2.
[32] This is the standard penalty under the *lex Iulia* (Cic., *Phil.* 1.9.23; Tac., *Ann.* 3.50.4).

There can be no doubt that the editors of the inscription are right to note that the senate is not simply deferring the matter to the *quaestio maiestatis* for decision. The praetor is told what it is appropriate for him do in terms which leave him no choice in the matter.[33] He is not simply to receive the charge but to pronounce the interdict, which would result in the banishment of the two men; and the consequence of this is made clear by the fact that the praetors in charge of the *aerarium* are simultaneously told to proceed with the sale of their property. However, the conclusion that they reach, that the praetor in charge of the *quaestio* is merely acting as the senate's agent, does take sufficient regard for the way in which accused persons were condemned or acquitted under laws which involved a *quaestio*, of which the *lex maiestatis* was, of course, one.

In a trial which involved a *quaestio*, once the votes of the *iudices* had been counted, the presiding magistrate simply announced the result of the vote, with a phrase such as *fecisse* or *non fecisse videtur* ('he appears [not] to have done it', or, perhaps better, 'he is seen [not] to have done it').[34] That apart, he had no role to play, for the sentence, as opposed to the verdict, was determined not by the court but by the law.[35] If the pronouncement of the senate is regarded as a straightforward verdict under the *lex maiestatis*, it is not clear why the matter was referred to the praetor at all, since (if the senate were acting as the *quaestio*) the sentence of *interdictio aqua et igni* would have followed automatically from the condemnation.

On the other hand, it must be said that the words of the *senatus consultum* are remarkably unlike those of a verdict, as understood by the *quaestio* procedures. In particular, the two men are not declared to be *condemnati* by the senators, which is the only way that *iudices* of the court stated their verdict.[36] Moreover, although the senate is asked to 'judge' (*iudicare*) in the case of the two *comites*, it should be noticed that in this inscription this verb does not always have the formal connotation that the editors wish to give it at line 11. At line 143 the same verb is used to express the high opinion that the imperial family has of Livia, the sister of Germanicus; and five lines later, the senate 'judges' (*iudicare*) that the proper restraint in the expression of their grief shown by the sons of Germanicus and by his brother, later the emperor Claudius, can be attributed to the training they had had from the emperor Tiberius and his mother. In these cases at least *iudicare* does not mean 'act as judges in a legal context', and there is no necessity for it to do so in line 11 either. The emperor calls upon the senate to deliver its conclusion, and it does so by stating that the praetor of the *maiestas* court should find the two *comites* guilty under the *lex maiestatis*. The juridical verdict could not be pronounced by the senate, because it had no place as such within the *lex*, but there was nothing to prevent it stating that the praetor should do so. In that sense, the editors of the inscription are right to see the praetor as carrying out the decision that the senate had arrived at, but that action required him to act within the context of the court over which he presided. The *quaestio* remains in place. What has been taken from it is not the operation *de iure* of the law but the decision *de facto* as to whether it should be applied in a particular case. In that respect the senators were indeed performing the task which previously had been that of the *iudices*, but, since they were not the *iudices*, they could not also take over the function of delivering the legal

[33] On the meaning of *oportere*, see D. Daube, *Forms of Roman legislation* (Oxford, 1956), pp. 8–23.

[34] Cic., *Verr.* 2.93; 5.14; *Pis.* 97. Cf. Cic., *Att.* 4.17.5.

[35] This is stated explicitly by Cicero, at *inv.* 2.59 and *Sull.* 63 (see Jones, *The Criminal Courts*, pp. 73–4).

[36] On the process, see, for instance, Jones, *The Criminal Courts*, pp. 58.79.

verdict, which was *de iure* the function of the *iudices*.

Much, of course, remains uncertain about the working of such a process. We cannot know, for instance, whether the praetor had to empanel jurors for the *quaestio* or whether, once the court was in session, he took the decision of the senate as equivalent to the votes of the jurors. It does seem, however, that this type of process relates to and illuminates early instances which have hitherto been unclear. If the law was in fact applied not by the senate but by the praetor, the evident belief of Tacitus that the question that Pompeius Macer posed to Tiberius in A.D. 15 and the emperor's response *exercendas leges esse* marked the beginning of the series of senatorial hearings on *maiestas*[37] becomes readily explicable. Moreover the pattern which is observable in the inscription also helps with the explanation of the case of Cornelius Gallus in 26 B.C.[38] According to Cassius Dio, the senate voted that Gallus be condemned in the courts and exiled, and that his estates be given to Augustus and the senate offer sacrifices. This, *mutatis mutandis*, is almost exactly the same as the position in the *senatus consultum*, in which the senate instructs the praetor of the *maiestas* court to interdict the two *comites*, which effectively meant their banishment.

IV

The pattern which emerges from this examination of the new inscription is one in which the senate is the effective *locus* of decision about the case under the *lex maiestatis* but not the formal *locus*. If this is correct, it provides a mechanism whereby the senate, which was not, under the republic, a juridical body, came to acquire *de facto* the power of decision in a number of areas which had previously been the remit of the *quaestiones perpetuae*. Further, the means by which this was achieved, by the imposition of a prior level of decision-making which completely transformed but did not replace that of the republic, is typical of much else that can be seen in the legislation of the Augustan and Tiberian principates. Perhaps the best parallel is the complex of documents produced some twelve months before, late in A.D. 19, to honour Germanicus in the immediate aftermath of his death.[39] There the process of election, whether by senate or people, is predetermined in the *rogatio Valeria Aurelia* by a complex process of 'destining' certain candidates before the election itself takes place. The whole process of the proposed *destinatio*, and indeed the detailed mechanism for the passing the *rogatio* itself, are set out with all the precision and safeguards of the legislation of the free republic, but the effects of the measures are intended to undermine the realities which that precision and those

[37] See above n. 4. Eck *et al.*, *Das senatus consultum*, pp. 231, n. 737, believe that Macer's question related only to cases heard in his own court. This is not what Tacitus, *Ann.* 1.72.3, says; and the distinction ignores the place of this passage in Tacitus' presentation of the *maiestas* trials (see above p. 510–11).

[38] See above n. 27. Eck *et al.*, *Das senatus consultum*, pp. 231, n. 732, argue that the senate can only have made a recommendation to the court that Gallus be condemned; but that is not what Dio, 53.23.7, says. In Dio's text, the senate votes for Gallus' condemnation in the courts and his punishment. This is strikingly like the position of the two *comites* in the *SC de Cn. Pisone patre*.

[39] See now M. Crawford *et al.*, *Roman Statutes* (1996), nos. 37–8, with bibliography and brief commentary.

safeguards were intended to protect.[40] Such too was the process whereby the senate effectively acquired the power of decision in cases which had previously been the preserve of the *iudicia publica*.

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[40] See F. G. B. Millar, 'Imperial Ideology in the Tabula Siarensis', in J. González and J. Arce, *Estudios sobre la* Tabula Siarensis (1988), pp. 11–19, and J. S. Richardson, 'The Rogatio Valeria Aurelia: Form and Content', *ibid.*, pp. 35–41. Note in particular the suspension of the requirement for the period of notice (*trinum nundinum*) in the presentation of the *rogatio*, normally waived only in cases of emergency (*Tab. Siar.*, col. II, ll. 28–30; see *Roman Statutes*, p. 536).