

The Case of Cremutius Cordus

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Tacitus' record of the year A.D. 25 commences with the case of Cremutius Cordus. It is important as perhaps the fullest and most explicit assertion of the alleged suppression of free speech by the Empire.¹

There is account in Dio parallel to that of Tacitus, with somewhat different details; Suetonius has brief statement, without Cremutius' name; and Seneca provides considerable information.² There are reasons to deny the historicity of much of what these sources report about the case.³

Tacitus writes (*Ann.* 4.34–35):

Cremutius Cordus postulatur, novo ac tunc primum audito crimine, quod editis annalibus laudatoque M. Bruto C. Cassium

¹ We have twice previously discussed the case, both times quite briefly. In *Criminal Trials and Criminal Legislation under Tiberius* (Middletown [Conn.] 1935) (hereafter cited as *Trials*) pp. 86–87, we accepted as much of Tacitus as others had, but suggested tentatively and interrogatively that the real charge was treason. In "A Tacitean Pattern in Narrating Treason-Trials," *TAPA* 83 (1952) 279–311, the case of Cremutius was one of the examples cited of the "pattern," 297–98. The same conclusion, essentially, was drawn as is arrived at hereunder; but the case merited there only two paragraphs, and only one of the arguments which follow hereafter was there set down.

² *Ann.* 4.34–35; Dio 57.24.2–4; Suet. *Tib.* 61.3; Sen. *Ad Marc.* 1.2–4; 22.4–7; 26.1, 3. The referee of this paper has called attention to Quintilian, 10.1.104, which, by virtue of a widely accepted emendation of Nipperdey, is made to read: "Habet amatores nec inmerito Cremuti libertas, quamquam circumcisis quae dixisse ei nocuerat." The passage does require some emendation. But (1) Nipperdey's was inspired and suggested, of course, by the Tacitean text here under discussion, which equally motivates the acceptance that emendation has received; (2) other possible emendation would make the passage a continuation of what precedes, which does not name the author discussed, usually supposed to be Fabius Rusticus; *libertas* would then well mean simply "frankness" and "outspokenness" as in Tac. *Dial.* 27.3 or cf. Pliny *Ep.* 9.19.5; (3) but if one is convinced that Nipperdey has divined precisely, *literatim*, what Quintilian actually wrote, then we would have five instead of four sources telling the same anti-imperial, distorted version of the case of Cremutius.

³ To the present writer the whole story given by the sources, except for the narrative of Cremutius' suicide, is patent absurdity. But those who hold different views of the Empire from his have perhaps also different conceptions of absurdity; therefore he presents an argument.

Romanorum ultimum dixisset. Accusabant Satrius Secundus et Pinarius Natta, Seiani clientes.⁴ Id perniciosum reo et Caesar truci vultu defensionem accipiens, quam Cremutius, relinquendae vitae certus, in hunc modum exorsus est.

Then follows a speech thirty-five lines long, which cites succession of Greek and Roman authors who had enjoyed immunity for the free speech of their literary works. Authenticity of the speech was long ago denied by Columba on the ground that Seneca's account shows that Cremutius' suicide preceded reception of the indictment.⁵ The speech is unquestionably pure Tacitus. And this speech constitutes four-fifths of what Tacitus tells us about Cordus.

Tacitus continues then: "Egressus dein senatu vitam abstinentia finivit. Libros per aediles cremandos censuere patres; set manserunt, occultati et editi."

Dio corroborates and adds a few details, but has no speech by the defendant (57.24.2-4 Loeb):

Cremutius Cordus was forced to take his own life⁶ because he had come into collision with Sejanus. He was on the threshold of old age and had lived most irreproachably, so much so, in fact, that no serious charge could be brought against him, and he was therefore tried for his history of the achievements of Augustus which he had written long before, and which Augustus himself had read [or he himself had read to Augustus]. He was accused of having praised Cassius and Brutus, and of having assailed the people and the senate; as regarded Caesar and Augustus, while he had spoken no ill of them, he had not, on the other hand, shown any unusual respect for them. This was the complaint made against him, and this it was that caused his death as well as the burning of his writings; those found in the city at the time were destroyed by the aediles, and those elsewhere by the magistrates of each place. Later they were republished, for his daughter Marcia as well as others had hidden some copies; and they aroused much greater interest by very reason of Cordus' unhappy fate.

⁴ Seneca writes to Marcia: "Seianus patrem tuum clienti suo Satrio Secundo congiarium dedit," *Ad Marc.* 22.4; and speaks of "Seianianos satellites," *Ad Marc.* 1.2.

⁵ M. Columba, "Il Processo di Cremuzio Cordo," in *Atene e Roma* 4 (1901) 361-83, esp. 367; followed by E. Ciaceri, *Processi Politici e Relazioni Internazionali* (Rome 1918) 301-2; Rogers, *Trials*, 86-87; R. Syme, *Tacitus* (Oxford 1958) 337 and note 10.

⁶ It is perfectly clear in Seneca that the suicide was entirely voluntary.

Suetonius makes Tiberius responsible; but this cannot stand against the unanimity of Seneca, Tacitus, Dio that Sejanus instigated the indictment. The biographer pairs Cremutius, whom he does not name, in the same sentence with Mamercus Aemilius Scaurus, also unnamed, thus (*Tib.* 61.3):

obiectum est poetae, quod in tragoedia Agamemnonem probris lacesisset; obiectum et historico, quod Brutum Cassiumque ultimos Romanorum dixisset; animadversum statim in auctores scriptaque abolita, quamvis probarentur ante aliquot annos etiam Augusto audiente recitata.

But Tacitus and Dio, when they report the case of Mamercus Scaurus, both say explicitly that although Macro (the Praetorian Prefect) had denounced his tragedy, citing the verses which were regarded as attacking Tiberius, that charge was *not* in the *indictment*, which named adultery and trafficking with astrologers.⁷ Be it noted, further, that Suetonius records as the reason for Helvidius Priscus' execution under Domitian, that he had under guise of a play on the myth of Paris and Oenone attacked Domitian for his divorce of Domitia; whereas it is quite clear that the actual charge against Helvidius was conspiracy (see below, p. 358). We therefore suggest, here first and tentatively, a question which will be raised again and discussed hereafter: were Cremutius' writings the charge against him at all? Or have our unanimous sources, by alleging that charge, cloaked and suppressed some other, as Suetonius does in the cases of Mamercus Scaurus and Helvidius Priscus?

For Seneca, too, makes Cremutius' writings the charge against him and the cause of his death. He writes to Marcia (*Ad Marc.* 1.3-4):

ingenium patris tui, de quo sumptum erat supplicium, in usum hominum reduxisti et a vera illum vindicasti morte ac restituisti in publica monumenta libros, quos vir ille fortissimus sanguine suo scripserat. Optime meruisti de Romanis studiis: magna illorum pars arserat; optime de posteris, ad quos veniet incorrupta rerum fides auctori suo magno imputata; optime de ipso, cuius viget vigebitque memoria, quam diu in pretio fuerit Romana cognosci, quam diu quisquam erit, qui velit scire, quid

⁷ Tac. *Ann.* 6.29.3-4; Dio 58.24.3-5.

sit vir Romanus, quid subactis iam cervicibus omnium et ad Seianianum iugum adactis indomitus, quid sit homo ingenio, animo, manu liber. [Just what did Seneca mean by those words, *manu liber*?] Magnum me hercules detrimentum res publica cepit, si illum ob duas res pulcherrimas in oblivionem coniectum, eloquentiam et libertatem, non eruisses.⁸

The burning of Cremutius' books is no proof that the books were the charge in the indictment, as is shown by the case of Mamercus Scaurus in A.D. 34, already referred to. The elder Seneca tells us that Scaurus' seven *orations* were burned; Tacitus, Suetonius, and Dio say that Macro had denounced his *play* on Agamemnon, but Tacitus and Dio are explicit that the indictment was for adultery and consultation of astrologers (the latter was viewed in the same light as treason).⁹

Seneca, again, explains the motivation of Sejanus' attack upon Cremutius (*Ad Marc.* 22.4.7):

Irascebatur illi ob unum aut alterum liberius dictum, quod tacitus ferre non potuerat Seianum in cervices nostras ne imponi quidem, sed escendere. Decernebatur illi statua in Pompei theatro ponenda, quod exustum¹⁰ Caesar reficiebat; exclamavit Cordus tunc vere theatrum perire.

Seneca comments on this incident, denounces Sejanus and his minions, and then relates the story of Cremutius' suicide. Finally he reports that when the purpose to suicide became known there was public rejoicing that the prosecutors were being deprived of their prey. But the accusers, whipped on by Sejanus, approached the consuls to complain that Cordus was dying, must not be allowed thus to escape them. The question was, says Seneca, whether a defendant had a right to death; and while this question was being debated, Cremutius got himself off.

⁸ Marsh, it seems, overlooked some of this passage; Seneca, he wrote, "does not allude . . . to the history of Cordus as the cause of his fate." F. B. Marsh, *The Reign of Tiberius* (London 1931) 292; followed by Rogers, *Trials*, 87.

⁹ Sen. *Contr.* 10.pr.3; Tac. *Ann.* 6.29.3-4; Suet. *Tib.* 61.3; Dio 58.24.3-5; cf. *Trials* 152, *TAPA* 83 (1952) 302. On astrologers and treason, cf. Paulus *Sent.* 5.21.3; *Mos. Rom. Leg. Coll.* 15.2. Scaurus' case is of itself sufficient evidence that the burning of books is not proof that the writings were necessarily the basis of the indictment. The other cases of burned books we have remarked in the article cited below (note 17), pp. 21-22.

¹⁰ Three years before, in A.D. 22, Tac. *Ann.* 3.72.2.

Now, as Marsh noted,¹¹ this supposed anxiety of the prosecutors is most strange. For only the year before, in connection with the trial of Caecilius Cornutus, a motion had been offered in the Senate that, in case of the defendant's suicide before his conviction of *maiestas*, the prosecutors should receive no rewards. The motion was rejected because of Tiberius' opposition: it would, said the Emperor, subvert the entire administration of the criminal law.¹² Seneca's detail, conflicting thus with the facts, greatly weakens the credibility of his story.

All four sources on the case, Seneca, Tacitus, Suetonius, and Dio, agree that Cremutius' writings, his history, were the charge against him, were the cause of his death. Can we believe that? Is it credible?

Tacitus, in the same passage, in the speech which he puts into the mouth of Cremutius, exonerates Augustus of any such repression of historiography.¹³ And it is Tacitus who informs us that Tiberius claimed and proclaimed that for him all Augustus' precedents were law (*Ann.* 4.37.3). And Tacitus again is authority that Tiberius ruled ridicule and abuse of Divus Augustus was not *maiestas* (*Ann.* 2.50); neither was perjury of an oath by Augustus' *numen* (*Ann.* 1.73.2-3); nor abusive ridicule of Tiberius or Livia (*Ann.* 1.74.3, 6; 2.50.2). In view thereof is it acceptable that Cremutius was accused because he praised Brutus, called Cassius the last of the Romans, and, as Seneca adds (*Ad Marc.* 26.1), "proscribentis in aeternum ipse proscripsit"?

But what is much more serious and important: nothing of this sort, nothing of all that is commonly called in modern times *lèse majesté*, appears in the juristic literature on *maiestas* as basis for an indictment on that charge. Two exceptions to this broad statement are Venuleius Saturninus' assertion (*Dig.* 48.4.6) that mutilation of *consecrated* images of the emperor is *maiestas*, and a passage from Paulus' *Sententiae* (5.29), which reads as follows:

Quod crimen non solum facto, sed et verbis impiis ac maledictis

¹¹ Marsh (above, note 8) 292-93.

¹² Tac. *Ann.* 4.30.2.

¹³ *Ann.* 4.34.3-4: "Titus Livius, eloquentiae ac fidei praeclarus in primis, Cn. Pompeium tantis laudibus tulit, ut Pompeianum eum Augustus appellaret; neque id amicitiae officit. Scipionem, Afranium, hunc ipsum Cassium, hunc Brutum . . . saepe ut insignis viros nominat. Asinii Pollionis scripta egregiam eorundem memoriam tradunt; Messalla Corvinus imperatorem suum Cassium praedicabat: et uterque opibusque atque honoribus pervigere."

maxime exacerbatur. In reum maiestatis inquiri prius convenit, quibus opibus, qua factione, quibus hoc auctoribus fecerit: tanti enim criminis reus non obtentu adulationis alicuius, sed ipsius admissi causa puniendus est.

The first sentence is often brought forward, always gleefully, by our opponents and critics. But let it be placed in juxtaposition with a passage of Herennius Modestinus (*Dig.* 48.4.7), very few years after Paulus:

Hoc tamen crimen iudicibus non in occasione ob principalis maiestatis venerationem habendum est, sed in veritate: nam et personam spectandam esse, an potuerit facere, et an ante quid fecerit et an cogitaverit et an sanae mentis fuerit. nec lubricum linguae ad poenam facile trahendum est: quamquam enim temerarii digni poena sint, tamen ut insanis illis parcendum est, si non tale sit delictum, quod vel ex scriptura legis descendit vel ad exemplum legis vindicandum est. Crimen maiestatis facto vel violatis statuibus vel imaginibus maxime exacerbatur in milites.

It appears that the text of Paulus, as it has come down to us, presents a radical abbreviation of the law; Paulus' *exacerbatur* seems to be a relic from a statement having reference to the military, the rest of which has been suppressed in the abridgement; and, finally, the passage of Paulus has apparently acquired something from the juristic writing on another matter, to which we must now turn.

For there is highly interesting and, correctly understood, very important title in the *Codex Theodosianus*, 9.4, next preceding the title on *maiestas*; it reappears in Justinian's Code as 9.7, again followed immediately by *maiestas*. *Theodosianus* reads:

Si quis modestiae nescius et pudoris ignarus improbo petulantique maledicto nomina nostra crediderit lacescenda ac temulentia turbulentum obtrektorum temporum fuerit, eum poenae nolumus subiugari neque durum aliquid nec asperum sustinere, quoniam, si id ex levitate processit, contemnendum est, si ex insania, miseratione dignissimum, si ab iniuria remittendum. Unde integris omnibus ad nostram scientiam referatur, ut ex personis hominum dicta pensemus et, utrum praetermitti an exsequi rite debeat, censeamus.

Now, Pharr has commented on this passage: "The first part of this constitution seems very liberal, but the latter part indicates

that the Emperor was so suspicious of all who spoke against him that he insisted on making a personal investigation of each case."¹⁴ But the latter part of this judgment on Theodosius errs. The corrective is in the already quoted passage of Herennius Modestinus. Theodosius was not "suspicious of all who spoke against him"; he was suspicious of his judges and his officials, from whom he had not succeeded in obtaining that liberalism which he himself had and demanded that others should equally practice. Instead, his judges had been violating the principle proclaimed by Modestinus: "hoc tamen crimen iudicibus non in occasione ob principalis maiestatis venerationem habendum est, sed in veritate."

What was the charge, we now ask again, what was the *formal charge* against Cremutius Cordus? For Paulus makes plain, citing Augustus' *Lex Iulia Iudiciorum Publicorum*, that in order to initiate a criminal trial, there must be a formal indictment which asserts an offense defined by law.¹⁵ So Tacitus will write: "maiestatis postulavit," or "repetundarum . . . postulatum," or "de vi damnatus," or perfectly clear paraphrase, "defertur moliri res novas," or "ob Sardiniam provinciam avare habitam."¹⁶ And if, as often, Tacitus does not bother to state it, the formal indictment was essential nonetheless.

Everybody, probably, assumes that Cremutius was indicted for *maiestas*. But not one of our sources says that; all assert that he was charged with having lauded the Liberators. The only appearance of the word *maiestas* is in the Tacitean speech; Cremutius is made to say (*Ann.* 4.34.2): "Verba mea . . . arguuntur. . . . Sed neque haec in principem aut principis parentem, quos lex maiestatis amplectitur." It appears, in fact, that *maiestas* is what our sources very carefully do *not* mention. That is what they are covering up.

There is near-perfect parallel of distortion and obfuscation in the account our sources provide of the charges in a trial or trials under Domitian.¹⁷

¹⁴ Clyde Pharr, *The Theodosian Code and Novels and The Sirmondian Constitutions* (Princeton 1952) 230, note 5 on 9.4.

¹⁵ *Dig.* 48.2.3.pr.1.

¹⁶ *Tac. Ann.* 1.74.1; 3.66.1; 4.13.2; 2.27.1; 13.30.1.

¹⁷ Cf. "A Group of Domitianic Treason-Trials," *CP* 55 (1960) 19-23. We have been told sternly and many times, through the years since the publication of *Trials* in 1935, that one cannot and must not use Ulpian as commentary on Tacitus, cannot

Tacitus reports that the charges against the younger Helvidius Priscus and Herennius Senecio were their eulogies respectively of Thrasea Paetus and the elder Helvidius Priscus. Pliny says only that Senecio had written a *Life* of Helvidius Priscus, for which Fannia had supplied some material. Suetonius writes that Arulenus Rusticus had composed eulogies of Thrasea and Helvidius, calling them "sanctissimos viros," and that the younger Helvidius had attacked Domitian through a play about Paris and Oenone. Dio's epitomators report that Arulenus was a philosopher, and had called Thrasea "holy"; that Senecio had written biography of Helvidius, and refused to pursue public career beyond the quaestorship.¹⁸ That is *all* the information we have on the charges in the case; it touches on four defendants, Arulenus, Senecio, Helvidius, and Fannia. But *seven* were tried, convicted, and punished by death or exile; in addition to the four just mentioned, there were Arulenus' brother Junius Mauricus, and the younger Arria, and Gratilla. Study of their relatives by blood or marriage, and of their associations with other persons, clearly places them in the long succession of *disloyal* opposition which had practiced treason against Tiberius, Gaius, Claudius, Nero, Vespasian, and Domitian; and makes it indubitable that the actual charge against the seven was treasonous conspiracy.¹⁹

What betrays the deception which our sources have attempted

and must not suppose third-century law applicable to first-century trials. This objection has such plausibility as to make it appear utterly devastating to our entire thesis, building through these three decades. But the plausibility is completely specious. The criticism was most fully and positively elaborated by C. W. Chilton in "The Roman Law of Treason in the Early Principate," *JRS* 45 (1955) 73-81, who added in its support the categorical statement (erroneous assumption) that Roman law was "constantly changing." Answering Chilton with "Treason in the Early Empire," *JRS* 49 (1959) 90-94, we cited evidence (more could be offered) on several matters in which the law was in the third century exactly what it had been in the second, and in the first, and even under Sulla. (One of the passages cited was that of Paulus [see above, pp. 355-56] in which he bases himself on Augustus' *Lex Iulia Iudiciorum Publicorum*.) We therefore took, and still maintain, the position that "Ulpian (or other jurist) *may* be valid commentary on a historian's narrative of an earlier period, if the historian and the jurist are in accord," and that "if a historian's . . . account of a criminal case under Augustus or Tiberius agrees with what Ulpian says two centuries later was the law, then, . . . if the historian's account is not inherently incredible, the law was probably the same under Augustus as in the third century."

¹⁸ Tac. *Agr.* 2.1; Pliny *Ep.* 7.19.5; Suet. *Dom.* 10.3-4; Dio 67.13.2 (Xiphilinus, Zonaras).

¹⁹ Cf. note 17, above. Numerous less exact but similar parallels in the methodology of the anti-imperial authors, as it shows itself in Tacitus, have been discussed in "A Tacitean Pattern in Narrating Treason-Trials," above, note 1.

to perpetrate in the account of Cremutius is the fact, clear in Seneca, Tacitus, Dio (Suetonius is too brief), that trial process continued after and despite the defendant's suicide. Now we know from Ulpian, Aemilius Macer, and Herennius Modestinus²⁰ that there were two charges, trial of which continued thus, *repetundae* and *that maiestas* which was conspiracy and treason.

Since Dio (57.24.2) has said that Cremutius was on the verge of old age, it is hardly possible to suppose that he had been governing a province or holding other public office so that he could commit extortion. One concludes he was charged with treason. But treason also, perhaps, the reader may find difficult to imagine of Cremutius, for other reasons. First, there lingers in reader's mind, of course, that utterly sympathetic and favorable picture of Cremutius which Seneca, Tacitus, Suetonius, Dio have painted. But, secondly, and let the reader be reminded, we know absolutely nothing about Cremutius except that he had a devoted daughter named Marcia, he wrote a history suffused with Republicanism, he committed suicide under indictment, and upon conviction his books were burned. We do not know his other relatives, his associations, his other activities—as we do in the case of the younger Helvidius Priscus and his circle.

If, however, even so, anybody finds himself totally unable to accept the combination of Cremutius and treason, must at whatever cost exonerate Cremutius, he may consider that the charge brought by Satrius Secundus and Pinarius Natta, wicked minions of a villainous Sejanus, was completely false, proceeding from the malice and spite of the Prefect, and that the conviction on that charge by the Senatorial Court was gross miscarriage of justice. But he may not consider that Cremutius was indicted and convicted of writing in laudation of Brutus and Cassius, for that was not an indictable offense.

²⁰ *Dig.* 48.4.11; 48.16.15.3; 48.2.20.