

MNEMOSYNE

BIBLIOTHECA CLASSICA BATAVA

COLLEGERUNT

H. PINKSTER · H.S. VERSNEL

D.M. SCHENKEVELD · P.H. SCHRIJVERS

S.R. SLINGS

BIBLIOTHECAE FASCICULOS EDENDOS CURAVIT

H. PINKSTER, KLASSIEK SEMINARIUM, OUDE TUREMARKT 129, AMSTERDAM

SUPPLEMENTUM DUCENTESIMUM QUINTAGESIMUM QUARTUM

INEKE SLUTTER AND RALPH M. ROSEN

FREE SPEECH IN CLASSICAL ANTIQUITY



FREE SPEECH IN CLASSICAL ANTIQUITY

EDITED BY

INEKE SLUTTER
&
RALPH M. ROSEN



BRILL
LEIDEN · BOSTON
2004

This book is printed on acid-free paper.

Library of Congress Cataloging-in-Publication Data

Penn-Leiden Colloquium on Ancient Values (2nd : 2002 : University of Pennsylvania)

Free speech in classical antiquity / edited by Ineke Sluiter and Ralph M. Rosen.

p. cm. (Mnemosyne, bibliotheca classica Batava, Supplementum,

ISSN 0169-8958 ; 254)

Consists of a collection of papers presented at the second Penn-Leiden Colloquium on Ancient Values, held in June 2002 at the University of Pennsylvania.

Includes bibliographical references and index.

ISBN 90-04-13925-7 (alk. paper)

1. Classical literature--History and criticism--Congresses. 2. Politics and literature--Greece--Congresses. 3. Law and literature--History--To 500--Congresses. 4. Politics and literature--Rome--Congresses. 5. Freedom of speech in literature--Congresses. 6. Freedom of speech--Greece--Congresses. 7. Political oratory--Greece--Congresses. 8. Freedom of speech--Rome--Congresses. 9. Political oratory--Rome--Congresses. 10. Oratory, Ancient--Congresses. I. Sluiter, I. (Ineke) II. Rosen, Ralph Mark. III. Title. IV. Series.

PA3015.P63P46 2004

880'.09--dc22

2004050330

ISSN 0169-8958

ISBN 90 04 13925 7

© Copyright 2004 by Koninklijke Brill NV, Leiden, The Netherlands

All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission from the publisher.

*Authorization to photocopy items for internal or personal use is granted by Brill provided that the appropriate fees are paid directly to The Copyright Clearance Center, 222 Rosewood Drive, Suite 910
Danvers, MA 01923, USA.
Fees are subject to change.*

PRINTED IN THE NETHERLANDS

HISTORIOGRAPHY AND FREEDOM OF SPEECH: THE CASE OF CREMUTIIUS CORDUS

MARY R. McHUGH

1. *Introduction*

Tacitus' description of the prosecution of Cremutius Cordus in 25 CE under the charge of *maiestas* at *Annals* 4.34–35 is an important passage for the discussion of the freedom of speech in the Julio-Claudian period.¹ Many scholars have referred to this account in discussing the alleged suppression of speech which occurred under Tiberius.² However, the key to a full appreciation of Tacitus' narrative technique in relating the treason trial lies in the digression at 4.32–33, which provides the frame and context to the account which follows.³ This digression, admittedly, is well known in the history of Tacitean scholarship. Scholars often refer to this passage in describing how Tacitus himself viewed his task in writing the *Annals* in comparison with the historiographical endeavors of his republican predecessors. Tacitus claims that the days of the republic were superior to those of the empire in range of topic and liberty of speech.⁴ I will argue, however, that the use of 'figured' speech in both the digression and in the speech spoken by Cremutius Cordus in his defense is designed to show that critical expression is in fact possible, even under the most repressive of regimes. The speech which Tacitus places in the mouth of Cremutius Cordus in his own defense, I shall argue, is Tacitus' invention.⁵ Tacitus makes

¹ I am grateful to the participants of the conference for the fruitful discussions generated by their own papers and by their thoughtful reception of this paper, especially Kurt Raaflaub, Joe Farrell, Susanna Braund, Manfred Horstmanshoff, and Sabine Grebe.

² To name but a few: Forbes 1936, 123–124; Syme 1939, 487, 489; Cramer 1945, 191; Syme 1958, I, 337, II, 517; Rogers 1965, 351; Syme 1970, 136; Syme 1978, 229; Martin and Woodman 1989, 176–186; Toher 1990, 141, n. 6; Sammons 1990, 438, 442; Levick 1999, 164, 194; Rutledge 2001, 95–96, 103, 177.

³ Leeman 1963, 344–347; Sinclair 1991, 2817–2818; Woodman and Kraus 1997, 93.

⁴ Among them Syme 1958, I, 309, 337; Leeman 1963, 343–345; Woodman 1988, 180–186; Martin and Woodman 1989, 169–176; Sinclair 1995, 56–58, 60–63.

⁵ Syme 1958, 337, n. 10; Syme 1978, 229; Martin and Woodman 1989, 177; Rogers

clear through this speech that it was Cremutius' faulty use of rhetoric in his histories that led to the prosecution of the historian. The digression, in other words, prepares us for the right way of reading Cremutius Cordus' speech.

'Figured speech' is the term Ahl uses in his article, 'The Art of Safe Criticism in Greece and Rome', to describe the various rhetorical techniques which the author or orator could use to conceal a message behind the more obvious surface meaning of their words. According to Quintilian, in using the rhetorical devices that create figured speech, one should avoid the appearance of using them at all. Figured speech should never be obvious, it should not rely on ambiguous words or double entendres, its usage should not rely on syntactical ambiguity, and its usage should not be too frequent (*Inst.* 9.2.69–70). If the effect is overdone, what lies open to detection is the fact that figured speech was used rather than the meaning lurking beneath it (9.2.72). Once the art is detected the effectiveness is lost.⁶

Tacitus himself uses figured speech in the digression and account of the trial, but he also demonstrates how not to speak through the negative example of Cremutius Cordus, whose attempt at figured speech fails. These examples provided by Tacitus (both in *propria persona* and in his personification of Cremutius Cordus) illustrate that the use of figured speech is desirable, even when one assumes that one is free to speak openly. Thus, *Annals* 4.32–35 fulfills Tacitus' explicit and implicit historiographical aims, that is, first to provide guidance, through the examples of the lives of others, on how one may survive with integrity, even under the reign of a bad emperor; and secondly to illustrate, by his own use of figured speech, that the historian can still communicate the lessons of history under tyranny, that critical and meaningful speech is possible even when the modes of expression are severely restricted.⁷ This preoccupation with the preeminence of survival, both

1952, 298.

⁶ Ahl 1984, 197.

⁷ Tacitus explicitly states his aim in recording history for posterity many times in his works, e.g. *Ag.* 42.4, cf. also *Ann.* 4.20.3. See especially Sinclair 1995, 37–38: 'For Tacitus, as for members of the social group he speaks for, distinction in the political arena is to be had neither by routine service, nor by rebellion. One must become a perfect representative of that political ethos, so much so that through one's mastery of the system one wins the ability to give expression to one's own individuality and independence. It is precisely this "flexible rigidity" that informs Tacitus' work as a historian'.

of the author (the historian) and his work, informs Tacitus' account of the trial, not only in his own voice in the digression, but also in the speech which he places in mouth of Cremutius Cordus, and in his summary of the aftermath of the trial.

2. *Maiestas Trials*

The trial of the historian Cremutius Cordus takes place under the reign of Tiberius in 25 CE. The charge is, according to Tacitus (4.34.2), 'a new charge for the first time heard' (*novo ac tunc primum audito crimine*). Martin and Woodman 1989, 177 clarify this statement with the explanation that while the elder Seneca describes the burning of T. Labienus' books in 6-8 CE in similar terms (*Con.* 10, pref. 5 *res nova inuisitata supplicium de studiis sumi* 'it was an unheard-of novelty that punishment should be exacted from literature', tr. Winterbottom), the responsibility for Labienus' offense is attributed to his *oratory* rather than to his *history*. No one previously had been charged with *maiestas* for writing a history (*editis annalibus*).⁸

The ambiguous general accusation of *maiestas* directed at literature was not a novelty under the reign of Tiberius or even under Augustus. According to Tacitus (*Ann.* 1.72), Augustus was the first to make the *lex maiestatis* apply to slanderous writing. Previously, so Tacitus tells us, the law had applied to 'betrayal of an army; seditious incitement of the populace; any act, in short, of official maladministration diminishing the "majesty of the Roman nation". *Deeds were challenged, words went immune*' (*facta arguebantur, dicta impune erant* [tr. Jackson, emphasis mine]). To achieve the end desired, Augustus combined two old legal traditions, the Twelve Tables law prohibiting defamatory writing and the *lex maiestatis*. For this new crime, he introduced a new punishment, the burning of the author's writings upon the culprit's conviction.

The first evidence at hand for such a sentence during the reign of Tiberius is provided by Aemilius Scaurus, who vented his republican sentiments both orally and in writing and was punished by the burning of seven of his written orations in 24 CE.⁹ Previously, no man of such elevated social status had been brought to trial on the sole charge of

⁸ For the development of the concept of *maiestas* in the republican and Augustan periods, see the very interesting discussion in Mackie 1992, 33-97.

⁹ Sen., *Con.* 10, pr. 2-3; Sen., *Suas.* 2, 22; Tac., *Ann.* 6, 9.

literary treason. In 34 CE, Scaurus was again prosecuted, this time under numerous charges, that of literary treason among them. Indeed, he was brought to trial on the basis of a line from his tragedy *Atreus*, which had been performed before Augustus, who had not objected. A man in the play is advised 'to bear the follies of the reigning prince with patience'.¹⁰ To ensure that his possessions would remain intact for his intended heirs, Scaurus committed suicide before a guilty verdict could be reached. This case is representative of the many attested examples of prosecutions under the new *lex maiestatis*, and while necessarily selective, helps to provide an historical context within which the treason trial of Cremutius Cordus took place. For a fuller, although still selective account of the suppression of speech under Augustus and Tiberius, please refer to the Appendix.¹¹

3. *The digression*

The key to understanding Tacitus' account of the trial of Cremutius Cordus lies in the digression (4.32–33) that precedes this narrative. While a digression can be seen as a formal turning away from the main path of the narrative, the *formal* status of this digression is challenged by the clear thematic links between the digression and its thematic environment.¹²

In the digression, Tacitus complains of the paucity of the subject material he has to work with: 'much of what I have related and which I shall have to relate, may perhaps, I am aware, seem petty trifles to record' (*pleraque eorum quae rettuli quaeque referam parua forsitan et leuia memoratu videri non nescius sum*, tr. Church and Brodribb). Compared with the annals of the old days, 'my labors are circumscribed and inglorious' (*nobis in arto et ingloriosus labor*).¹³ Tacitus, in contrast to the usual claims

¹⁰ Dio 58.24; Cramer 1945, 190.

¹¹ Cramer 1945, 161–196 provides a very detailed account of the history of the suppression of freedom of speech under Augustus and Tiberius. For an interpretation of the information relating to the *maiestas* trials *contra* Cramer, see Rutledge 2001.

¹² Moles 1988, 15; cf. also Woodman and Kraus 1997, 93.

¹³ Moles remarks that editors have noted the similarity between this expression and that of *Georgics* 4.6: *in tenui labor; at tenuis non gloria*. Both authors work in restricted/trivial spheres, but Vergil's labor wins *gloria* and Tacitus' does not. The implication Moles 1998, 15 draws from this parallel/contrast is that Tacitus fails to get *gloria* because, unlike Vergil, he is not an encomiast for the victorious Caesars but an apologist of the defeated republicans.

of historians that their work far surpasses that of their predecessors, pleads the opposite. And, ironically, in this digression, a device usually employed to entertain the reader, he denies that his work has any of the usual pleasurable elements one could find in the works of republican historians:

they recounted great wars, the sieges of cities, kings defeated and captured, or whenever they chose to turn to domestic affairs, they told, with free digression, of the conflicts of consuls with tribunes, of the land and corn laws, and of the struggles between the plebeians and the aristocracy.
(tr. mine)

ingentia illi bella, expugnationes urbium, fusos captosque reges aut, si quando ad interna praeuenterent, discordias consulum aduersum tribunos, agrarias frumentariasque leges, plebes et optimatum certamina libero egressu memorabant.¹¹

Tacitus' theme, instead, is 'undisturbed or hardly disturbed peace, the state of a sad city, and an emperor careless of expanding his authority/the empire' (*immota quippe aut modice lacescita pax, maestae urbis res, et princeps proferendi imperii incuriosus*, tr. mine).

In this first paragraph of the digression, Tacitus surprises the reader (and delights with his irony). He entertains while claiming not to do so. The explicit absence of the familiar and the expected in the formal structure and themes of the digression warns the reader to be alert. The active engagement of the reader with the text, filling in the gaps that the author has intentionally left, is necessary to unravel its full meaning. His theme is not the brilliant pictorial tableaux of his predecessors, who could freely write on whatever topic suited their interest, and whose mode of entertainment rested on the obvious and apparent. By contrasting his work in these terms *nobis in arto et ingloriosus labor* with that of his predecessors *libero egressu memorabant* Tacitus hints at the restraints placed on his own freedom of expression, and those which are not necessarily dictated by his restricted *topic*, but rather the time itself in and of which he is writing.

The instruction to the reader continues at the beginning of the second paragraph in the digression: 'it will not be useless to study those at first sight trifling events out of which the movements of vast changes often arise' (*non tamen sine usu fuerit intraspicere illa primo aspectu levia, ex quibus magnarum saepe rerum motus oriuntur* [emphasis and tr. mine]). Thus he neatly negates the surprising and apparently self-deprecatory claim

¹¹ Martin and Woodman 1989, 170; Woodman 1983, 180–185.

that began the first paragraph (*pleraque ... parua, forsitan et leuia memoratu videri*). He does have a reason to get out of bed in the morning, his history is worth writing, after all, and we should not take that first sentence at face value. His themes appear superficial to the casual observer, and this is intentional – this is what figured speech looks like. Again, Tacitus urges the reader to delve below the surface. Although his theme is different from those of his predecessors, it is perhaps of even greater importance, and, given the constraints placed upon his freedom of expression, his craft arguably achieves a higher level of skill/artifice.

At the end of the digression, Tacitus returns to the complaint with which he began, but we now know better than to take this at face value. In comparison to what was available to the historian of the past to record, topics (descriptions of countries, various battles and the deaths of famous generals) which ‘hold and refresh the mind of the reader’ (*retinent ac redintegrant legentium animum*), he laments the monotony of his subject-matter:

the merciless biddings of tyrants, incessant prosecutions, faithless friendships, the ruin of innocence, the same causes issuing in the same results.

(tr. Church and Brodribb)

nos saeva iussa, continuas accusationes, fallaces amicitias, perniciem innocentium et eadem exitii causas coniungimus, obuia rerum similitudine et satietate.

And here, the complaint is somewhat straightforward – Tacitus bewails the grimness of the events of the first century CE. However, he is well aware of the psychological effect created by his histories (certainly enough to grip the mind of the reader, although perhaps not to refresh it in an altogether pleasurable manner), his accounts of *delatores* and the climate of fear and suspicion created by their activities. The topic is far from monotonous or *leve*. The problem is that writing about it is an activity fraught with danger for the author.

And so, he continues, his predecessors also had this advantage (*Ann.* 4.33):

Then, again, an ancient historian has but few disparagers, and no one cares whether you praise more heartily the armies of Carthage or Rome. But of many who endured punishment or disgrace under Tiberius, the descendants yet survive; or even though the families themselves may be now extinct, you will find those, who from a resemblance of character imagine that the evil deeds of others are a reproach to themselves. Again, even honor and virtue make enemies, condemning, as they do, their opposites by too close a contrast.

(tr. Church and Brodribb, emphasis mine)

Tum quod antiquis scriptoribus rarus obtrectator; neque refert cuiusquam Punicas Romanasne acies lactius extuleris; *at multorum, qui Tiberio regente poenam uel infamias subiere, posterī manent, utque familiae ipsae iam extinctae sint*, reperies qui ob similitudinem morum aliena malefacta sibi obiectari putent, etiam gloria ac virtus infensos habet, ut nimis ex propinquo diversa arguens.

Then, he ends his digression in his own voice and returns to the impersonal annalistic format, narrating the account of Cremutius Cordus' trial (*Ann.* 4.34–35).

The last few lines of the digression are the most telling. While Tacitus is ostensibly complaining of the difficulties he faces in his own work as a historian, he is also setting the stage for the troubles of Cremutius Cordus, which in turn mirror the perils faced by Tacitus. The speech of Cremutius Cordus, the creation of Tacitus, lists the historians of the past who could speak openly with impunity. Tacitus, in his own voice in the digression, states that the ancient historian had but few disparagers and no one cared whether you praised more heartily the armies of Carthage or Rome. The Republican historian could praise the virtues of an enemy of Rome as despised as Hannibal without any serious repercussions.

By contrast, Tacitus must hide behind the persona of Cremutius Cordus to illustrate that praise of the imperial regime's enemies (even those long dead – Brutus and Cassius) was indeed a dangerous undertaking during the reign of Tiberius. To demonstrate the continued relevance to his own time of the instructive example of Cremutius Cordus, Tacitus remarks in his own voice (in the digression) that 'the descendants of those who suffered punishment or disgrace under Tiberius yet survive', either literally, or in a way '*even though the families themselves may be now extinct*.'¹⁵ In my reading of this last line, Tacitus means for his contemporary audience to understand that the 'descendants' are not necessarily blood relatives, but those who vulnerably continue in the occupations of those so prosecuted, most notably historians, such as Cremutius. By *posterī*, then, I understand a figurative, rather than a literal translation of 'descendants'. Tacitus' advice to these 'descendants'

¹⁵ Yes, even in Tacitus' own time, Moles remarks that despite Tacitus' protestations (*Hist.* 1.1.2) that under emperors such as Nerva and Trajan, 'it is permitted to feel what you wish and to say what you feel', one can argue that this too is an example of figured speech (cf. Ahl 1984, 207). Of course, the use of figured speech and the ability to interpret it is suitable under Tiberius and monarchs like him and in historiographical treatment of such monarchs. Moles 1998, 20.

is to be careful of those who, from a resemblance of character, imagine that the evil deeds of others are a reproach to themselves. And he warns historians and writers that even honor and virtue make enemies, condemning as they do, their opposites by too close a contrast.

Implicit in this statement is the caution – be aware that in describing events and characters of the past, you may excite animosity.¹⁶ Someone in a position of power may find incrimination of their behavior through analogy to an historical figure you castigate, or, again, may find themselves condemned through your praise of a character whose virtue they lack.¹⁷ As the use of figured speech becomes more and more necessary, so will the suspicions of those whose wrath you are trying to avoid increase. The case of Cremutius Cordus amply demonstrates the value of this sentiment. Because he praised Brutus and Cassius, his words were deemed a reproach (and perhaps they were so intended) to the reign of Tiberius. By speaking too openly (although this does not seem so obvious to us), Cremutius sealed his own fate. If Cremutius intended to use figured speech, he has failed, because his use of it was detected.

¹⁶ This is a danger faced not only by the historian, but also by those engaged in an active political life, such as Tacitus – a senator and magistrate and orator and historian. As an orator, whose ambit at the end of the first century CE was principally the lawcourts, 'he may have to censure powerful personages (Quint., *Inst.* 9.2.68) to make his case, even though this is not his direct or desired goal. He has a triple audience: the judge, his opponent, and external powerful people who may be offended. No part of this audience is necessarily well disposed to him' (Ahl 1984, 194). Rhetoric is employed not only in the lawcourts, however, but also in literature, and publication expands the audience of the author. In Tacitus' *Dialogus de oratoribus*, the character Maternus, who has eschewed the oratory of the lawcourts in favor of poetry, who claims to have abandoned the world of politics and ambition, is warned by his friends on a number of occasions of the 'offence to the mighty that he is causing by his tragedies and of the consequent dangers that threaten'. The titles of Maternus' tragedies – *Cato*, *Thyestes*, *Medea*, and *Domitius* – indicate that Maternus was using tragedy to reflect dramatically on tyranny and to oppose it, as well as to express an analogy between his dramatic tyrants and the imperial system, cf. Williams 1978, 33–34. Maternus' use of figured speech is quite similar to that of Cremutius Cordus. Indeed, Aper's speech (*Dial.* 10.5–8), warning Maternus of the folly of his behavior, provides some insight into Tacitus' treatment of Cremutius Cordus in the *Annals*.

¹⁷ Woodman and Martin 1989, 175 note on this line 'Readers were evidently alive to hidden meanings, innuendo or – to use the technical term – *emphasis* (*Rhet. Her.* 4.67, Quint., *Inst.* 8.3.33, etc.).'

4. *Trial of Cremutius Cordus*

According to Tacitus, Cremutius Cordus was brought to trial 'because he had published a history in which he praised Marcus Brutus and called Caius Cassius the last of the Romans' (*Ann.* 4.34). It is this praise of Brutus and Cassius that is Cremutius Cordus' most obvious use of figured speech – by praising historical figures, he is able to comment on his contemporary political scene, while not so obviously appearing to do so. This use of history is analogous to the use made of myth in both Greek tragedy and in Roman tragedy and epic, where associations to historical and political figures and realities were made by analogy.¹³ The reader or listener supplies the details omitted altogether, although hinted at, by the writer or speaker.

But let us look at Tacitus' account of the trial. In his defense, Cremutius says that his words and not his deeds convict him. He argues that he has not maligned the emperor or his mother, who, he says, alone are comprehended under the *lex maiestatis*. In this argument of defense, a strange and seemingly anachronistic one at first glance, he alludes to Tiberius' first adoption of the law formulated by Augustus, when Tiberius had been offended by anonymous verses circulating, which had directly attacked him for his vices and for his estrangement from his mother.¹⁴ However, after the case of Appuleia Varilla in 17 CE, Tiberius had ruled that slanderous remarks against himself need not be prosecuted and that slanderous remarks about his mother should never be the basis of prosecution (*Ann.* 2.50). Elsewhere, Tacitus is the authority that Tiberius ruled that abusive ridicule of Tiberius or Livia was not *maiestas* (*Ann.* 1.74.3–6; 2.50.2).

So why would Tacitus have Cremutius Cordus use this particular defense, when the law has changed dramatically since that first iteration under the reign of Tiberius? Surely in preparing his defense the historian Cremutius Cordus was aware of the current scope of the *lex maiestatis*? Placing this hopelessly inadequate and anachronistic argu-

¹³ Cf. also note 20 below. Williams 1978, 40 notes that 'mythological and historical tragedy, used to convey Republican sentiments and criticism of the monarchy, was already old-fashioned by the time of Vespasian, and it had completely died out long before A.D. 102'. Considering the fate of Cremutius Cordus, is it any wonder that this type of figured speech quickly became unfashionable?

¹⁴ *hunc quoque asperavere carmina incertis auctoribus vulgata in sacviliam superbiamque eius et discordem cum matre animum.* 'He too had been ruffled by verses of unknown authorship satirizing his cruelty, his arrogance, and his estrangement from his mother', *Ann.* 1.72.

ment in the mouth of Cremutius Cordus is enough to get our attention, and this is just what Tacitus intended. This is another example of the rhetorical device of *emphasis* at play, where the author does not say everything himself, but leaves clues for the reader to fill in the gaps. In the first two arguments of his defense, Cremutius summarizes the history of the law (*Ann.* 4.34):

Conscript Fathers, my words are brought to judgment --so guiltless am I of deeds! Nor are they even words against the sole persons embraced by the law of treason, the sovereign or the parent of the sovereign.
(tr. Jackson)

verba mea, patres conscripti, arguuntur: adeo factorum innocens sum. Sed neque haec in principem aut principis parentem, quos lex maiestatis amplectitur ...

In the first sentence, he refers to the pre-Augustan state of the *lex maiestatis*, when 'deeds were challenged, words went immune' (*facta arguebantur, dicta impune erant*, *Ann.* 1.72). In the beginning of the second sentence of his defense, he refers to the post-Augustan changes made to the law by Tiberius, when *open* and *direct* opposition to or slander of the emperor and his family was encompassed by the law. In summing up this history, Cremutius says that he is innocent of both counts-- either acts of sedition or *openly* slanderous attacks against the imperial family. In essence, then, in his defense Cremutius admits that his opposition has been veiled and indirect, that he has employed figured speech in his histories, until then a non-prosecutable offense -- *novo ac tunc primum audito crimine*.

The next part of Cremutius' defense, then, addresses his use of figured speech in his histories (*Ann.* 4.34):

I am said to have praised Brutus and Cassius, whose acts so many pens have recorded, whom not one has mentioned save with honor.
(tr. Jackson)

Brutum et Cassium laudavisse dicor, quorum res gestas cum plurimi composuerint, nemo sine honore memoravit.

Although Cremutius admits to praising Brutus and Cassius, so has anyone else who has ever mentioned them. Augustus tolerated Livy's praise of Pompey, even teased Livy about it, and did not allow this difference in opinion to mar their friendship (*neque id amicitiae eorum offecit*, *Ann.* 4.34). Cremutius then names other Roman historians who praised Brutus and Cassius, yet suffered no censure because of it: Asinius Pollio and Messala Corvinus. When Cicero might have offended Caesar by

his praise of Cato, Caesar replied with his own oration, as if he were pleading his case in court. Antony and Brutus, Bibaculus and Catullus all included invectives against Caesar in their work, and yet Augustus bore all this patiently. As far as the Greeks were concerned, liberty and even license went unpunished (*Ann.* 4.35).

Cremutius Cordus continues: Is he rousing people to civil war because of his praise of Brutus and Cassius?²⁰ Because death has removed Cassius and Brutus from the partialities of hatred or esteem, are not they due their measure of honor in posterity? Cremutius warns that if he is condemned, his memory, too, will remain, as did the memories of Brutus and Cassius 'as they are known by their effigies (which the conqueror himself did not abolish)', tr. Jackson, *quomodo imaginibus suis noscuntur (quas ne uictor aboleuit)* (*Ann.* 4.35, tr. Jackson). After delivering this speech, Cremutius Cordus departs and ends his life by starvation. The senate decreed that his books were to be burned. However, Tacitus tells us, 'some copies were left which were concealed and afterwards published'.

The survival of Cremutius Cordus' work ensures that the historian gets the last laugh—although Tacitus claims on a number of occasions that the emergence of the principate and the peace that it established made oratory obsolete, the irony of that claim is evident at *Ann.* 4.35-45:

A fact which moves us the more to deride the folly of those who believe that by an act of despotism in the present there can be extinguished also the memory of a succeeding age. On the contrary, genius chastised grows in authority; nor have alien kings or the imitators of their cruelty effected more than to crown themselves with ignominy and their victims with reknown. (tr. Jackson)

quo magis socordiam eorum inridere libet qui praesenti potentia credunt extinguì posse etiam sequentis aevi memoriam, nam contra puni-

²⁰ According to Martin and Woodman 1989, 162, 183, Cordus' question in his speech: *nunc enim ... belli civilis causa populum ... incendio?* omits all reference to his role as an author, and thus 'Cordus represents as *actually* taking place that which in his history is merely *described*'. Thus he 'seeks to exculpate his work on grounds that it exhibits a quality at which all ancient historians aimed'—reproducing in the minds of the readers the feelings which were actually experienced by those who viewed the events (Plut. *Mor.* 347a)—and which therefore implies nothing about his personal motive (*causa*). This is the same rhetorical ploy that Tacitus is using in recounting the trial of Cremutius Cordus—he invents the speech of the historian and through this direct speech, Tacitus removes himself from the obvious role of narrator by representing the event as actually occurring.

tis ingeniis gliscit auctoritas, neque aliud externi reges aut qui eadem saevitia usi sunt nisi dedecus sibi atque illis gloriam peperere.²¹

This is 'Tacitus' defiant cry – no matter how fiercely tyrants, either foreign or domestic, may try to silence their opponents, their ferocity will only inspire greater ingenuity on the part of the oppressed, who will find a way to escape the detection of the censors, who will speak freely if not openly, and, who will ensure the circulation and/or publication of the writings of the silenced, even if the authors themselves do not survive.

5. *Other literary accounts of the trial*

According to Rogers (1965, 351), the account of the trial of Cremutius Cordus is the fullest and most explicit assertion of the alleged suppression of free speech by the Empire. In addition to 'Tacitus' report, Dio, Suetonius, and Seneca all provide various accounts of the trial.²² According to Dio (57.24.2–4), the complaint was made that while Cremutius had spoken no ill of Caesar and Augustus, neither had he praised them sufficiently. This was the cause of his death as well as the burning of his books. Dio's account is slightly different from the description of the charge as recorded by Tacitus. Dio is the only one of the sources to say that Cremutius Cordus had not praised Caesar and Augustus enough. Martin and Woodman 1989, 179 point out that the application of the *lex maiestatis* has come a long way from its original intent – 'in the past, insofar as it concerned the written word, (the law) had previously been confined to criticism or libel'. Cordus' work is not critical but encomiastic. Of course, the question remains – by praising, does Cordus intend criticism? In any case, Dio's statement indicates that the issue was one of control of speech rather than suppression of speech.

Dio also reports that Cremutius was forced to commit suicide. Seneca (*Ad Marc.* 22.4) and Dio, together with Tacitus, cite Sejanus as the source of Cremutius Cordus' indictment. Suetonius (*Tib.* 61.3), however, makes Tiberius responsible. All four sources, Seneca, Tacitus, Dio, and

²¹ Cf. Tac., *Dial.* 36.1–2; 38.2.

²² Dio 57.24.2–4; Suet., *Tib.* 61.3; Sen., *Ad Marc.* 1.2–4; 22.4–7; 26.1, 3.

Suetonius agree that Cremutius' writings, his histories, were the charge against him and the cause of his death.²³ However, only Tacitus records a speech delivered by the defendant.

6. *Cremutius' failed figured speech*

How does Tacitus suggest that Cremutius Cordus fails in his use of rhetoric? One could argue that Cremutius did not necessarily praise in his histories the individual virtue of Brutus and Cassius, but what they represented. He opposed in principle the monarchy instituted under Augustus and currently maintained by the rule of Tiberius. His words did not attack Augustus, Tiberius, or Livia personally, which would not have been an indictable offense anyway, but his praise is even more subversive. It attacked the institution of the monarchy itself. According to Moles (1998, 28), 'the salutation of Cassius as the last of the Romans actually implies the most radical of political claims, namely that the Republic *was* Rome and that with the fall of the Republic Rome is spiritually and politically dead'. And while Cremutius was not in the fields of Philippi with Brutus and Cassius (a physical impossibility) stirring the people to civil war with a rousing speech, his recounting of the events of history could still potentially incite political aspirations in his audience.²⁴ Because Cremutius Cordus' speech was so thinly veiled, the *suspicion* of what his words meant implicated him. The meaning of his statement, praising Brutus and saying that Cassius was the last of the Romans, was too apparent.

One could argue, however, that Cremutius Cordus intended to be detected. After all Tacitus describes Cordus as *reliquendae uitae certus* before he even begins speaking at his trial. There is no one as dangerous as the man who knows he has nothing to lose. According to Seneca's account (*Ad Marc.* 22.4), Cremutius Cordus felt that his fate was sealed because of the animosity Sejanus felt toward him. As a consequence, he became even more open in his criticism of Sejanus.

²³ Rogers 1965, 355. Rogers asserts, however, that Cremutius Cordus could not have been convicted on the basis of his having praised Brutus and Cassius, as that was not an indictable offense (359).

²⁴ In Suetonius' *Life of Claudius* (*De Vita Caesarum*, Book 5, pt. 2), Livia and Antonia advise the young Claudius, aspiring to be an historian, not to write about civil war. Even during the reign of Augustus, apparently, the historian who wrote about civil war was embarking on an inherently dangerous project.

This attitude is strikingly similar to that of the twentieth-century Russian poet, Osip Mandelstam, who died under the reign of Stalin. According to Mandelstam's widow, Mandelstam carefully considered his action in writing the poem about Stalin that ultimately incriminated him. He felt he could no longer be silent. He was aware that it was only a matter of time before he would be singled out for elimination. The infamous poem was not written down at the time of its composition, for fear of being discovered, but was memorized and communicated to about eleven intimate acquaintances of the Mandelstams. Nedezhda Mandelstam later decried the rumor that the poem about Stalin had been read at a party: 'Every word of this shows total ignorance of our life ... This is the sort of thing that only a provocateur would do, but even a provocateur would scarcely have dared to recite a poem about Stalin at a party'.²⁵ Yet the fact that Mandelstam intended the poem for wider circulation is also clear from his uncharacteristically plain language. His poetry was normally rife with figured speech, but in this poem Mandelstam wanted to be sure that his meaning was absolutely clear to any and every hearer. In this way, he chose the manner of his own death. While both writers made superficial attempts to conceal their speech, it is clear that both meant their meaning to be fully understood. And while Tacitus suggests that successful figured speech would have ensured Cremutius Cordus' survival, there is more than a hint of admiration in his description of the aftermath of the trial and the ultimate survival of Cremutius Cordus' work. (Mandelstam's work, too, was preserved as *samizdat*.) Perhaps Tacitus suffered from what we now call 'survivor guilt'?

7. Conclusion

While Cremutius Cordus' use of figured speech was too easily detected, Tacitus succeeds and survives politically because he has followed the rhetorical advice of Quintilian, the leading educator and rhetorician of the day.²⁶

For we may speak against tyrants in question as openly as we please without loss of effect, provided always that what we say is open to a different interpretation, since it is only danger to ourselves and not

²⁵ Mandelstam 1970, 149.

²⁶ Tacitus, in fact, may have been a student of Quintilian's. Conte 1987, 512, 531.

offence to them, that we have to avoid. And if the danger can be avoided by any ambiguity of expression, the speaker's cleverness will meet with universal approval (Quint. *Inst.* 9.2.67, tr. mine).²⁷

quamlibet enim apertum, quod modo et aliter intelligi possit, in illos tyrannos bene dixeris, quia periculum tantum, non etiam offensa vitatur. Quod si ambiguitate sententiae possit eludi, nemo non illi furto favit.

When, in the digression at *Annals* 4.32–33, Tacitus complains of the limitations of his subject matter and yearns for the days when his predecessors could write freely of more interesting topics, he could indeed be complaining of the poverty of his material, as the most obvious meaning of these lines imply.

Or, as is likely, he could be complaining of the political restrictions placed upon him by his contemporary situation. At the same time, by reference to the fluidity with which Republican historians could move from external to internal affairs, he also provides a clue to the understanding of his own work. Although his speech is restricted, Tacitus is still able to speak freely through the use of figured speech. The digression of *Annals* 4.32–33, though normally understood as a break in the stream of the narrative, and therefore external to it, is actually the frame and the key for understanding the internal narrative account of the treason trial of Cremutius Cordus at 4.34–35. At the same time, the digression represents Tacitus speaking in the first person, therefore 'directly' communicating his subjective thoughts about history, while also indirectly preparing us to read the account that follows. In the treason trial, Tacitus speaks indirectly through the person of Cremutius Cordus, creating the impression of an objective telling of an historical event. Thus, Tacitus himself moves fluidly between the internal and the external, between the implicit and the explicit in the writing of his history. In writing the speech for Cremutius Cordus, Tacitus corrects his predecessor's failed use of figured speech and shows others how to avoid his fate.

²⁷ This attitude toward figured speech is strikingly similar to that expressed in Horace's *Satires* 2.1.79–86.

Appendix

Defendant	Date	Alleged Offense	Punishment(s)	Source(s)
oracular writings	12 BCE	source of perpetuating hopes of political opposition?; offense not specifically mentioned	books burned	Suet., <i>Aug.</i> 31.1
C. Plautius Rufus	6-8 CE	accused of publishing pamphlets critical of Augustus	?	Suet., <i>Aug.</i> 19.1; Dio, 55-27.2-3
Titus Labienus	6-8 CE	anti-monarchical in speech & writings more?; commits suicide	all works burned	Sen., <i>Con.</i> 10, pt. 5 (Seneca says that Labienus was the first author to suffer this fate; Tacitus <i>Ann.</i> 1.72 says that Cassius Severus' case was the earliest; Dio attributes 1 st bookburnings to 12 CE (56.27.1)
T. Cassius Severus	8 CE; 24 CE	defiant obituary on T. Labienus; burned writings; barbed attacks on Rome's social elite	works burned; exiled to Crete, then Scriphos in 24 CE; after 2 nd trial	Sen., <i>Con.</i> 10, pt. 7-8; Tac., <i>Ann.</i> 1.72
Appuleia Varilla , niece of Augustus' sister	17 CE	'insulted defied Augustus, Tiberius, and his mother; also caught in adultery'	punished for adultery; turned over to her family to be exiled beyond the two-hundredth mile stone	Tac., <i>Ann.</i> 2.50

Defendant	Date	Alleged Offense	Punishment(s)	Source(s)
Clutorius Priscus	21 C.E.	composed poem anticipating death of Drusus; when Drusus recovered from illness, C.P. recited poem anyway	charge of literary treason brought against him; fine, exile and death penalty = punishment	Tac., <i>Ann.</i> 3.50 Dio, 57.20, 3
Aelius Saturninus	23 C.E.	recited 'improper' verses about 'Tiberius'	prosecuted under <i>lex maiestatis</i> ; convicted and hurled from the Capitol	Dio, 57.22, 5
Mamercus Aemilius Scaurus	24/25 C.E. 34 C.E.	Line from his play, <i>Annae</i> : 'Tiberius made to believe that remark was made about him, not prince of tragedy; also accused of adultery and magic practices	charge of literary treason; seven of Scaurus' written orations were burned; Scaurus commits suicide before final verdict; rest of works burned after his death? (see Suet., <i>scriptaque abalida</i>)	Tac., <i>Ann.</i> 6.9 & 29 Dio, 58.24, 4-5 Suet., <i>Tib.</i> 61, 3 Sen., <i>Con.</i> 10, pt. 2-3; Sen., <i>Stuas.</i> 2, 21
Aulus Crementius Cordus	25 C.E.	Cordus' <i>Annales</i> : in which he 'praised Brutus and Cassius' & did not praise 'Caesar and Augustus enough'	charge of literary treason; committed suicide before sentence delivered; books burned	Dio, 57.24, 2-3 Tac., <i>Ann.</i> 4.34 Sen., <i>Ad Marc.</i> 22, 4ff. Suet., <i>Tib.</i> 61, 3

Bibliography

- Ahl, E., 'The Art of Safe Criticism in Greece and Rome', *American Journal of Philology* 105 (1984), 174-208.
- Conte, G., *Latin Literature: A History*. London, 1987.
- Cramer, E., 'Bookburning and Censorship in Ancient Rome: A Chapter from the History of Freedom of Speech', *Journal of the History of Ideas* 6 (1945), 157-196.
- Forbes, C., 'Books for the Burning', *Transactions of the American Philological Association* 67 (1936), 114-125.
- Leeman, A.D., *Oratoris Ratio: The Stylistic Theories and Practice of the Roman Orators Historians and Philosophers*. Amsterdam, 1963. (Repr. 1986).
- Levick, B., *Tiberius the Politician*. London and New York, 1976. (Rev. ed. 1999).
- Mackie, N., 'Ovid and the Birth of Maiestas', in: A. Powell 1992, 83-97.
- Mandelstam, N., *Hope Against Hope*. New York, 1970.
- Martin, R., and A.J. Woodman, *Tacitus: Annals Book II*. Cambridge, 1989.
- Moles, J., 'Cry Freedom: Tacitus *Annals* 4.32-35', <http://www.dur.ac.uk/Classics/histos/1998/moles.html>
- Powell, A. (ed.), *Roman Poetry and Propaganda in the Age of Augustus*. London, 1992.
- Raaflaub, K., and M. Toher, (eds.), *Between Republic and Empire: Interpretations of Augustus and His Principate*. Berkeley, 1990.
- Rogers, R., 'A Tacitean Pattern in Narrating Treasons Trials', *Transactions of the American Philological Association* 83 (1952), 279-311.
- Rogers, R., 'The Case of Cremutius Cordus', *Transactions of the American Philological Association* 96 (1965), 351-359.
- Rutledge, S., *Imperial Inquisitions: Prosecutors and Informants from Tiberius to Domitian*. New York, 2001.
- Sammons, L.J. II, 'Opposition to Augustus', in: Raaflaub and Toher 1990, 417-454.
- Sinclair, P., 'Rhetorical Generalizations in *Annales* 1-6: A Review of the Problem of *Innuendo* and Tacitus' Integrity', *Aufstieg und Niedergang der Römischen Welt* II.33, no. 4 (1991), 2795-2831.
- Sinclair, P., *Tacitus the Sententious Historian: A Sociology of Rhetoric in Annals 1-6*. University Park, PA., 1995.
- Syme, R., *Roman Revolution*. Oxford, 1939.
- Syme, R., *Tacitus*, vols. 1 & 2, Oxford, 1958.
- Syme, R., *Ten Studies in Tacitus*. Oxford, 1970.
- Syme, R., *History in Ovid*. Oxford, 1978.
- Toher, M., 'Augustus and Roman Historiography', in: Raaflaub and Toher 1990, 139-151.
- Williams, G., *Change and Decline: Roman Literature in the Early Empire*. Berkeley, 1978.
- Woodman, A.J., *Rhetoric in Classical Historiography: Four Studies*. Portland, Oregon, 1988.
- Woodman, A.J., and C.S. Kraus, *Latin Historians. Greece & Rome. New Surveys in the Classics*, no. 27. Oxford, 1997.