

Xavier University

## Exhibit

---

Honors Bachelor of Arts

Undergraduate

---

2020-5

### **On a Defense of Democracy: How Roman Delatores and Emperors Dismantled Libertas and Established the Principate in the Early Roman Empire**

Justin R. Scott

Follow this and additional works at: <https://www.exhibit.xavier.edu/hab>



Part of the Ancient History, Greek and Roman through Late Antiquity Commons, Ancient Philosophy Commons, Classical Archaeology and Art History Commons, Classical Literature and Philology Commons, and the Other Classics Commons

---

Justin Scott

Director: Dr. Thomas E. Strunk

Readers: Drs. Alexandros Laftsidis and Karim Tiro

Instructor: Dr. Shannon Byrne

On a Defense of Democracy:

How Roman *Delatores* and Emperors Dismantled  
*Libertas* and Established the Principate in the Early  
Roman Empire

## I. Introduction

Lawyers, both modern and ancient, have been instructed to formulate rational and compelling arguments based on the evidence presented in a particular case. Despite the many changes, additions, and subtractions by modern conceptions of law, as those applicable in the American courts, both of which have formed the American Constitution and the American court system. This formulation of rational and compelling arguments has diachronically been a central theme in all forms of law practice since Republican Rome. If, however, this central theme of rational and compelling arguments was subtracted with indefensible slanders and a law system heavily influenced by one man, namely the Roman Emperor, how could lawyers practice law in courts?

This legal overturn took place under the Roman Principate and, in particular, during the prosecution of C. Silanus (consul in 10 C.E.) by a *delator*, Mamercus Scaurus. Not only did Silanus have to fend off accusations of extortion by the provincials of Asia, but also Scaurus' prosecution for violating the "godhead of Augustus" and "spurning the majesty of Tiberius" at the same time (Tac. *Ann.* 3.66).<sup>1</sup> The accusations, by their very nature, raise the question for defendants, like Silanus, how does a citizen either violate the "godhead of Augustus" or "spurn the majesty of Tiberius." Silanus, we might imagine, was just as confused, being unsure of how to effectively defend against these accusations on top of the other accusations being levied against him by his provincials. Such was the atmosphere under the emperor and the *delatores* during the first two centuries of the Principate. This atmosphere resulted in a complete change in the way Roman law had been interpreted and enforced under the Principate compared to how it

---

<sup>1</sup>All translations will be from the *Loeb Classical Library*. See Works Cited.

had been under the Republic. The Principate's law became more private and susceptible to manipulation by individuals like the *delatores* and the emperor, both of whom used their power and influence to cement their interpretations of the law into common practice.

The development of the *delatores* in the Roman legal system during the first and second centuries C.E. changed the way in which law was practiced in the Roman Empire. The term *delator*<sup>2</sup> refers to a Roman citizen, usually of the senatorial class, who was informally conscripted by the emperors to inform on Roman politicians and citizens. The *delatores* informed the emperors directly about a wide variety of people, such as political dissidents, anti-imperialists, or political/personal enemies of the emperor. The *delatores* were a new type of legal informers for the Romans, while there were the *accusatores* under the Republic, the *delatores* differed from the *accusatores* because the *delatores*' accusations had tangible effects on the accused. As will be explained in this thesis, while the *accusatores* had the ability to, more or less, alter public perception about individuals, the *delatores* had the ability to ruin political lives, force exile, and suggest state confiscation of property to the emperor.

The *delatores* operated during the early Principate under the Julio-Claudian emperors, such as Augustus (reign 27 BC-14 CE), Tiberius (14-37 CE), and Caligula (37-41 CE), when the *delatores* actively changed the operations of the Roman legal system. Some emperors, like Marcus Aurelius (161-180 CE), regulated the *delatores* closely and restricted the amount of freedom that they possessed in Roman politics and law. For example, Aurelius made it a habit to ask the Senate for permission over financial decisions, which was not required, but reflected traditional republican norms of senatorial spending.<sup>3</sup> This financial aspect of the law, as will be

---

<sup>2</sup>I will use the meaning "political/judicial informer" to describe a *delator*.

<sup>3</sup>Irvine 2009:57-58.

discussed later in this thesis, became one of the gifts that the *delatores* received for their accusations. Other emperors, like Tiberius, gave their *delatores* free rein of both the politics and the laws of the Roman Empire through confiscation, prosecution, and other uses of the law for personal benefit. Based upon their relationship with the emperor, the *delatores* posed a great threat to the accused, the locus of power in the Principate. Accusations stemming from the activity of the *delatores* had real political consequences on the individuals they were targeting, such effects could include exile, state confiscation of personal property, or political blacklisting.

The introduction and subsequent development of the *delatores* as the emperor's political tools drastically altered how the Roman legal system operated under the Principate compared to how the system had operated under the Republic. The *delatores* rejected many traditional Roman legal practices, like eloquent speaking and training, and superimposed their own form of legal practices based on venomous prosecution, infamy with the emperor, and the acquisition of wealth. Many Romans, particularly lawyers that favored traditional republican-style legal practice, despised this new legal system and resented the *delatores* and the legal system that they upheld and employed. Early imperial Roman lawyers, having been forced to adapt to the new legal system, changed also their practices in order to defend against the *delatores*' prosecutions of both themselves and their clients. This change in the practices of Roman law reflected a larger political shift in Roman power as the emperors progressively abolished democratic processes in favor of authoritarian imperial ones. In other words, they ripped political power away from the Roman Senate and placed it on the imperial throne.

The *delatores* operated in a system where proximity to the emperor and a close relationship with him mattered more than one's own ability to eloquently defend oneself. This change in the legal system between the Republic and the Principate meant that while the

emperors desired for their political and personal enemies to be prosecuted that did not dare to try and flex governmental authority in order to target their enemies. Rather, they enlisted, or rather simply, encouraged some individuals, the *delatores*, to prosecute their enemies for them with the promise of riches, power, status, or some other form of compensation.<sup>4</sup> For example, during the reign of Tiberius (14-37 C.E.), a *delator* named Gnaeus Calpurnius Piso, sat in on a trial in which Caepio Crispinus, quaestor of Bithynia, accused Granius Marcellus, praetor of Bithynia. Piso was a *delator* who viewed court cases and then would inform emperor Tiberius about how the trial had progressed. Crispinus, similar to Scaurus' prosecution of Silanus, slandered Marcellus with undefendable accusations all of which personally attacked Tiberius (*Tac. Ann.* 1.74). These accusations alleged that Marcellus' character reflected all those traits that were seen as foul under the imperial system for the citizens which, I argue, could have included impiety towards the emperor and the Roman state, treason, and positing a statue of Marcellus himself above a statue of Augustus. All of which, therefore, could have been perceived as treason.

These accusations against Marcellus' character were undefendable because, similar to Silanus' hearsay of his so-called "disrespect" towards Augustus, they were impossible for Marcellus to provide evidence against. *Delatores*, like Piso, often would silently attend trials, which served as a reminder to judges, lawyers, and the witnesses that the emperor would take notice of the proceedings. The *delatores* would also have imperial protection so that they would make their presence both known and show that they had imperial approval. Tacitus recounted that Piso "was therefore put in a litter and accompanied home by an officer of one of the praetorian cohorts; while rumor debated whether the escort was there for the preservation of his life or the enforcement of his death" (*Tac. Ann.* 3.14).

---

<sup>4</sup>Flint 1912:37.

Piso's imperial entourage demonstrated his influence that he had within the courts on account of his relationship with emperor Tiberius that clearly showed that crossing Piso meant also offending the emperor. The mere presence of Piso, I argue, was sufficient for the magistrate to rethink his judicial decisions, keeping in mind that Piso would have informed Tiberius about the trial. Having a *delator* present during the case shows that the *delatores* crippled legal proceedings and restricted individual liberties, because magistrates harbored more fear for imperial backlash rather than for the republican laws.

Simple gestures such as observing court cases, defile any legal system, Roman or otherwise, because of the implicit pressure that judges would experience before and during the trial. The judges could, therefore, easily pass judgment not based on evidence, but on the perceived desires of the "observer," whether that be a *delator* or the emperor himself, desires out of fear of punishment by imperial authority. Although a subtle political move, the presence of the *delatores* in legal proceedings demonstrated the emperors' desire to extend their influence over the Senate and the legal system. The *delatores* became extensions of the emperors within the courtroom to continually remind magistrates and lawyers that the emperor would take into consideration their arguments and judgments. The result of this extension into the law, I will

argue in this thesis, becomes a source of degradation of *libertas*.<sup>5</sup> *Libertas* will be defined in this thesis as political freedom that Romans had experienced under the Republic but had slowly become degraded by the *delatores* under the Principate.

I will divide this thesis into three separate categories of arguments: 1) an analysis of the republican legal system; 2) the rise of the *delatores* and degradation of *libertas*; and 3) the institution of a new imperial legal system based on political violence and fear. Throughout this thesis, I will argue that the legal and political actions of the *delatores* in the early empire affected the Roman legal system so that the emperors gradually fractured individual *libertas* and replaced it with a fear of the state in order to cement their authority over the new Empire.

---

<sup>5</sup>Both ancient writer and modern scholars have debated the exact meaning of Roman *libertas* that includes not only its definition, but also provides the socio-political context, within which Romans understood themselves. Wirszubski, in *Libertas as a Political Idea at Rome During the Late Republic and Early Principate* (1-30), argued that the conception of the meaning and significance of *libertas* was a poly-layered understanding for the Romans that included: *libertas*' relationship to citizenship (*civitas*), the surrounding Roman population (*Populi Romani*), Roman laws (*leges*), equality (*aequa*), dignity (*dignitas*), the way in which power was balanced (i.e. the rule of law), and individual rights. Thomas E. Strunk, in *History After Liberty: Tacitus on Tyrants, Sycophants, and Republicans* (23), provided two prevailing theories on the definition of the word, one from Florentius (*Dig.* 1.5.4), a second century CE jurist under the Principate, in which he described: "Liberty is the natural faculty of doing what is pleasing for each to do, unless it is prohibited by force or by law." The other from Matthew B. Roller in *Constructing Autocracy: Aristocrats and Emperors in Julio-Claudian Rome* (228) arguing that "*libertas* means the same thing in all cases: it means 'the (desirable) condition of not being a slave.'" While I believe that Roller's argument is too absolute, the true definition and understanding of Roman *libertas* is a mixture of these three aforementioned definitions that includes how Romans related the laws to their understandings of themselves as individuals, as citizens of Rome, and as "world-citizens," in which I mean to convey the way that they understood themselves to be free to pursue what they desire without being subjugated by *domini* [masters].

## II. The Republican Legal System and *Libertas*

The old republican legal system encouraged regular men to rise up through the political ranks by their own merits. John North argues that “whether [one] became a great man in the Rome of [his] day depended on [his] own efforts and [his] own merits, as judged by [his] fellow citizens.”<sup>6</sup> Non-senatorial men, referred to as *novi viri* or *novi homines*, “new men,” had the ability to rise through the political world until they reached the Roman Senate, the consulship, or another position of political power based upon the approval of their fellow-citizens and peers.

This path to political power for Romans was called the *cursus honorum* that Roman politicians, the most notable of which was Cicero, followed to reach political power. This path described the important offices that a Roman would hold as a milestone on their path to political power starting at the quaestorship, then aedileship, praetorship, and finally reaching the consulship. While the path to this political power had been available to all citizens through the *cursus honorum*, Ronald Syme counters that, “[i]n the beginning knowledge of the law had been the monopoly of the governing class; and for a long time the men of birth and station continue[d] to be the authoritative exponents of legal science.”<sup>7</sup> The elite, educated, and rich upper class, for the majority of the time when the republican government had operated, hoarded political power in the republican legal system. The upper class, having been in positions of judicial power for generations, naturally became the authorities on republican law. As a result, these upper class men dominated judicial positions, such as magistrates, who interpreted Roman laws and established the science and art of the republican legal system.

---

<sup>6</sup>North 1994:39.

<sup>7</sup>Syme 1972:406.

While the elite certainly maintained legal and political power, there was a way that individuals could rise through the legal ranks through an election as a magistrate. Roman magistrates, some of whom could have been non-senatorial individuals, had to be elected through an election by the Roman people.<sup>8</sup> In theory, at the very least, any Roman citizen could make a name for themselves, however, for reasons such as established influence, money, and connections, the rich of Rome would have an easier time than a middle or lower class prospect, who lacked these resources.

Regarding legal matters and lawyers within the court a man's own merits and efforts did not in entirety constitute legal or political power. Neither did his own ability to speak eloquently mattered equally, if not more, to what he was arguing in court. As a result, legal careers held for some articulate and eloquent individuals a path to political and social infamy. The Romans placed less emphasis on the evidence that the lawyer would have presented during the trial and, instead, evaluated lawyers based upon their oratory. In other words, the Romans, when they judged arguments, focused on *how* a lawyer presented his argument rather than *what* he argued. It was, thus, oratory that held the keys to political success, which could be demonstrated in the courtroom or during a public speech.<sup>9</sup> This emphasis on oratory will be taken into account later during the examination of the imperial legal system, which will demonstrate how imperial *delatores* relied on their relationship with the emperor rather than their individual legal/oratorical skills. One of the ways that a lawyer could demonstrate his prowess in oratory and courtroom eloquence was by effectively controlling witnesses through precise examination.

---

<sup>8</sup>North 1994:39.

<sup>9</sup>Atkinson 1970:32.

Under the *Lex Cincia*,<sup>10</sup> a law of the tribune Marcus Cincius Alimentus passed in 204 B.C.E. forbidding lawyers to be compensated after pleading a case, republican lawyers held themselves to a high standard in which their work was more for principle than financial compensation. This law, which, in general, republican lawyers held to, became a central part of a lawyer's commitment to his ideals about justice without being affected by financial compensation. The *Lex Cincia* will become one of the many issues that imperial lawyers raise about the *delatores* on account of the large amount of compensation that the *delatores* would receive through the prosecutions, which, more often than not, came from the emperor through state confiscation of property of the convicted.

Witnesses, in the republican court, fell into two general categories, voluntary and demanded by law. Roman lawyers adjusted the structure of their examinations and cross-examinations around these two categories. Quintilian (35-100 C.E.), a Roman orator and rhetorician in the first century C.E., explained that “there are two kinds of witnesses: voluntary, and those whose presence in the public courts is commonly demanded by law. Both sides use the former; the latter are available only to the prosecution” (Quint. *Inst.* Book 5.7). Witnesses that voluntarily testify in courts, both modern and Roman, in general, are amicable to their side, while hostile to the other side. Subpoenaed witnesses can be hostile to both sides; lawyers, on both sides of the trial, have to readjust their questioning so that the witnesses deliver accurate and useful testimony as evidence. Modern lawyers, like Roman lawyers, attempt to use direct

---

<sup>10</sup>This law limited the fee of advocates for trials that had been implanted for the Republic. However, Livy (around 60 B.C.E.-around 15 C.E.), a Roman historian, explained that the law had fallen out of use in the Republic and later renounced by emperor Augustus (27 B.C.E.-14 C.E.) in 17 B.C.E. (Rutledge 2001: 39). This law seemed more symbolic than literal, but Augustus still felt the need to formally renounce the law for the *delatores*.

examinations to let the witnesses paint a story for courtroom for the jury/judge and cross-examinations in order to have opposing witnesses agree with another reasonable point of view.<sup>11</sup>

While it was true that a Roman lawyer needed to be well-trained in oratory, in order to extract evidence from witnesses, lawyers still needed to extract evidence through their questioning of witnesses. Using pompous language could distract witnesses, the magistrates, and even the lawyer himself from either drawing out or understanding the intended point that the lawyer attempted to show.<sup>12</sup>

The way in which lawyers structured their examinations and cross-examinations, as either hostile or friendly, mattered in both republican and imperial trials because lawyers would have treated witnesses from both their side and their opponents' in different fashions. Quintilian argued that "[w]ritten statements are easier to combat: (1) there will surely have been fewer scruples when there were only a few persons to sign the document; (2) absence from court can be attacked as showing lack of confidence; (3) if the main personality involved is unassailable, we can discredit the signatories" (Quint. *Inst.* 5.7.2). Quintilian argued that lawyers in trials ought to form their arguments based on written statements to clearly point to and demonstrate the weaknesses of witnesses to discover the truth of the matter. Ronaldo Ferri explains that in the fifth book of his *Institutio*, Quintilian discussed these categories of witnesses and recommended different approaches to each type of witness.<sup>13</sup> Roman lawyers, similar to modern lawyers, were expected to be able to change their style of examination depending on the individual witness, and the Roman courts took notice of how effective a lawyer's style had been on the witness.

---

<sup>11</sup>Bates 2015:340

<sup>12</sup>Ferri 2014:61.

<sup>13</sup>Ferri 2014:60.

Without written statements, it would be very difficult for lawyers to make arguments about the truths of the cases, if the witnesses were allowed to provide conjecture about different events. The *delatores* did not need to order their accusations around these types of evidence, but rather chose to throw slanderous accusations, which will become vital to how the *delatores* degraded Roman conceptions of *libertas* within the courtroom.

The republican legal system attempted to uphold Roman conceptions of *libertas* through fair trials that had been argued through witness-based evidence. Republican lawyers sought to find truths about justice and morality through eloquent speeches, for both the prosecution and the defense, and, most importantly, were not compensated for their efforts. Other than moralistic/idealistic reasons, Roman lawyers were not concerned with compensation since all public offices remained unpaid until the Principate.<sup>14</sup> However, something within the Roman legal system changed because the *delatores* started acquiring large amounts of wealth and power under the Principate, which was something that the republican lawyers were not accustomed to because of the *Lex Cincia*. The cause of this dramatic change occurred for two reasons: the *delatores* ignored or malformed republican conceptions about legal practice to acquire power and the emperors rewarded the *delatores* with gifts and political positions for their loyalty in order to maintain their power of Rome.

---

<sup>14</sup>Atkinson 1970:36.

### III. The Rise of the *Delatores* and the Degradation of *Libertas*

The Roman lawyer under the Empire attempted to use the evidence, primarily the witnesses, to attack the character of the accused and paint him as someone, who would commit a given type of crime, rather than proving through evidence that the accused actually committed the crime. This meant that republican norms of eloquent defenses or prosecutions, well-researched evidence, and proper courtroom etiquette fell out of favor for the *delatores* under the new Empire. Steven H. Rutledge, with reference to imperial lawyers, stated that “[w]hether the orator will prevail or not depends not on the crime itself, but on how the prosecution presents it. The character of the accused must be represented in such a way that it corresponds to the type of crime the defendant is accused of having committed.”<sup>15</sup> Rutledge echoed both Quintilian and Ferri in their discussions on the categories of witnesses and approaches lawyers could use for each witness type<sup>16</sup> in that Roman magistrates in the Empire compared to those in the Republic rendered judgment differently based upon their perception of the accused’s character that the trial had developed through the arguments of both the prosecution and the defendant. Under the imperial legal system, however, the *delatores* emerged, breaking Quintilian’s ideals for lawyers, and, on account of either their lack of knowledge or disregard for republican legal practice and oratory, relied on their relationship with the emperor to deliver vicious prosecutions of political enemies.

Quintilian (35-100 C.E.), despite his commentary on republican-era legal and oratory practices for imperial lawyers, condemned the *delatores*’ form of legal practice because he formed his ideal imperial lawyer from republican standards for law practice. This is not to say,

---

<sup>15</sup>Rutledge 1999:563.

<sup>16</sup>See page 11, Quint. *Inst.* 5.7.2 and Ferri 2014:60.

however, that Quintilian favored imperial lawyers over their republican counterparts. Rather, Quintilian desired, through his writings, that imperial lawyers should emulate republican lawyers, which was something that *delatores* continually ignored and rejected. Quintilian wrote under the Principate, however, the parameters that he drew were republican and the *delatores* did fit his mold of an ideal Roman lawyer based upon the way that the *delatores* practiced and manipulated the law. I argue that an example of the *delatores*' diversion from republican parameters can be found in the tenth book of Quintilian's *Institutio Oratoria*, written under the Principate, in which he disapproved of the *delatores*' extempore arguments. Quintilian admitted that "[my] point is not that he [Quintilian's ideal lawyer/orator] should *prefer* to speak extempore, but that he should *be able* to do so" (Quint. 10.7.4). This interpretation of Quintilian is in accordance with Chris Holcomb's view: he comments, with respect to the *delatores*' immoral political and legal activities, that their extempore arguments violated Quintilian's ideals on using such devices.<sup>17</sup>

Extempore arguments, both Quintilian and Holcomb would agree, have their purpose in a lawyer's arsenal, but should not dominate his/her oratorical style. A good lawyer should be flexible and generate extempore arguments when necessary, but, importantly, a lawyer should not solely rely on their extempore arguments. Well-researched and rehearsed arguments that take skill and time to develop are ways that lawyers demonstrate their mastery over the art of law. Quintilian explained why it is foolhardy for orators to put all their faith in extempore arguments:

[n]o one should trust his native talents so much as to hope that this capacity will come to him immediately as a beginner. As I advised about mental preparation, so also with impromptu facility: we must develop it gradually from small beginnings to perfection which nothing[,] but practice can achieve or maintain (Quint. *Inst.* 10.7.18).

---

<sup>17</sup>Holcomb 2001:55.

Making extempore arguments without training or practice can lead to improper, rushed, or influent arguments where the lawyer's argument or reasoning can be lost to the magistrate.

Having a previously research argument that has been structured allows the lawyer to change and improvise, through extempore arguments, his/her already formulated argument based upon the other side's arguments. A good lawyer, moreover, should be skilled in preparation and improvisation in order to deliver fluent and compelling arguments for the trial.

The new imperial legal system placed importance on a close relationship with the emperor over being skilled in practicing law or oratory. While it may be true that these two attributes were not mutually exclusive (indeed, a *delator* may have been skilled in oratory and have a close relationship with the emperor), but skill was not required to become successful in the imperial legal system. Atkinson explains that, when a young pupil of a lawyer started out into the Roman legal practice, the emperor had the power to make or break his career. The emperor could bestow on the pupil one of two grants: either the emperor could grant *latus clavus*<sup>18</sup>, in which a purple line would be stitched into a rising politician's toga, symbolizing his elevation to senatorial status, or *ius respondendi*,<sup>19</sup> in which the pupil would become a jurist who had the legal authority to deliver judicial decisions that would become binding law. These decisions would be upheld in court and ensure that imperial policies would be implemented in the imperial legal system.<sup>20</sup>

---

<sup>18</sup>Those who received *lati clavi* wore a broad purple band across their tunics, which symbolized membership within the senatorial class. For more information on the *latus clavus* see Rich on *Clavus Latus* and *Clavus Angustus*.

<sup>19</sup>Not much is known within scholarship about the benefits or distinctions given to those who received *ius respondendi*, however, at the very least having the grant seemed to symbolize either imperial favoritism or adherence to imperial ideology. For more information on the debate in scholarship about *ius respondendi*, see Tuori on the *ius respondendi* and Roman magistrates.

<sup>20</sup>Atkinson 1970:52.

A relationship between a young lawyer/*delator* and an emperor could have developed for any number of reasons: political gift, familial relationship between the pupil and emperor, special interest in a pupil by the imperial family, or other similar situations. These relationships, however, were not formalized ceremonies in any sense of the word, but rather informal agreements between the individual or family and the emperor in a *quid-pro-quo* type of agreement. Suetonius explained that Augustus would appoint young Roman nobles to public affairs to gain their support for his imperial ideology:

To enable senators' son to gain an earlier acquittance with public business, [Augustus] allowed them to assume the broad purple strip immediately after the gown of manhood and to attend meetings of the senate; and when they began their military career, he gave them not merely a tribunate in a legion, but the command of cavalry as well...he usually appointed two senators' sons to command each division (Suet. *Aug.* 17.38).

These appointments and favors that emperors, like Augustus, would bestow on young men that had a senatorial future helped emperors maintain their control over the legal system with loyal senators and magistrates.

For example, Augustus conferred on some jurists this grant of *ius respondendi*, which became a common practice for the emperors following Augustus. The emperors used the *ius respondendi* and *latus clavus* as ways to centralize state power around the imperial throne through loyal magistrates and lawyers that would support the emperor because he had shown public support for the pupils through these types of imperial grants.<sup>21</sup>

While it is unclear what authority either *ius respondendi* or *latus clavus* specifically granted the individual jurist, other than being marked as an imperial favorite, Craig Anderson speculates that this position would have marked particular jurists as favored by the imperial throne. Rather than making the jurist's opinion legally binding in Roman law, the jurist's opinion

---

<sup>21</sup>Tuori 2004:313

on the case would symbolize imperial opinion on the law and it would be rare, if not politically detrimental, for a judge to refuse an imperially-supported jurist's opinion on a law.<sup>22</sup>

Although imperial favor, in general, meant success for an individual *delator*, it also became a source of much hatred and distrust among the public because of the *delatores'* tendency to be lax with their morality. In that respect, Tacitus (56-120 C.E.) commented on how a jurist, Ateius Capito (30 B.C.E.-22 C.E.), on account of his approval from Augustus, had risen higher and faster through the Roman legal system than his rival, Antistius Labeo:

For that age produced together two of the glories of peace; but, while Labeo's uncompromising independence assured him the higher reputation with the public, the pliancy of Capito was more to the tastes of princes. The one [Labeo], because he halted at the praetorship, won respect by his ill-treatment; the other [Capito], because he climbed to the consulate, reaped hatred from a begrudged success (Tac. *Ann.* 3.75).

Unlike Labeo, who insisted on remaining independent of imperial favor, Capito gained the greater political position, the consulship, because he relied on imperial power to propel him to political heights. On account of this, Labeo had been deemed the more honorable in the public eye for pursuing political power independently. Capito, on the other hand, rose to political power over Labeo despite the public disapproval for clutching onto his imperial favoritism. I argue that Labeo would have received more lucrative positions or opportunities courtesy of the emperor rather than Capito because the emperor would have recognized the potential benefit from a jurist focused on results rather than ideals of justice.

Discrepancies between lawyers' and the *delatores'* financial compensation became a fiery debate within some of the senatorial meetings. For the sake of clarity, an imperial lawyer is an orator/rhetorician that focused on the practice of the law that relied on republican ideals of arguing cases through eloquent defenses and evidence-based arguments. The *delatores*, on the

---

<sup>22</sup>Anderson 2009:14.

other hand, differed from the imperial lawyers in that they disregarded these models of traditional Roman conceptions of good lawyers, as defined by Quintilian and emulated by Cicero, in favor of clutching their imperial favoritism to dominate courtrooms and reap the benefits of a *delatio*<sup>23</sup>, which could include money, land, or status from the convicted.

Although lawyers would criticize the *delatores*, some emperors, such as Tiberius, would interpose themselves through their political vetoes to protect the *delatores* from being prosecuted. Tacitus recounts a debate within the Senate about the issue of suicide affecting financial compensation for the *delatores*:

And since [an accused praetor Caecilius] Cornutus had fallen by his own hand, a proposal was discussed that the accuser's [the *delator*] reward should be forfeited whenever the defendant in a charge of treason had resorted to suicide before the completion of the trial. The resolution was on the point of being adopted, when the Caesar [Tiberius], with considerable asperity and unusual frankness, took the side of the accusers, complaining that the laws would be inoperative, the country on the edge of an abyss: they had better demolish the constitution than remove its custodians (Tac. *Ann.* 4.30).

Tiberius chose to disregard republican conceptions of financial compensation from the *Lex Cincia* in order to protect the *delatores*' theft of money, a portion of which, of course, as emperor, he would have received. For most cases, as was the case in Cornutus' trial, the state, or in other words, the emperor, would confiscate the accused's property after being convicted on crimes, such as treason, sexual effeminacy, and other difficult to disprove accusations based on the lack of evidence. After the state/emperor had confiscated the convicted property, the emperor would gift a portion of the loot to the *delatores* as compensation for their services in convicting an "enemy of the state." Despite the criticism against this theft-gift system orchestrated by the emperors and their *delatores*, the emperors and pro-imperial senators/*delatores* ignored

---

<sup>23</sup>I define a *delato* as an "informing" which would entail a trial with a prosecution by a *delator*. A *delatio* should be reserved for only those prosecutions by the *delatores* since a *delatio* required some act of informing for the prosecution to occur.

advocates of new laws surrounding financial compensations during trials. Lawyers, therefore, found themselves hard-pressed to pass compensation reforms through the Senate because the emperors were flexing their imperial vetoes to block those types of legislation.

Lawyers criticized the *delatores'* disregard for the *Lex Cincia* by accepting financial compensation for their prosecutions. Tacitus expanded on the implementations of the *Lex Cincia* within the courtroom:

emperor [Claudius], who considered that these arguments [the different arguments given earlier either defending or criticizing receiving financial compensation for lawyers and the *delatores*], if less high-minded, were still not pointless, fixed ten thousand sesterces as the maximum fee to be accepted; those exceeding it to be liable on the count of extortion (Tac. *Ann.* 11.6-7).

At the very least, the emperors seemed to recognize the issue of allowing lawyers and the *delatores* to receive money *during* an ongoing trial because of the obvious concern for bribery. However, only a few emperors decided to retain this republican ideal for compensation. By the reign of Trajan, the *Lex Cincia* had fallen out of usage because lawyers and the *delatores* would be compensated after their work had been completed. While it may be true that this modification by Trajan would have decreased corruption *during* the trial, the lawyers, and more importantly the *delatores*, could have been compensated well *after* the trial had been concluded. At the very least, it discouraged bribery within court proceedings. But this practice of post-trial compensation could have resulted in encouraging faster and more vicious prosecutions by the *delatores*, as they were no longer to be paid during trial proceedings. They would be determined to “exploit” individual cases in order to receive the maximum amount of benefits.

Cassius Dio (135 C.E.-235 C.E.) provided another example of how imperial favoritism often propelled *delatores* to higher positions of political power over those individuals, who sought to retain their independence from the imperial throne. Emperor Tiberius, on account of

Julius Graecinus<sup>24</sup> refusal to accuse Marcus Silanus, a former legal adviser that fell out of Tiberius' favor,<sup>25</sup> executed Graecinus. Dio explained that “when the senate desired to dishonor Gaius [Tiberius], [Tiberius] personally prevented the passage of the measure, but on his own responsibility caused all his predecessor’s images to disappear by night” (Dio *Roman History* 60.5.). While a complicated situation, this execution and subsequent prosecutions demonstrate how politically detrimental, and even life-threatening it could be for imperial advisors, lawyers, or *delatores* to fall out of favor with the emperor.

This imperial approval led many *delatores* to abuse the legal system and partake in acts of corruption, such as state confiscation of property, which undermined the republican legal system. Tacitus described the disrespect of the *delatores* for republican laws stating that “[a]ll the laws our ancestors discovered, all which the deified Augustus enacted, are now buried, those in oblivion, these—to our yet greater shame—in contempt” (Tac. *Ann.* 3.54). Since the *delatores* worked alongside the current law and also the prosecutions by the *delatores* had become increasingly more entwined with either state-enforced or state-created corruption, Shreyaa Bhatt comments on this passage pointing out that the *delatores* and emperors implicated laws to sanction or legalize state-confiscation of personal property.<sup>26</sup> The *delatores* did not break the current law under the Principate, but rather they manipulated interpretations of the laws to legalize their thievery, abuse, and violence. The *delatores* and the emperors bent Roman laws through political intimidation and fear alongside imperial approval and enough pro-imperial judges and jurists, in order to make those “interpretations”—if such a word could even describe

---

<sup>24</sup>Julius Graecinus was the grandfather of Tacitus' wife. For more information about his death by emperor Gaius and his son Gnaeus Iulius Agricola, see Richmond on Graenicus, Agricola, and Tacitus.

<sup>25</sup>Rutledge 2001:105.

<sup>26</sup>Bhatt 2017:312.

their abuse of the system—align with Roman law, thereby legalizing actions such as state-endorsed confiscation of property. Tacitus described how Lucius Volusius Saturninus (60 B.C.E.-20 C.E.), an appointed magistrate had used this trick to his own advantage, explaining that “he himself enriched it with the consulate, and, besides discharging the duties of the censorship in the selection of the equestrian decuries, became the first accumulator of the wealth which raised the family fortunes to such unmeasured heights” (Tac. *Ann.* 3.30).

The new legal system allowed for individuals new in politics to quickly gain political power; however, it also encouraged some individuals, the *delatores*, to abandon republican practices of law. For *novi viri*, who wanted to secure power quickly, as explained earlier with the imperial jurists, latched onto the emperor and imperial power to establish themselves among the senatorial class. Romans understood that a politician holding political office under the imperial regime provided evidence that this politician collaborated or, at the very least, accepted the new imperial regime.<sup>27</sup>

The *delatores* and other pro-imperialist politicians attempted to transform positions of authority, such as magistrate positions, into imperialist positions of power and influence that reflected the original republican positions. For example, a *delator* could have been appointed to a magistrate that the Republic had viewed as the judges on the law, however, the *delator* would rule cases to adhere to imperial ideology and edicts. Since emperors needed loyal magistrates to implement imperial dictates on Roman law, the *delatores* became natural choices to fill these positions for the emperor. Rather than destroying their credibility by circumventing republican

---

<sup>27</sup>Strunk 2015:48.

legal processes, the *delatores* could use the political office that they received to credibly enter the political system with their imperialist ideologies and pursue wealth and power.<sup>28</sup>

Some individuals, whether they be *equites*, freedmen, or pupils of a lawyer, who depended on the patronage of the emperor, received coldness and hostility from many members of the senatorial class furious with the imperial interference in both the political and social cultures, which normally were dominated by the rich upper-class aristocrats.<sup>29</sup> Tacitus provided the example of Brutedius Niger, a *delator* who prosecuted Gaius Silanus, a corrupt governor of Asia, and advanced at the cost of those above him:

Brutedius, amply provided with liberal accomplishments, and bound, if he kept straight road, to attain all distinctions, was goaded by a spirit of haste, which impelled him to outpace first his equals, then his superiors, and finally his own ambitions: an infirmity fatal to many, even of the good, who, disdainful of the sure and slow, force a premature success, though destruction may accompany the prize (Tac. *Ann.* 3.66).

Rutledge, moreover, argues that “the *delator* becomes a *genus*, readily identifiable as a marginalized individual out to destroy his betters.”<sup>30</sup>

The prosecution by the *delatores* disrupted Roman life and plunged Rome, from the *delatores*' inception, into a state of violence, tyranny, and suspicion. Tacitus, in his *Historiae*, explains the situation within Rome as chaotic:

High birth, wealth, the refusal or acceptance of office—all gave ground for accusations, and virtues carried the surest ruin. The rewards of the informers were no less hateful than their crimes; for some, gaining priesthoods and consulships as spoils, others, obtaining positions as imperial agents and secret influence at court, made havoc and turmoil everywhere, inspiring hatred and terror (Tac. *Hist.* 1.2).

Tacitus described a Rome without order, without purpose. Rome itself seemed like it had been turned into a wild jungle with predators, the *delatores*, running around the city having free rein in

---

<sup>28</sup>Strunk 2015:55.

<sup>29</sup>Rutledge 2001:24.

<sup>30</sup>Rutledge 2001:24.

pursuit of their prey because of the relative lack of order and restrictions to the *delatores*, who gained access to all forms of political positions, like priests, magistrates, or consuls. Rutledge highlights that this description of Rome with a tripart crescendo including the Vesuvius' eruption, the burning of the Temple of Jupiter on the Capitoline, and—placed purposefully at the end of the crescendo—the *delatores*' unchecked reign of Rome. This subtle but clear prioritization signals the fact that in Tacitus' mind the *delatores* had been the most destructive element, surpassing a volcanic eruption and horrors of wartime conquest.<sup>31</sup> Thomas E. Strunk echoes Rutledge's opinion, adding that these events had been some of the most harmful effects that Rome had endured which uprooted friendships, virtues, and even public service.<sup>32</sup> Both Rutledge and Strunk agree that Tacitus purposefully placed the *delatores* at the end of the crescendo to further highlight how dangerous, violent, and detrimental they had become to Rome, its politics, and traditions.

The Romans perceived voluntarily prosecuting other citizens as morally dubious because the prosecutor needed to provide evidence proving why another Roman should be convicted of a charge. In particular, under the Principate, prosecution became a sensitive area of legal practice because of the *delatores*. Cicero, in his *De Officiis*, explained why prosecutions had such a negative stigma for Romans:

But if it shall be required of anyone to conduct more frequent prosecutions, let him do it as a service to his country; for it is no disgrace to be often employed in the prosecution of her enemies....For it requires a heartless man, it seems, or rather one who is well-nigh inhuman, to be arraigning one person after another on capital charges. It is not only fraught with danger to the prosecutor himself, but is damaging to his reputation, to allow himself to be called a prosecutor (Cic. *Off.* 2.14).

---

<sup>31</sup>Rutledge 2001:14.

<sup>32</sup>Strunk 2017:82.

Strunk argues that the Romans considered prosecution to be morally questionable at best because prosecutors had to justify the reason(s) that the accused ought to be prosecuted. This tension surrounding prosecution became closely tied with the act of *delatio*<sup>33, 34</sup>.

Prosecution could be detrimental to political and social reputations, if taken up willingly, which the *delatores* often did. For example, Tacitus described that a *delator*, Aquilius Regulus, “had made himself most bitterly hated for causing the downfall of the houses of the Crassi and of Orfitus: he seemed voluntarily to have taken the accusation on himself though quite a youth, not to ward off danger from himself, but because he hoped thereby to gain power” (Tac. *Hist.* 4.42). Regulus’ acceptance of the prosecution did not align with republican legal norms of defending against prosecution as the more honorable legal practice. Pliny also commented on Regulus’ dishonorable enthusiasm in prosecuting other citizens:

He [Regulus] had helped with the prosecution of Arulenus Rusticus [, a praetor in the early 70s C.E., who was executed for writing a panegyric<sup>35</sup> to the executed Thrasea Paetus] and proclaimed his delight in Rusticus’s death by giving a public reading of his speech against him..., where he used the words ‘Stoics’ ape’ ‘branded with [emperor] Vitellius’s mark’ (Plin. *Ep.* 1.5).

It is clear, moreover, that Regulus and the *delatores* cared little for those norms and were only concerned about political gain and the acquisition of wealth through legal prosecution.

In some more extreme cases, after a *delatio* had been performed and power had changed hands between emperors, some individuals or families that had been prosecuted would seek revenge on a *delator* that had fallen out of imperial favor. Tacitus explained how the enemies of a *delator*, Sillius Rufus, had returned after the coronation of a new emperor to wreak their revenge upon him:

---

<sup>33</sup>See above footnote 23 for definition of a *delatio*.

<sup>34</sup>Strunk 2010:251.

<sup>35</sup>A panegyric is a public speech or published text that praises either something or someone.

Neither with [Rufus'] fate in the balance nor with his condemnation recorded did his spirit break, and it was asserted later that a life of luxury and abundance had made his seclusion not intolerable. When his son Nerullinus was attacked by the accusers [those having been afflicted by Rufus' prosecutions], who relied on his father's unpopularity and on charges of extortion, the emperor interposed his veto, on the ground that vengeance was satisfied (Tac. *Ann.* 13.43).

The *delationes* in many ways were detrimental to the *delatores* that had performed them regularly. In this case, Rufus, not only suffered from his enemies that he created, but also his son suffered.

While republican and imperial lawyers aspired to high philosophical ideals and truths, the *delatores* cared little for ideals and, instead, focused on vicious prosecutions for wealth and power. George L. Canfield explains that, under the Republic, "the Roman lawyer had high ideals, he could illuminate his statues with verses from Homer and Aristophanes and dream of absolute justice and laws automatically executory; but he also realized that he had to try his cases in a degenerate world."<sup>36</sup> The republican lawyer pursued true justice, and although he realized true justice is theoretical and not possible, he continued to pursue those high ideals anyway, aiming to preserve justice in the practice of the law.

Unlike republican lawyers, the *delatores* did not pursue those ideals of true justice and instead oriented themselves around monetary rewards. Many of the *delatores*, determined to gain as much notoriety and wealth as quickly as possible, abandoned republican legal ideals, such as the pursuit of the truth or making conclusions based upon the evidence presented. Pliny, in a conversation with Regulus about oratory within the imperial courtroom, said to him: "Personally I do try to copy Cicero, ...and am *not* satisfied with the oratory of today. It seems to me foolish not to model oneself on the highest standards" (Plin. *Ep.* 1.5). While Regulus seemed content

---

<sup>36</sup>Canfield 1909:559.

using his new imperial style of prosecution, Pliny viewed him as foolish to reject republican oratory and one of its most achieved teachers, Cicero, as a model.

These imperial prosecutions by the *delatores* reflected an overall departure from the republican ideals of how lawyers ought to argue cases, as laid out by Quintilian, writing during the Principate and drawing upon republican legal parameters. Quintilian in the first book of his *Institutio* described his ideal orator, who incorporated republican ideals into an imperial system, stating that “[t]he man who can really play his part as a citizen, who is fit for the management of public and private business, and who can guide cities by his counsel, give them a firm basis by his laws, and put them right by his judgements, is surely no other than our orator” (Quint. *Inst.* 1.10-11). Quintilian’s orator, much like Cicero’s ideal orator, who focused on pursuit of the truth and impeccable moral character, needed to be more than an eloquent speaker; this orator needed to be active in both the public and private realms. Quintilian also believed that a good orator not only needed to be able to provide legal counsel for individuals and cities, but also legal arguments for the justification of this counsel.

Orators must, in addition to all these qualities, have a secure sense of morality and perceptibility, but, at the same time, be able to adapt to the changing situations of the courtroom while delivering an excellent and masterful speech. The definition of an ideal orator did not change even with the advent of the Principate, but rather, a group, the *delatores*, elected to ignore oratory. Quintilian explained that a lawyer ought to have the ability to improvise on the spot, which Quintilian defined as “[t]he greatest fruit of our studies, the richest harvest of our long labours is the power of improvisation. A man who does not succeed in this should, in my opinion, give up public work, and use his one talent, which is for writing, for other purposes instead (Quint. *Inst.* 10.7). Holcomb explains that Quintilian’s orator sought to find a balance

between not comprising his moral character and performing extemporaneous arguments in arguments when necessary, both of which defined mastery in oratorical arts.<sup>37</sup> These many qualities all pertain to both the ideal republican and the ideal imperial lawyer. Imperial lawyers, had to deal with the *delatores* and their prosecutions that, as Quintilian attested to earlier, rejected and subverted the republican law continually. Michael Winterbottom explains that the *delatores* relied on their *ingenium*<sup>38</sup> and talked arrogantly about their “inspirations” that came to them without having to review depositions or evidence in cases.<sup>39</sup> Being an imperial lawyer would have had to been extremely difficult job to perform. One would need to argue their cases against a legal system that continually robbed its citizens of *libertas*, used its magistrates to cement imperial interpretations of the law, and had individuals *actively* seeking out prosecution cases against those who dissented with imperial policies.

The subversion of the traditional Roman law practices angered many Romans, particularly politicians and writers, who painted the *delatores* as manipulative, vindictive, and vicious. The earlier quotes used in this thesis from Quintilian’s *Instituto* and Tacitus’ works, the *Historiae* and the *Annales*, all described the *delatores* in a negative light focusing on their prosecutions that ignored republican traditions and ideals for power and money.

Often, the *delatores* would bring charges that were next to impossible to defend against. For example, the charges could consist of hearsay evidence against the emperor that would be determined by a character analysis, in which the *delatores* would slander the accused. Caepio Crispinus, in Tacitus’ *Annales*, “alleged that Marcellus had retailed sinister anecdotes about

---

<sup>37</sup>Holcomb 2001:54.

<sup>38</sup>I will define *ingenium* as the *delatores*’ natural ability that did not have a foundation with oratorical teachings of either Cicero or Quintilian.

<sup>39</sup>Winterbottom 1964:95.

[emperor] Tiberius: a damning indictment, when the accuser selected the foulest qualities of the imperial character and attributed their mention to the accused” (Tac. *Ann.* 1.74). As in this example, a *delator* could accuse a politician of being or doing everything that the emperor despised and prohibited, which, of course, would be a charge that would be impossible to defend against because the charge is entirely hearsay. The resulting action could include political blacklisting, which effectively terminated a political career of an individual. Evidence, in the modern sense, would not be required, rather the *delator* had to prove during the trial that the accused’s character matched someone who would have committed the accused’s crime.

In other words, if the *delator* argued that the accused seemed like the type of man to speak out against the emperor, and if a rumor was circulating that he was treasonous, all the *delator* had to do was show that the convicted would be treasonous, if given the chance. All that was required, moreover, in imperial courts to convict the defendant would be a rumor that the defendant committed the accused crime, whether he did it or not mattered little. If the trial had determined that the defendant’s character matched someone who seemed like the type of character to commit the accused, then, alongside the rumor, that would be sufficient evidence to convict the defendant.

Another example of the *delatores*’ perceived vindictiveness and active opposition to traditional Roman values is afforded by Tacitus. In his *Annales*, he provided an account of Granius Marcellus, who had been accused of treason by his own quaestor, as evidence of the ruthless and power-driven goals of the *delatores*. Tacitus recalled that:

Before long, Granius Marcellus, praetor of Bithynia, found himself accused of treason by his own quaestor, Caepio Crispinus, with Hispo Romanus to back the charge. Caepio was the pioneer in a walk of life which the miseries of the age and the effronteries of men soon rendered popular (Tac. *Ann.* 1.74).

Rutledge, based upon this description in particular, described the archetype *delator* as an adaptable, ruthless, and fierce careerist. The *delator* did not care about those whom he stepped on while climbing to the apex of Roman political society. The Romans concluded that, on account of the abuses of the legal system by the *delatores* and the political privileges that the imperial system had given to them, a *delator* held a negative connotation with no concern for republican idealism and society.<sup>40</sup>

---

<sup>40</sup>Rutledge 2001:11.

#### IV. The Institution of the New Imperial Legal System

Although, under the Republic, political competition was fierce, the *delatores* became a new *genus*, one prone to political violence. The *delatores* became their own *genus* of Roman citizen that not only had been excluded from the aristocracy, but, because of this exclusion, had become violent and power-hungry.<sup>41</sup> The imperial regime allowed for *novi viri* to rise up through the political ladder and it, invariably, carried with it vicious, angry, and violent individuals, who now having received power were determined to either involve themselves within the aristocracy's financial and social circles or exact revenge on the Roman aristocracy. Either way, the *delatores* shattered the system of republican power and consumed the void of power that was left after the politicians were either disgraced, exiled, or killed. For example, in the aforementioned case of treason against Marcellus, Tacitus described that emperor Tiberius intervened into the situation and acquitted Marcellus (Tac. *Ann.* 1.74). Tiberius, afterwards, dispensed gifts, such as money, to senators involved with this case and similar cases that followed, to appease all sides. Tacitus concluded that "while equity gained, liberty suffered" (Tac. *Ann.* 1.75) because Tiberius had to flex imperial power in order to appease all sides of the conflict subverting the Roman courts and taking this "justice" into his own hands.

The locus of legal power in the Republic, through individual merit of the ideal orator/lawyer, had dramatically changed because the new locus of power under the Principate was one man, the emperor. With Senatorial power continually fracturing, emperors, like Tiberius, aided by their *delatores*, dismantled republican ideals and norms in order to cement imperial power over Rome. The aftermath of the aforementioned case of Marcellus caused turbulence in the Roman courts as senators clawed for power and money. This pursuit for power

---

<sup>41</sup>Rutledge 2001:24.

and money forced Tiberius to assert more power over the courts, severely limiting the courts' independence. In other cases, the emperor would refuse to intervene, which was a form of political statement in its own regard. For example, Tacitus again described how Tiberius' silence spoke volumes when recalling the events of a small riot that had killed and wounded centurions and citizens alike:

The riot was discussed in the senate, and proposals were mooted [raised] that the praetors should be empowered to use the lash on actors. Haterius Agrippa, a tribune of the people, interposed his veto, and was attacked in a speech by Asinius Gallus, Tiberius said nothing: these were the phantoms of liberty which he permitted to the senate (*Tac. Ann.* 1.77).

In this example, Tiberius' actions, and inactions, disrupted traditional Roman forms of developing and executing the law. Taking into account that the emperors progressively acquired greater control of the Senate and the courts, the way in which the emperors controlled the criminal justice system became a vital part in their subjugation of the Roman courts and Senate.

The Roman criminal justice system under the Principate became more private and the imperial officials changed the way in which defendants were evaluated under the law. In republican court, criminal defendants were allowed to argue their case in courtrooms where the magistrate, the prosecutor, and a small audience would be present to deliberate about the case. Under the Principate, however, criminal cases were more private events where an imperial-backed magistrate or the emperor himself would determine the outcome, based progressively less and less on the evidence, but rather on their perceived understanding of the character of the accused.

The way in which judgments were rendered about the accused's character had changed drastically, unlike in the republican system, the legal system in the Principate did not require well-structured arguments, references to evidence, or preparation. The imperial legal system

encouraged the *delatores* to become lax in the formulation of their arguments and the imperial courts rewarded their prosecutions that centered around acquiring as much money and power as quickly as possible. The *delatores* improvised on the spot to make the accused seem like the worst imperial stereotype without evidence, without finding the truth of the matter, or without pursuing some ideal about truth or justice. The *delatores* had evolved into something completely foreign and toxic to Roman conceptions of how individuals involved in the legal process ought to act. In fact, the imperial criminal justice system justified the Roman state's punishment of criminals based upon their "ability" to evaluate the morality of the defendant through physical signs. Putting it another way, imperial agents, or the *delatores* and magistrates, could determine if a citizen is guilty of a crime not through evidence and testimony, but by the way that the accused looked.<sup>42</sup> Tacitus outlined an example of this major degeneration from evidence-based trials in the accusation of Asiaticus, who was arrested and dragged into Rome by order of emperor Claudius:

[H]e was heard inside a bedroom, with Messalina looking on and Suillius formulating the charges: corruption of the military, who, he alleged, were bound in return for money—and worse—to every form of infamy; adultery with Poppaea; and, finally, sexual effeminacy (Tac. *Ann.* 11.2).

Asiaticus had been arrested and, then, convicted based upon hearsay of a conversation that the accuser recalled, and the emperor found this testimony sufficient enough reason to arrest and convict the defendant of the charges levied against him.

Just as Asiaticus was privately arrested and dragged into Rome to face indefensible charges, Titius Sabinus (executed in 28 CE), a Roman knight, experienced a similar situation in which he was tricked by the *delatores* to confess treason. Emperor Tiberius suspected that

---

<sup>42</sup>Bryen 2014:249.

Sabinus led a conspiracy plot with Nero (37 C.E.-68 C.E.) and Agrippina (15 C.E.-59 C.E.) against Tiberius but lacked sufficient evidence to prosecute them. Tacitus recounted how Tiberius instructed the *delator* L. Aelius Sejanus, his close confidant to prosecute Sabinus:

Then, as Sabinus, with the usual weakness of the human heart in sorrow, broke into tears coupled with complaints, he grew bolder and showered reproaches on Sejanus, his cruelty, his arrogance, his ambition. Even [emperor] Tiberius was not spared, and these conversations, regarded as an exchange of forbidden sentiments, gave the appearance of intimate friendship (Tac. *Ann.* 4.68).

Unknown to Sabinus, however, Sejanus had carefully contrived a plan with Latiaris, the man whom Sabinus had developed a close friendship, to induce Sabinus to speak negatively of Tiberius. Sejanus placed three witnesses on top of Sabinus' roof to overhear a part of the conversation between Sabinus and Latiaris to use as "evidence" that he plotted against the emperor. Therefore, Sabinus' criticism of Tiberius had been recorded, privately and through these three witnesses, and passed onto Tiberius himself. The Roman Senate convicted Sabinus of treason in a plot against the emperor based off of one conversation and he was executed. Tiberius later thanked the senate for disposing this 'enemy of the state' and hinted other conspirators, which, Tacitus most likely intended to be Nero and Agrippina.<sup>43</sup>

In imperial court cases, defendants and the accused had to select their words carefully because the *delatores*, such as Marcus Aper, had accepted the new imperial legal system and supported it within court cases. Lawyers that did not adhere or accept the new system (unlike the *delatores*) did not have the same liberties as the *delatores*, because they could not appeal to the imperial throne as a justification for their arguments. Rather, lawyers were forced to continually adapt to the new and changing legal system in order to strive to best accommodate the imperial influence in the courts alongside their pursuits of truth and justice. For example, in Tacitus'

---

<sup>43</sup>Bauman 1974:121.

*Dialogus*, Aper said that “[w]here change occurs, we are not immediately to conclude that is a change for the worse: you must blame it on the carping spirit of mankind that whereas what is old is always held in high esteem, anything modern gets the cold shoulder” (Tac. *Dial.* 18).

Strunk argues that Roman readers would have realized that the way in which Aper acts within the courtroom meant that he supported the imperial regime, its belief that the Principate and the Republic were the same system, and that the defendant Maternus ought to be careful when making arguments.<sup>44</sup> Aper appeared to believe in the contemporary imperial narrative that the Roman Republic had never changed and the emperors had smoothly transferred power from the Republic. Strunk explains that Aper accepted the Augustan propaganda that the Republic and the Principate were the same system, a theory that argued that Augustus had restored and preserved the Republic following the civil wars.<sup>45</sup> There appears to be some serious contradictions in Aper’s belief that the Principate was a natural extension of the Republic that did not rely on political violence, an authoritarian figure, or the abolishment of *libertas*. Considering that emperors and the *delatores* caused individuals to be exiled or executed, Aper’s belief that the Republic has not changed lacked sufficient evidence as the *delatores* pursued prosecutions to feed their power and influence within Rome.

The abolishment of democratic processes in favor of authoritarian imperial processes had severely restricted the individual’s freedom and legal powers. Tacitus, in the *Annales*, explained that “to consolidate his power, Augustus raised Claudius Marcellus, his sister’s son and a mere stripling, to the pontificate and curule aedileship” (Tac. *Ann.* 1.3). Augustus and the subsequent emperors appointed imperial allies or family members to important political and judicial

---

<sup>44</sup>Strunk 2010:257.

<sup>45</sup>Strunk 2010:256.

positions that would ensure those imperial-favored positions would enact imperial policies. Subtle appointments, such as this one, undermined the democratic processes of the Republic and damaged personal *libertas*. The way in which the emperors superseded traditional forms of climbing the political ladder, through the *cursus honorum*, restricted the abilities of individuals to gain political prominence without relying on imperial favor. While some individuals were certainly capable of rising to the top without imperial help, the *delatores* were able to rise much faster using imperial favoritism as leverage over their rivals. In addition, the way in which trials operated under the Principate denied the defendant the ability to argue compelling evidence in their defense, when the entire way in which character analysis were performed had changed with the Principate. The most obvious damage to *libertas* would be the emperor vetoing or greatly influencing senatorial procedures, such as when Tiberius flexed imperial power to bail out a *delator*.

The emperors, beginning with Augustus, threatened the individual's sense of *libertas* and superimposed themselves as *domini*. Strunk explains how Tacitus went as far as to describe "Augustus as searching for bulwark (*subsidia*) for his *dominatio*, suggesting that Augustus' fellow citizens were in the position of *servi* and Augustus as their *dominus*."<sup>46</sup> The *servus-dominus* relationship would be one that all Romans would understand because of the Roman slavery system. The connotation behind *dominus* is charged with the idea of a Roman citizen being a slave to another Roman citizen, an unacceptable condition for a Roman, at least under traditional republican norms.

Despite Augustus' acceptance of the title of the *pater patriae*, the father of the fatherland, an argument could be made that he and the subsequent emperors disliked having such titles

---

<sup>46</sup>Strunk 2017:26.

because of the implied connotation as the emperors being *domini*. Emperors disliked having any reference to slavery associated with them because Romans prided themselves on being free, another conception of their *libertas*, because, as Tacitus explained, Romans understood *libertas* as the freedom from domination (*dominatio*) and the ability to freely participate in public life.<sup>47</sup> Suetonius echoed Tacitus in arguing that people perceived Augustus, Domitian, and the other emperors as *domini*; this implied a loss of *libertas* having been regulated to *servi* under the *dominus*. Suetonius, in the *Lives of the Caesars*, explained that Augustus did not enjoy being called a *dominus*:

[Augustus] always shrank from the title of Lord [Master (*Dominus*)] as reproachful and insulting. When the words, ‘O just and gracious Lord!’ were uttered in a farce at which he was a spectator and all the people sprang to their feet and applauded as if they were said of him, he at once checked their unseemly flattery by look and gesture, and on the following day sharply reproved them in an edict (Suet. *Aug.* 53).

The emperor’s perception as *dominus*, described as such by Tacitus, aligned with the loss of *libertas*, in which individual freedom had been replaced by imperial favor, established by the Principate’s legal system, magistrates, and the *delatores*.

The use of violence in the Principate did not aim to control criminal offenses, but rather aimed to maintain political power through political violence and, by extension, fear. Neither criminal reform nor deterrence, for that matter, seemed to be what had been crucial for the imperial legal system, rather the law focused on preservation of itself that had its foundations, not in truths or justice, but on violence and fear.<sup>48</sup> Violence and fear aimed, thus, in controlling the population and public as well as private demonstrations of imperial power, which could be expressed via the magistrates, executions, and the *delatores*.

---

<sup>47</sup>Strunk 2017:23.

<sup>48</sup>Bhatt 2017:320.

The act of being accused, the *delatio*, by the *delatores* fractured Roman society between the accusers and the accused, as a result of the feuds that could arise from the *delatio*, regardless of if the accused is indicted or not. One *delator*, Epirus Marcellus, created a bitter feud between himself and another Roman family because of Marcellus' close relationships with emperors Vespasian and Galba, during the Year of the Four Emperors.<sup>49</sup> Tacitus explained that Marcellus and Vibius Crispus, another *delator*, had experienced one of these feuds.

[Marcellus and Crispus took] the leading place in the [e]mperor's [mostly likely Vespasian, but probably could include the other three emperors since the two *delatores* had been in power for years] circle of friends and get their own way in everything.... [F]or our aged and venerable [e]mperor, who never shuts his eyes to facts, is well aware that all the rest of his favorites owe their position to the advantages they have received from him (Tac. *Dial.* 8.3).

Marcellus' and Crispus' prosecution demonstrate that these prosecutions by the *delatores* could spark bitter hatred between the *delatores* and those families whom they had convicted for generations.

Tacitus recounted another one of these feuds between Marcellus, Thrasea Paetus, and Paetus' son-in-law, Helvidius Priscus. Marcellus successfully accused and executed Paetus, while, at the same time, Paetus' son-in-law Priscus had been sent into exile from Rome. Priscus exacted revenge on Marcellus for the honor of his father-in-law:

Driven into exile by the ruin of his father-in-law, [Helvidius] returned under [emperor] Galba and brought charges against Marcellus Epirus, who had informed against Thrasea. This attempt to avenge him, at once notable and just, divided the senators: for if Marcellus fell, it was the ruin of a host of the guilty (Tac. *Hist.* 4.6).

---

<sup>49</sup>The Year of the Four Emperors was a turbulent year in the Principate in which four emperors came to power in a short span of one year in 69 CE. The line of succession is as follows: Galba (June 68-69 CE), Otho (January-April 69 CE), Vitellius (April-December 69 CE), and Vespasian (December 69-June 79 CE). For more information on the Year of the Four Emperors, see Rutledge 2001:121-126.

Rutledge explains that it must have been very difficult for any individual to undergo a *delatio*. The *delatio* could spark hatred between two families that could span generations and emperors, particularly, if the accused lost their status, property, honor, or a family member.<sup>50</sup> In these two cases, the same *delator*, Marcellus, abused his political power and status to rip away Paetus' wealth from his family.

For example, Maturus, in Tacitus' *Dialogus*, suggested that neither oratory nor morality, on account of imperial interference in the legal system, played a major role in the imperial legal system because state-sanctioned violence, either through the emperor's decrees or lack thereof, had replaced the need for either orators or lawyers. Tacitus, in his *Dialogus*, when he was reflecting on the change between the republican-era lawyers and orators compared with the imperial *delatores*' apparent rejection of these republican norms, said that:

[it] is not a professional philosopher that we are delineating, nor a hanger-on of the Stoics, but the man who, while he ought to drink deeply at certain springs of knowledge, should also wet his lips at them all. That is the reason why the orators of former days made a point of acquiring knowledge of civil law, while they received a tincture also of literature, music, and mathematics. In the case that comes one's way, what is essential in most instances, indeed almost invariably, is legal knowledge, but there are often others in which you are expected to be well-versed also in the subjects just mentioned (Tac. *Dial.* 31).

The *delatores*, however, like Aper, were not well-versed in these subjects and in fact, they behaved in a manner that neglected or ignored republican legal practices preferring their own imperially-backed prosecutions. "Messalla's role in the dialogue," according to Strunk, "seems to be to deliver the argument that oratory declined under the Principate because morality declined, the primary explanation given by ancient commentators."<sup>51</sup> I agree that oratory and

---

<sup>50</sup>Rutledge 1999:570.

<sup>51</sup>Strunk 2010:257.

morality were closely entwined, as seen with the prosecutions by the *delatores*, in which they progressively became more aggressive, violent, and, ultimately, deadly.

## V. Conclusion

In conclusion, the emperors weaponized the *delatores*' aggressive use of force and manipulation of the law in order to restrict personal *libertas* and institute a regime based upon fear, violence, and tyranny. The aggressive prosecution of the *delatores* contradicted Roman norms and ideals of lawyers and the legal system. Roman law and politics became entwined with the *delatores* as the emperors slowly closed their grip on the Roman political and legal system, the *delatores* becoming the emperors' fingers gripping Rome by the throat.

Although the *delatores* continued to exist and operate well beyond the second century C.E., I chose to end the thesis at this point of time because the first and second centuries C.E. presented the greatest amount of political turmoil in Rome. This turmoil allowed for power-hungry individuals to reap the fruits of chaos to solidify political power in the Roman social and political atmospheres. While the *delatores* operated as far forward as the Byzantine Empire, I believe that the time period in which they played the most significant role was during the transition from the Republic to the Principate. This shift had been driven by the ambitions of the *delatores* and the backing of their emperors, who actively secured imperial political power by silencing political opponents and dissidents.

Many Romans, like Pliny the Younger, Quintilian, Suetonius, and Tacitus, became disgusted with the *delatores* and the obvious disrespect for the republican laws. Despite the propaganda deployed by the emperors and the *delatores*, like Piso and Aper, I argue, as does the four aforementioned authors, that the *delatores* used Roman law and imperial influence to fundamentally transform Rome from a Republic to an Empire. The transformations that Rome experienced, having been scarred by the civil wars of C. Julius Caesar, left power voids in Roman politics that aspiring individuals attempted to fill. While Roman lawyers tried to preserve

republican law, the emperors and the *delatores* prevailed by using force, violence, and manipulation to secure Rome's future as an Empire under one man, the Roman Emperor.

## Works Cited

Primary Sources

- Cicero, Marcus T. 1913. *On Duties: Book 2*. Walter Miller, trans. Cambridge, MA: Harvard University Press. Found online in the *Loeb Classical Library*. Book number 30:168-269. DOI: [10.4159/DLCL/marcus\\_tullius\\_cicero-de\\_officiis.1913](https://doi.org/10.4159/DLCL/marcus_tullius_cicero-de_officiis.1913)
- Dio, Cassius. 1914. *Roman History, Vol. III: Books 36-40, 60*. Earnest Cary, Herbert B. Foster, trans. Cambridge, MA: Harvard University Press. Found online in the *Loeb Classical Library*. Book number 53:2-510. DOI: [10.4159/DLCL.dio\\_cassius-roman\\_history.1914](https://doi.org/10.4159/DLCL.dio_cassius-roman_history.1914)
- Pliny the Younger. 1969. *Letters, Vol. I: Books 1-7*. Betty Radice, trans. Cambridge, MA: Harvard University Press. Found online in the *Loeb Classical Library*. Book number 55:2-564. DOI: [10.4159/DLCL.pliny\\_younger-letters.1969](https://doi.org/10.4159/DLCL.pliny_younger-letters.1969)
- Quintilian. 2001. *The Orator's Education: Vol. I, II, IV: Books 1-2, 5, 10*. Donald A. Russell, trans. Cambridge, MA: Harvard University Press. Found online in the *Loeb Classical Library*. Book number 121:1-418. DOI: [10.4159/DLCL.quintilian-orators\\_education.2002](https://doi.org/10.4159/DLCL.quintilian-orators_education.2002)
- Suetonius. 1914. *Lives of the Caesars, Vol. I: Julius, Augustus, Gaius, Caligula*. J.C. Rolfe, trans. K.R. Bradley, intro. Cambridge, MA: Harvard University. Found online in the *Loeb Classical Library*. Book number 31:150-507.
- Tacitus. 1914. *Vol. I: Agricola, Germania, Dialogue on Oratory*. M. Hutton and W. Peterson, trans. R.M. Ogilvie et al., rev. Cambridge, MA: Harvard University. Found online in the *Loeb Classical Library*. Book 35:219-348. DOI: [10.4159/DLCL.tacitus-dialogus.1914](https://doi.org/10.4159/DLCL.tacitus-dialogus.1914)

- Tacitus. 1925. *Histories: Vol. II, III: Books 1, 3-5*. Clifford H. Moore and John Jackson, trans. Cambridge, MA: Harvard University. Found online in the *Loeb Classical Library*. Book number 249:243-383. DOI: [10.4159/DLCL.tacitus-annals.1931](https://doi.org/10.4159/DLCL.tacitus-annals.1931)
- Tacitus. 1937. *Annales: Vol. I, IV, V: Books 1, 3-6, 11-13*. John Jackson, trans. Cambridge, MA: Harvard University. Found online in the *Loeb Classical Library*. Book number 312:2-417. DOI: [10.4159/DLCL.tacitus-annals.1931](https://doi.org/10.4159/DLCL.tacitus-annals.1931)

### Secondary Sources

- Anderson, Craig. 2009. *Roman Law Essentials*. Dundee, U.K.: Dundee University Press.
- Atkinson, Kathleen M.T. 1970. "The Education of the Lawyer in Ancient Rome." *The South African Law Journal* 82:31-59.  
<https://heinonline.org/HOL/Page?handle=hein.journals/soaf87&collection=journals&id=43&startid=&endid=71>
- Bates, Walter W. et al. 2015. "Ten Tips for Direct Examination and Cross-Examination." *Am. J. Trial Advoc.* 39(339):339-363.  
<http://heinonline.org.nocdbproxy.xavier.edu/HOL/Page?handle=hein.journals/amjtrad39&div=20>
- Bauman, Richard A. 1974. *Impietas in Principem: A Study of Treason Against the Roman Emperor with Special Reference to the First Century A.D.*. München, Germany: C.H. Beck'sche Verlagsbuchhandlung München.
- Bhatt, Shreyaa. 2017. "Useful Vices: Tacitus's Critique of Corruption." *Arethusa* 50:311-333.  
<http://rave.ohiolink.edu/ejournals/article/349414171>
- Bryen, Ari. 2014. "Martyrdom, Rhetoric, and the Politics of Procedure." *Classical Antiquity* 33(2):243-280. [www.jstor.org/stable/10.1525/ca.2014.33.2.243](http://www.jstor.org/stable/10.1525/ca.2014.33.2.243)

- Canfield, George L. 1909. "The Roman Lawyer: A Sketch." *Michigan Law Review* 7(7):557-569. [www.jstor.org/stable/1273002](http://www.jstor.org/stable/1273002)
- Ferri, Ronaldo. 2014. "Witness and Lawyer in the Roman Courts: Linguistic Strategies of Evasiveness and Intimidation in Roman Trial Debates." *Meetings of Classical Philology* 12:57-99. <http://hdl.handle.net/10077/10100>
- Flint, W.W.. 1912. "The *Delatores* in the Reign of Tiberius, as Described by Tacitus." *The Classical Journal* 8(1):37-42.
- Holcomb, Chris. 2001. "'The Crown of All Our Study': Improvisation in Quintilian's *Institutio Oratoria*." *RSQ* 31(3):53-72. [www.jstor.org/stable/3886042](http://www.jstor.org/stable/3886042)
- Irvine, William B. 2009. *A Guide to the Good Life: The Ancient Art of Stoic Joy*. New York, NY: Oxford University Press.
- North, John. 1994. "Democracy in Rome." *Hist. Today* 44:38-43.  
<http://libproxy.xu.edu:2048/login?url=https://search.proquest.com/docview/1299044568?accountid=407>
- Rich, Anthony. 2008. "*Clavus Latus* and *Clavus Angustus*." In John Murray 1875's *A Dictionary of Greek and Roman Antiquities*. University of Chicago Press:293-294.  
[http://penelope.uchicago.edu/Thayer/E/Roman/Texts/secondary/SMIGRA\\*/Clavus\\_Latus.html](http://penelope.uchicago.edu/Thayer/E/Roman/Texts/secondary/SMIGRA*/Clavus_Latus.html)
- Richmond, I.A. 1944. "Gnaeus Iulius Agricola." *JRS* 34(1-2):34-45.  
<https://www.jstor.org/stable/296778>
- Roller, Matthew B. 2001. *Constructing Autocracy: Aristocrats and Emperors in Julio-Claudian Rome*. Princeton, NJ: Princeton University Press.

- Rutledge, Steven H. 1999. "Delatores and the Tradition of Violence in Roman Oratory." *Am. J. Philol.* 120(4):555-573. [www.jstor.org/stable/1561805](http://www.jstor.org/stable/1561805)
- Rutledge, Steven H. 2001. *Imperial Inquisitions*. New York, NY: Taylor & Francis Group.
- Strunk, Thomas E. 2010. "Offending the Powerful: Tacitus' *Dialogus de Oratoribus* and Safe Criticism." *Mnemosyne* 63:241-267. DOI:[10.1163/156852510X456147](https://doi.org/10.1163/156852510X456147)
- Strunk, Thomas E. 2015. "Collaborators Amongst the Opposition? Deconstructing the Imperial *Cursus Honorum*." *Arethusa* 48:47-58.  
<http://rave.ohiolink.edu/ejournals/article/324750466>
- Strunk, Thomas E. 2017. *History After Liberty: Tacitus on Tyrants, Sycophants, and Republicans*. Ann Arbor, MI: University of Michigan Press.
- Syme, Ronald. 1972. "Lawyers in Government: The Case of Ulpian." *PAPhs* 116(5):406-409.  
[https://www.jstor.org/stable/986071?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/986071?seq=1#metadata_info_tab_contents)
- Tuori, Kaius. 2004. "The *Ius Respondendi* and the Freedom of Roman Jurisprudence." *International Review of Antiquity Rights* 51(3):295-337.  
<http://local.droit.ulg.ac.be/sa/rida/file/2004/Tuori2.pdf>
- Winterbottom, Michael. 1964, "Quintilian and the Vir Bonus." *JRS* 54(1-2):90-97.  
<https://www.jstor.org/stable/298654>
- Wirszubski, Ch. 1950. *Libertas as a Political Idea at Rome During the Late Republic and Early Principate* Cambridge, UK: Cambridge University Press.