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ARI BRYEN

Labeo's *iniuria*: violence and politics in the age of Augustus

I. Introduction

As is well known, over the course of the late Roman Republic politics became increasingly violent. While «political violence» remains a problematic category (and one to which I shall return), it is possible to isolate some key features which, at first glance, distinguish the late Republic from preceding periods: no fewer than eight popular or populist politicians (counting Caesar) were murdered in public over some nine decades;[1] there were public altercations between competing gangs of armed men operating in the service of elite political actors;[2] and not least there were proscriptions, both Sullan and Triumviral, and full scale civil war.[3] Accordingly, when in 29 BC the Senate first shut the doors of the temple of Janus Quirinus, «which our ancestors wished to be closed only when there was peace throughout the entirety of the *imperium* of the Roman people, both on land and on sea,» surely large numbers took this boast at face value, and with relief.[4] The subsequent century was accordingly celebrated for

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[1] Ti. Sempronius Gracchus (133 BC), C. Sempronius Gracchus (122 BC), L. Appuleius Saturninus (100 BC), M. Livius Drusus (91 BC), P. Sulpicius Rufus (88 BC), P. Clodius Pulcher (52 BC), C. Julius Caesar (44 BC). I include L. Sergius Catalina (63 BC), who supported a cancellation of debts. One might also include C. Memmius and C. Servilius Glaucia (both 100 BC). I of course use the term advisedly. See Wiseman 2009, 10–16; Flower 2010, 80–96. Sigismund 2008 gathers the ancient evidence.

[2] Vanderbroeck 1987.

[3] Lintott 1999 remains the standard treatment of Republican violence.

[4] RG 13; Tac. Ann. 1. 9.

its absence of overt public disruption; art and literature flourished; and new forms of thought emerged.[5]

In the period that followed the civil wars, the city of Rome is said to have had fewer outbreaks of political violence. In a sense this is accurate: the transformation of politics, while certainly a work in progress throughout the reign of Augustus, does seem to have made obsolete certain forms of public struggle: for office, for the prerogative of legislating, or for control of public spaces. The ambitions of the elite were quashed, channeled, or allowed to rot on the vine to await replacement;[6] Augustan legislation (on *maiestas* in particular) and a variety of criminal charges soon brought to heel whatever dissonant voices remained.[7] Administrative control was exercised over popular groups.[8] There was no longer the opportunity, much less the need, to do violence to one's opponents in public, or to claim through force the right to legislate.[9] As the princeps came to represent the *populus*, there was no need to court mass favor; political action, as Tacitus lamented,[10] was reduced to competition for imperial favor. This would be won through flattery, not force.

The ghost of Max Weber, though rarely evoked explicitly, looms large over contemporary analysis.[11] With increasing success, Augustus and his successors claimed a monopoly over political power. Violence and political power are closely linked (even if the nature of that link is rarely explicated). Accordingly, the emperor and the new form of the Roman state are imagined to begin an extended process of monopolizing violent action and its legitimation.[12] There were intermittent outbreaks of political un-

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[5] The bibliography on this topic is of course vast, but see, for a recent treatment, Wallace-Hadrill 2008. To be certain, this was the end of a complex process, beginning in the late Republic: see Moatti 2015.

[6] Syme 1989.

[7] Rutledge 2001; Rivière 2002; Schilling 2010, 70–187.

[8] Nippel 1995.

[9] E.g., Tac. Ann. 6. 11. To be sure, there were some conspiracies against Augustus (Vell. Pat. 2. 91), but these did not revolve around using violence to obtain the rights to office. Cf. the verdict of Syme 1952 (1939), 371 f. on Egnatius Rufus.

[10] E.g., Tac. Ann. 1. 2.

[11] The most commonly cited formulation of the theory of the Gewaltmonopol can be found in Weber 1992 (1919), 6 f.; an alternative formulation is Weber 1925, 2: 613–616. On the prehistory of the concept, see Whitman 2002.

[12] Riggsby 1999, 113. The analysis of Thomas 1984 is likewise Weberian (in a similar vein is Rivière 2006); while that of Vanderbroeck 1987 proceeds from that of C. Tilly, who wrote in a Weberian tradition. The question of the applicability of the Weberian model of a Gewaltmonopol to the high empire is similarly complicated: it is assumed by Burton 1998, 8; Fuhrmann 2011, 161; and Ando 2012a, 10 f.; but rejected by Hopkins 1985, 28 and (more cautiously) Brélaz 2007. Hopkins's objection to applying Weberian categories, however, was oddly framed as an empirical one – that the Roman state did not achieve a modern Gewaltmonopol. This strikes me as a misunderstanding of Weber, as well as a failure to theorize violence. Recent literate on violence in Late Antiquity has provided a more sophisticated treatment of violence: see Drake 2006; Sizgorich 2009; Shaw 2011.

rest, e.g., over the death of Germanicus in AD 19, when a crowd dragged representations of his supposed murderer, Piso, to the Gemonian stairs, in a mock execution.[13] But in general public protest could be explained by ancient sources as crude outbreaks caused by panics, shortage, or local rivalry; in more sophisticated recent accounts, they are understood as ruptures in the symbolic, moral, and material order that bound the emperor (or his representatives) to his people.[14] As the forms of political violence that characterized the late Republic abated, the princeps's monopoly on violence and its legitimation came to be articulated symbolically and ideologically through two forms of ritualized violence in the city of Rome: the triumph, monopolized by the emperor and his family after AD 19; and later in the first century AD through the violence of the games – that is, through a more controlled and channeled mode of brutality, and one which quickly came to include public criminal punishments. Here spectacular violence was deliberately targeted, directed against particular malefactors, and staged to impress upon the consciousness of spectators the justice of the imperial order.[15]

In broad outlines, some parts of this narrative are persuasive. The early first century AD would not produce another Clodius or another Milo (or even another Dolabella), men who claimed the right to intervene in politics while being accompanied by hired gangs of violent specialists. What violent specialists remained were either repressed or coopted, and the private armies of earlier periods converted into a single, professionalized army.[16] Similarly, there was certainly an important horizon in the practice of punishment in the middle of the first century AD. Capital punishments came to play a feature role in the games starting under Caligula.[17] Emperors monopolized the right to hear the appeals of citizens, which in theory meant that citizens could only be executed in criminal cases with imperial approval.[18]

But the narrative of either the elimination or the progressive monopolization of (political) violence remains nonetheless problematic.[19] Insofar as some concept of violence might be analytically useful, the problem remains that Romans of the political class themselves disagreed on – because they cared deeply about – what ought to be categorized as violence, and what its role in politics ought to be. Not only did they disagree – they fought bitterly, physically, and at times to the death over the label itself, over when it ought to be applied, and over what consequences ought to follow its application.[20] They did not reify violence; they understood that it was not a thing

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[13] Tac. Ann. 3. 14. 4; cf. Dio Cass. 58. 11. 5.

[14] Erdkamp 2002; on riots as a problem of imperial ideology, see Kelly 2007.

[15] Coleman 1990; Gleason 1999; on the negotiations of this power, Wiedemann 1992. Certainly governors could also punish in the provinces.

[16] Shaw 1984, 33–35; Kelly 2002.

[17] Suet. Gai. 27.

[18] For an overview, see Santalucia 1998, 219–221.

[19] For a critique relating to the history of the Imperial-period triumph, see Beard 2007, 295–305.

[20] Wiseman 2009, 177–210.

(or the abstract property of a thing) that could be monopolized, but rather that it was an ethical label that characterized particular behaviors – one whose applicability was inherently subject to political contest.[21]

While the application of the label «violence» to individual acts was contested, there was among the political class a broad agreement, in the late Republic, on what we might call the structuring metaphor, or if one likes, the paradigm or archetype, that allowed people to debate what acts might be categorized as violence, and to understand how that violence related to the polity.[22] There was, in other words, a set of categories for understanding the relationship between politics and violence that allowed political actors in the late Republic to struggle with one another, to contest the labels applied to their behaviors, and to make sense of their political enemies. Broadly speaking, the category that structured these arguments throughout the late Republic was *vis*, a term which we may provisionally translate as «force». It is the thesis of this paper that the master category through which the relationship between politics and violence was understood shifted dramatically during the transition from Republic to Principate. Instead of *vis*, the master category came to be *iniuria* – not «force», but «degradation». Rather than a gradual monopolization of violence, there was instead a sharp rupture in the organizing categories or structuring metaphors through which people understood the relationship between violence and the state.

When saying that *vis* and *iniuria* were, at different times, the dominant organizational metaphors through which people understood the relation between violence and political order, I should not be taken to mean that, at any given moment, these were exclusive categories, or that there were no competing categories – any alternative metaphors that allowed people to make sense of violence. There were: one could imagine acts of violence in the Republic as being primarily problems of degradation, and in some instances people did.[23] What is more, when seeking a remedy for someone else's violence, one might elect to frame violence as being, for one's immediate purposes, primarily an issue of degradation, not an issue of force, or vice-versa. I wish to emphasize, however, two things.

First, while both *vis* and *iniuria* are legal terms, they are also, if not primarily, organizing categories and structuring metaphors, ones that allowed legislation and jurisprudence to have urgency and immediacy within a particular context.[24] The corollary of this claim is that what follows is neither an attempt to map the main categories of Republican or early Imperial criminal law (categories which anyway were nowhere near

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21 Bryen 2013, 52. For a useful comparison, see Skoda 2013.

22 On the importance of such metaphors, cf. Lendon 2015. On political culture more generally, see Hölkeskamp 2010, 44–52.

23 E.g., Cic. Caec. 35; de Inv. 2. 60.

24 Methodologically, see Roller 2001, 213–285; Hölkeskamp 2010, esp. 51 on «cognitive concepts».

as discrete as one might hope),[25] nor an attempt to propose an essentialist definition of one term or another. It is rather an attempt to unpack, through the framework of cultural and institutional history, how Romans understood violence – how they cared or worried about it – and with what effects.[26] This inevitably involves speculation, as well as attempts to generalize from difficult and fragmentary evidence. Deep cultural presumptions are perhaps the hardest thing to excavate from our evidence, since they tend to be taken for granted. Nonetheless, Roman politicians kept passing legislation, holding trials, and punishing people who threatened the political order. They did so to solve problems (even if the net result of their iterative actions did no such thing);[27] in so doing, they relied on understandings of the relationship between violence and politics. The goal of the first part of this paper is to flesh out, as best as possible, what those understandings were, and how they shifted with the new political regime.

Second, while the existence of these underlying organizing metaphors matters (as does the fact that other metaphors competed with them), what is important, in what follows, is that certain metaphors, at certain times, proved especially durable. Their durability also translated into specific institutional responses: the creation of new modes of punishing and the punishment of new sorts of acts. When we map a shift in structuring metaphors, we do more than investigate what happened in the minds of Rome's political class, or even in its rhetoric. We investigate instead how institutions were marshaled – or in some cases created – to deal with what people took to be a pressing problem.

At the center of the shift that I trace is a jurist, Marcus Antistius Labeo. There is a tradition that Labeo was something of a holdover from a previous generation: Tacitus praised him for his *incorrupta libertas*; other texts suggest that, at the very least, he enjoyed vexing Augustus.[28] On this basis modern scholars have held him to be a «conservative», one of the last Republicans, and a bitter enemy of the new system of politics.[29] This is something of an overstatement. Labeo's father, Pacuvius Labeo, certainly had strong political convictions: he participated in one of the last great Republican acts of *vis* – the murder of Caesar in 44 BC – and he later died, by suicide,

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[25] Thus, e.g., creating an *incendium* was prohibited both in the Julian *lex de vi*, and in the *lex Cornelia de sicariis et veneficiis*. Whether it was in earlier *leges de vi* is ultimately hard to know, but likely. Dig. 48. 6. 5, 48. 8. 1. 1 (both from Marc. Inst.).

[26] See further Ando 2015, who develops insights from Lakoff – Johnson 1980.

[27] Gruen 1974, 259.

[28] Tac. Ann. 3. 75; Dio Cass. 54. 15. 7 (cf. Suet. Aug. 54, who tells the same story to show Augustus' tolerance). Cf. Aul. Gell. NA 13. 12.

[29] Syme 1989, 80 n. 117; Honoré 1962, 37; Wieacker 1969, 345f.; Bretone 1984, 129–146; Moatti 2015, 157, 162f. Bauman 1989, 27–55 summarizes earlier bibliography, and hews to more of a middle path. As to the question of whether Labeo was «pro» or «anti» Augustan, the methodological cautions of Barchiesi 1997, 83f. are salutary. In general, in what follows I have restricted myself to citing secondary literature from the second half of the twentieth century onwards.

on the battlefield at Philippi in 42.[30] But whether Labeo inherited these convictions is a harder question. What is certain is that he lived through the period of civil wars, and long enough into the new Augustan regime to reach the rank of praetor and to be considered for the consulship of AD 5 (which he either declined, according to one tradition, or for which he was passed over, according to another).[31] He was remembered by jurists for his legal innovations, and by other educated men for his historical investigations into the Latin language.[32] Equally interesting is that Labeo came to take especial interest in the law pertaining to *iniuria*.[33] Labeo, I will argue, became invested in *iniuria* because the nexus of ideas inherent in *iniuria* – about the body, integrity, violence, and political community – was a live political issue in his day. This shift was inspired not only because the shape of politics had changed generally, but more specifically because political authority was increasingly linked to the physical integrity of the emperor and his family. Accompanying and inflecting this shift was a wholly new understanding of *maiestas*, which was quietly being reorganized along the rules concerning *iniuria*. In other words, turning his attention to this largely undeveloped body of private law gave Labeo space to think through issues of the nature and function of this new regime, and the place of violence within it.

*II. The Republican Tradition of Violence/*vis *as an organizing category*

When Roman politicians of the late Republic spoke about political violence, they spoke of a variety of acts that they punished under the heading of *vis*. Cicero most notably posed to his audiences a sharp contrast between what is just and lawful *(ius)* and what was violent and disruptive *(vis)* and argued that no functional state could sustain *vis* (even as he agreed to partake in the violence of his age).[34] But *vis* was more than just a descriptor of illegitimate behaviors. It also underwent institutional elaboration. Legislation sought to keep up with the tally sheet of violent acts in the late first century BC.[35] A series of measures were passed: a *lex Lutatia*, possibly of 78 BC; a *lex Plautia*, possibly of 70 BC; an ad hoc measure of Pompey designed to deal with Clodius' killing; and one or two *leges Iuliae de vi*.[36] The last of these complicates

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[30] The evidence is gathered in Kunkel 1967, 32–34, 115, on father and son respectively. On the political orientations of jurists of this period more generally, see Wieacker 1969; Bauman 1989.

[31] Tac. Ann. 3. 75; Pomponius apud Dig. 1. 2. 2. 47. On the two passages, see Syme 1958, 2, 760 f., followed by Koestermann 1963, 565. Ateius Capito's (suffect) consulship was in AD 5.

[32] Pomponius apud Dig. 1. 2. 2. 47: *plurima innovare instituit*; Aul. Gell. NA 13. 10. 2.

[33] Crook 1976, 137; Bretone 1984, 173–190.

[34] Frier 1985, 118 f.; Lintott 1999, 54–69. On Cicero's participation in Milo's violence, see Kaster 2006, 14.

[35] In general, Brunt 1966; Labruna 1971, 10–27.

[36] We might include two other measures. First, a *senatus consultum* of 57 or 56 BC disbanding clubs, and declaring that those who failed to disband would be punished under the law on *vis*: Cic. QFr. 2. 3. 5. This was probably connected to an earlier attempt to punish *collegia* that

the evidentiary record substantially: later jurists relied on the Augustan text for their explication, which means that the content of the earlier laws was effaced.[37] Even allowing for the conservative and tralatician nature of Roman lawmaking, the content of the Republican laws remains a contested problem.[38] Yet even without the details, some four or five distinct laws remains a substantial harvest of legislation devoted to a single topic over a relatively short period. A standing court *(quaestio)* on *vis* was also instituted, and seems to have been kept quite busy: some thirty trials concerning *vis* are attested, although obviously many are connected to the events of 63 BC.[39] Still, there were acts of *vis* that were not prosecuted.[40] In keeping with this legislative and judicial activity, this period also shows a great deal of creativity with respect to other reactions to violent and disruptive behavior, in particular, through experimentation with emergency powers (including the elusive «*senatus consultum ultimum*») and with the development of processes for stripping malefactors of their civic rights, in addition to passing other pieces of legislation that dealt with acts of public violence (the *lex Cornelia de sicariis*, for instance).[41] In the aggregate, the available evidence speaks to a period of remarkable collective legal creativity and institutional innovation revolving around the optimal means of collective response to political violence.

Even allowing for problems in reconstructing the content of *vis* legislation, some important contours of it can be discerned. These laws were concerned with violence that directed against the commonwealth *(contra rem publicam)*.[42] That is to say, «violence» per se was not a problem; what legislators tried to delimit, and what a jury would have to decide, was whether a particular man's violence was the sort that would injure the state itself.[43] This comes back to the question of the «structuring metaphors» that allowed people in the late Republic to recognize and discuss political violence: how, in other words, would Romans know *vis* when they saw it?

Here we must rely primarily on Cicero, with all his attendant pitfalls. Nonetheless, his speeches (especially the Catilinarians, the *Pro Sestio*, and the *Pro Milone*) were attempts to locate blame and, in the case of the first Catilinarian oration, to underscore the importance of a looming threat. They provide at least two important insights into

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acted *contra rem publicam*: Asc. 7c, with Mommsen 1899, 662 n. 4. Second, the *lex Licinia de sodalitatibus*, which, echoing the earlier *senatus consultum*, punished illegal clubs with the same penalties as the law on *vis*. On these measures, see, with reference to earlier material, Mouritsen 2001, 149–151.

[37] Cloud 1988; 1989.

[38] See Cloud 1989 for one attempt to untangle this problem.

[39] Alexander 1990, s.v. *vis*.

[40] On legislation passed *per vim*, see Bleicken 1975, 460.

[41] See Allély 2012; Golden 2013. The story of experimentation would continue well into the Principate: on the role of the Senate in punishing politically problematic individuals in the Augustan period, see Arcaria 2014; the *senatus consultum de Pisone Patre* might be taken as an end point of this process: Eck – Caballos – Fernández 1996, 289–298.

[42] Riggsby 1999, 82f. Cf. the imagery of *vis* as sickening the *civitas* in Cic. Sull. 76.

[43] Cic. Mil. 8–9 is obviously tendentious, but nevertheless broadly correct. Cf. Mil. 16.

the way that the Roman political class – or at the very least, an especially persuasive member of the Roman political class – understood the structural threats that violence posed. Cicero's understandings of *vis* are, in their broad outlines, essentially consistent internally, and coherent with what we might reconstruct of Republican *vis* legislation. They thus speak to the institutional responses to *vis*, not least among those the sorts of «tests» or threshold conditions that a Roman jury or deliberative body would have imagined applied to a particular case.

To begin with, at least on Cicero's account, *vis* was in the main disorderly and collective. It was conducted by groups of men, their slave *familiae*, clients, and supporters, who might range from members of the various *collegia* to groups of veterans bearing personal loyalty to a particular leader. A complicated cast of characters, according to Cicero, was assembled in Etruria to support Catiline; a similarly unruly group followed Clodius along the Via Appia.[44] As opposed to mere assault, *vis* was a particularly disturbing category because, while its ringleader might be easily discerned, his fellow participants (or passive sympathizers) were often linked to him in ways that were hard to disentangle. At the legal level this might create theoretical or procedural problems of agency, causation, and responsibility. At the level of politics this ambiguity might also create situations in which malefactors or sympathizers could exploit violent confusion to escape responsibility. In the trial of Publius Sestius, for instance, Cicero exploits precisely these ambiguities to protect his client: on the 23rd of January, 57 BC, who was actually committing an act of *vis* – the defendant, Sestius (and his supporter, Milo), or the prosecutors (and their supporter, Clodius)? Cicero attempted to place the blame on the prosecution, but it is clear that the accusation could have applied to both parties.[45] Similarly, in the midst of the upheaval of the early phases of the Catilinarian conspiracy Cicero would broadcast his desire that «what each and every one of you thinks about the *res publica* should be branded upon your forehead» – a sort of panoptic fantasy that speaks to the ways that violent political disturbances might obscure, rather than clarify, political allegiances.[46] Cicero was not opposed to political violence per se; indeed, he opens the Catilinarians by praising past acts of political violence. But in praising such violence he implies that it was done openly, purposefully, and directly.[47] The conspirators' violence, by contrast, was planned in secret and designed to sow panic and confusion. A fortiori, violence is acceptable in a polity when done

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[44] Cic. Cat. 2. 18–22, noting the all-important fourth category of supporters, an inscrutable grab-bag of deviants whose political allegiances cannot be explained according to materialist criteria; Cic. Mil. 28: *magno et impedito et muliebri ac delicato ancillarum puerorumque comitatu*, a *socially* disordered crowd following Clodius (cf. the description of social disorder in Rep. 1. 67; Cat. 2. 5). Note also Caesar's penultimate words: *ista quidem vis est*, referring to the amateurish and disordered group of assassins in the Senate house (Iul. 82).

[45] E.g., Cic. Sest. 86–92.

[46] Cat. 1. 32: *sit denique inscriptum in fronte unius cuiusque quid de re publica sentiat*.

[47] Cat. 1. 3–4.

doggedly, publicly, and with clear leadership (though, Cicero's account notwithstanding, the murders of the Gracchi and Saturninus were in reality chaotic and bloody).[48]

Secondly, *vis* disrupted the functioning of institutions of the *res publica*. One might disrupt these functions by physically violating a particular individual, such as a magistrate,[49] but one might also disrupt them by illegitimately taking over public spaces (the forum, a temple), disrupting the passage of legislation, or even, under specific circumstances, besieging «private» spaces, such as an individual's home (as was the case with Cicero's home, which the Senate placed under a protective order).[50] Thus, we see Sex. Cloelius punished under the heading of *vis* for moving Clodius' murdered body into the city of Rome and exposing it on the rostra.[51] *Res publica*, it should be added, had both an abstract sense («the state») and a strongly literal, material sense. *Vis* was force directed against the physical architecture of the state – its walls, buildings, and public spaces.[52] Thus Cicero, in his accusation of Catiline in the Senate:[53]

qua re secedant improbi, secernant se a bonis, unum in locum congregentur, muro denique, quod saepe iam dixi, secernantur a nobis; desinant insidiari domi suae consuli, circumstare tribunal praetoris urbani, obsidere cum gladiis curiam, malleolus et faces ad inflammandam urbem comparare …

«Therefore let these villains withdraw, let them separate themselves from the decent people, let them gather in a single place, and let the (city) wall, as I long said, divide them from us. Let them cease plotting against the consul in his house, cease surrounding the tribunal of the urban praetor, cease besieging the Senate house with their swords, cease preparing torches and fire-darts to burn the city …»

This materialist tendency has a corollary: because the physical space, architecture, and even soil of the city of Rome were endowed with a unique role in Roman religion, an assault on these places was a distinct threat in a way that an analogous action outside of Rome would not be.[54] It is therefore not a surprise that *vis* was a crime committed at Rome, or just nearby.[55] The violence of aristocrats abroad might still be considered

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48 App. BC 1. 15–16, 32.

49 E.g., L. Vettius (Dio Cass. 38. 9).

50 Lintott 1999, 109. Cf. Cic. Har. Resp. 15. Very little hinges on the argument over whether the Romans had a concept of private space; certainly they distinguished between public and private property.

51 Asc. Mil. 55–56c. Similarly we see officials driven off the rostra to enable the passage of legislation: App. BC 1. 30.

52 Bleicken 1975, 460f.; Nippel 1995, 53–69; Riggsby 1999, 79–119.

53 Cic. Cat. 1. 32. Cf. Cat. 4. 2; Sest. 75 (seizing buildings followed by armed assaults), 78, 84–85; Cael. 78; Sull. 18–19; Sall. Cat. 27. 2.

54 On the importance of the physical architecture of the city in terms of both law and cognition, see Ando 2011.

55 The obvious objection to this is the case of M. Caelius Rufus (56 BC). But it is exceptional, for two reasons: the prosecution used the *lex Plautia* to take advantage of its abbreviated procedure, using this case to block Caelius' attempt to prosecute another case; moreover, they seemed

problematic, but it would be imagined as *maiestas* (harm to the superiority of the Roman people), *repetundae* (provincial mismanagement), or something else entirely.

This link between violence, political order, and actual physical objects helps further illuminate another key area in which Romans of the late Republic thought systematically about *vis,* namely, in civil or private litigation.[56] Roman praetors began, in the early 70s BC, to develop and later modify a series of interdicts about the violent dispossession of people from their possessions. These interdicts came to be adapted to cases where people found themselves being dispossessed by gangs.[57] This is less a different usage of the term (i.e., a private law usage vs. a criminal/public law usage) than it is an extension of the same structuring metaphor into distinct contexts: just as criminal laws against *vis* sought to preserve political order by marking certain acts of violence as illegitimate because they drove wedges between the citizen and his city, so too in private law the mark of illegitimate action was to dispossess the citizen from his possessions – his land in particular. In fact, we might generalize from these examples to say that, at the level of symbols, *vis* was a category that focused on the relationship between people and their possessions – whether private or communal. Just as it was *vis* to forcibly dispossess someone from the land he possessed, so it was *vis* to exclude others from voting and to prevent access to public spaces – those things that were *res communes*.[58] An assault on a magistrate follows a similar logic, namely, keeping a magistrate from accessing the rights inherent in his position. What made something *vis,* then, was not just an infringement of protected state interests (for such a formulation tends, in practice, to collapse into circularity),[59] nor was it simply a process of labeling some actions (i.e., carrying a weapon) as in themselves violent or beyond the pale.[60] What made something knowable as *vis*, and thereby problematic, was that it targeted the link, or the relationship, between people and their rights in places and things, the

to be using the specific charges as something of a «test case», earning mockery in the process: Cic. Cael. 70–72. In the Principate, by contrast, *vis* could be an act committed by provincial governors: Tac. Ann. 4. 13.

[56] Cascione 2013, 286–288.

[57] Frier 1985, 51–57.

[58] Cic. Off. 1. 53: *multa enim sunt civibus inter se communia, forum, fana, porticus, viae, leges, iura, iudicia, suffragia, consuetudines praeterea et familiaritates multisque cum multis res rationesque contractae* … There is obviously a slippage between *res communes* and *res publicae*; this is not particularly surprising. Cf. Cic. Rep. 3. 43, with Schofield 1995, 75f. (though he takes the language to be metaphorical); Ando 2012b, 114–116.

[59] Cicero tried precisely this strategy at Mil. 13 *(quia nulla vis umquam est in libera civitate suscepta inter civis non contra rem publicam)*. Had Cicero managed to deliver the speech, there is reason to think this tactic would have failed. As Asconius pointed out (Mil. 30c), both men were well known for their violent tendencies *(audacia pares)*.

[60] Indeed in the Julian *vis* law a magistrate himself could commit *vis* by denying to a citizen the right to *provocatio*: Cloud 1988, 585. But the arguments of Cloud 1989, 433f. that these provisions (a) date to the reign of Augustus and (b) pertain to provincial appellants strike me as forced.

state included.[61] It is no accident, then, that Cicero, who gave so much thought to *vis* in both private and criminal contexts, would also link the state to the preservation of private property.[62] *Vis* was primarily concerned with disruptive potential of violence and its interference with one's rights, rather than with harm to one's dignity or standing.[63]

III. From Force to Degradation

Yet even as Roman elites of the late Republic legislated against *vis*, held trials concerning acts of *vis*, and tried, as Cicero did, to use ideas of *vis* to animate concerns of political theory more generally, a new way of imagining the relationship between violence and political order was emerging: the language of honor *(dignitas)*, and its opposite, degradation *(iniuria)*. This may seem like a strange claim, given that Roman elites were deeply concerned with their personal honor (in the anthropological sense) and that a concern with honor remained relatively stable from Republic to Principate.[64] But I intend the claim to be understood both in its broad sense (i.e., that Romans took honor seriously), and also in a more specific sense, namely, that they started to explicitly link offenses against a person's honor to the stability of the city as a whole.

Elite Romans took honor seriously. They developed, over the course of the Republic, a rich language of vituperation for impugning the character of their rivals. But they put relatively small amounts of thought or care into institutions and procedures that would protect and avenge it.[65] Men who felt degraded could sue the person who offended them for *iniuria*, but such suits appear to have been most rare.[66] Censors were similarly charged with protecting the integrity of public institutions by ensuring the decency of their members, and every so often they removed the morally unqualified from the rolls. Even here, however, the censors were concerned primarily with people

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[61] It is therefore unsurprising that the Greek translation of *vis* is βία, which in contemporary papyri refers exclusively to harm to property interests. Cf. LSJ, s.v., and Bryen 2013.

[62] Cic. Off. 1. 20–21.

[63] Though of course one can, as a result of *vis*, suffer personal harm (Off. 1. 41).

[64] See Lendon 1997, who with good reason treats the evidence synchronically. Mayer-Maly 1961, 314.

[65] Which is striking, in comparison to their interests in avenging death: Thomas 1984. On invective generally, see Arena 2007.

[66] On suits for *iniuria*, see Alexander 1990, who lists only three: two reported by the ad Her. 2. 19, which came to opposite conclusions on the basis of an identical set of facts (that someone had been defamed onstage), and a third concerning a Sergius (Cic. de Dom. 13–14). Why Alexander concludes that Sergius had been convicted of *iniuria* is to me unclear. To this list we might add a provincial example: Cic. Verr. 2. 5. 108 records that a member of Verres' entourage, Naevius Turpio, had been condemned for *iniuria* by the governor of Sicily. That Cicero could bring this up seems to attest to the rarity of such condemnations. On the question of degradation, I have very little faith in early accounts of the *lex Sca(n)tinia*, barring sexually degraded individuals from office. See Richlin 1993. On honorable challenges by stipulations, see Crook 1976; Peluso 2003.

who degraded themselves, rather than those who had insulted or degraded others.[67] Nevertheless, their power to deal even with this category of people was reduced in the first century BC.[68] Prior to Augustus, moreover, degradation does not appear to be a concern of legislation. Even the *lex Cornelia de iniuriis*, insofar as its Republican content can be excavated, dealt more with acts that resembled force, rather than with degradation per se.[69] Overall, then, there was little in the way of institutions that linked violence, degradation, and political stability more generally.

This was in large measure because matters of honor were considered essentially personal, rather than political. Certainly, an honorable man might have a series of *inimici*, and strive to harm them whenever possible. This was considered normal, even (in some circumstances) a goad to personal excellence. If these hostile relationships ever threatened to impede one in carrying out his public offices, informal pressure was put on the hostile parties to desist.[70] There was no need to craft any sort of institutional response to such hostility, for the insults traded between honorable men were essentially private matters, not something requiring legislation.

Yet in this respect institutions of the late Republic had fallen out of step with their times. Degradation and dishonor, rather than disruption by force, were openly acknowledged as motivating political actors whose behavior, in turn, threatened the stability of the state.[71]

Thus, the language of *dignitas* and degradation features heavily in the (probably authentic) letter sent by Catiline to Q. Lutatius Catulus, in which he explains his actions after his flight from Rome. He complains that his actions were provoked by insults and abuse *(iniuriis contumeliisque),* because he was robbed of the honor *(dignitas)* due to him, and because he saw unworthy people being promoted to positions of honor.[72] What is more, he contends, those at Rome (these *non dignos homines*) are conspiring to use *vis* against him. Sallust would pick up the theme: ventriloquizing C. Manlius, he would explain Manlius' actions as arising in the need to «keep our bodies safe from insult».[73] The complaint, again, is that the organs of government are actually in the wrong: in this case he claims that moneylenders and the praetors had conspired to violate the law, thus producing an *iniuria*. Such reasoning entails a further claim: *iniuriae* are a threat to political stability. When the organs of government produce *iniuriae*, or at least *iniuriae* to decent men, this can be taken as prima facie evidence that these institutions have failed to function properly.

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[67] McGinn 1998. On self-degradation generally, see Edwards 1993. On the way this shift registered in literature, Rohmann 2004.

[68] Tatum 1990.

[69] See infra, n. 98.

[70] Epstein 1987, 18f.

[71] See esp. Meier 1966, 297–299.

[72] Sal. Cat. 35. On the letter's authenticity, see Syme 2002 (1964), 71f.

[73] Sal. Cat. 33: *uti corpora nostra tuta ab iniuria forent*.

If such claims were of interest to Sallust, it was because they had quite recently been evoked in an analogous context. The civil wars began with Caesar declaring that he plans to avenge the *iniuriae* done to him by his opponents, *iniuriae* which included stripping the tribunes of their right of intercession. Notably, this was a personal affront to his *dignitas* and *existimatio*; it was not *vis*.[74] As Robert Morstein-Marx has emphasized, this is not to be understood as a selfish claim, but rather as a claim that a faction has disrupted the normal mechanisms by which political honors were distributed, and through which the excellence of individuals was recognized. It was, following the logic of Catiline, a claim about the relationship between a personal affront and political stability more broadly.[75]

Caesar's language is not only important for understanding the shift in structuring metaphors; it also teaches an important lesson about the perceived strength of Roman institutions for dealing with insults of such gravity. When speaking of the civil wars as a means of avenging *iniuriae*, Caesar follows a mode of reasoning that guided his thinking about war more generally. Caesar understood acts of aggression by lesser powers against Rome as *iniuriae*, to be responded to and punished with violence.[76] The *iniuriae* of foreign nations were not fundamentally different from the *iniuriae* of fellow citizens, but they demanded different responses. In normal times, one ought not respond to a fellow citizen with murderous violence, but it was reasonable to respond violently to an insult by a foreign nation – not because there was any difference in the underlying offense, but because among citizens there was an agreed upon tribunal – an institutional framework – for settling such disagreements. By contrast, there was no such tribunal for adjudicating between foreign powers, at least not when Rome itself was a party to the dispute.[77] To submit to the jurisdiction of others would have been considered an affront to Rome's *maiestas*, its superiority.[78] To wage war against one's own citizens to avenge an insult, a fortiori, involved the claim that normal institutions within the city could not be trusted to function properly, or had already ceased to function properly – such a logic, it seems, was an effective tool for shifting

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[74] Caes. BC 1. 7: *omnium temporum iniurias inimicorum in se commemorat … ipse honori et dignitati semper faverit adiutorque fuerit*. And later: *hortatur … ut eius existimationem dignitatemque ab inimicis defendant.* On civil war a mode of avenging injury, cf. Caes. BC 1. 9, 1. 22, 1. 32, etc.; App. BC 1. 77, cited with discussion in Lendon 2015, 24f.

[75] Morstein-Marx 2009 (responding to Raaflaub 1974).

[76] Lendon 2015, 11–16.

[77] In circumstances in which Rome was not a party, Romans imagined that the appropriate way to settle a matter between two nations was analogous to a civil suit at Rome – as is evidenced by the *Tabula Contrebiensis*. The Romans, of course, would serve as judges.

[78] Cf. Cic. Verr. 2. 5. 149. As a comparandum, see the analysis of Whitman 2012, in the context of property claims; in the Roman context, Eckstein 2006, esp. 37–42 and Mattern 1990, 183–194, on Republic and Principate respectively.

the blame.[79] Quite obviously, the identical claim could be made by the opposite side as well.[80]

The period of Caesar's sole rule would prove chaotic, but there is some hint that concerns with personal degradation remained a motivating factor. One might only consider the complex interactions between M. Antonius and P. Cornelius Dolabella: the violence between these two men that upset Rome in 47 took its origins not least of all in Antonius' claim that Dolabella has committed *stuprum* with Antonius' wife and cousin: indeed, he went so far as to denounce Dolabella before the senate to this effect.[81] In Cicero's polemical telling, this was an example of Antonius' propensity to fling degrading insults: his declaration in the senate was no more than a *contumelia* against his uncle, and a filthy and impious *(tam spurce, tam impie)* charge against his wife. Still, Antonius and Dolabella soon came into open, armed conflict in the city. Even with a temporary truce in place, their mutual hatred soon boiled over, with Antonius blocking Dolabella's consulship: this seems, if nothing else, a strong reason why Dolabella would have sided with the tyrannicides.[82] The personal – in the sense of insult and dishonor – had become openly political.

Notably in the cases of Catiline and Caesar, the institutional responses were identical: passage of the *senatus consultum ultimum*, the open-ended emergency decree evoked since the chaos of Caius Gracchus; in the case of other actors struggling for power and honor (such as Dolabella) it was the eventual declaration of *hostis*. Yet it is evident that, at least in the case of Caesar, this reaction failed to speak to the questions raised by claims of *dignitas*: When *iniuria* affects the stability of the city, and when the claim is made that degrading a (noble) man is tantamount to striking at the foundations of functional government, the only institutional response that makes sense is to generate some way of processing whose *dignitas* is worthy of protection, and in what way. Most obviously it is the *dignitas* of the ruling elite and the sovereign. But during the civil wars the location of sovereignty was not precisely evident. It would not be evident until Augustus began to craft institutional responses to the problem.[83] As was typical of his reign, he adapted existing concepts in new and sometimes unusual ways, gradually deeming that an increasing amount territory surrounding him be protected from violent degradation. Once might mark the beginning of this process during the triumviral period, when he had a law passed that granted him *sacrosanctitas* (personal inviolability) in 36 BC.[84] This grant of inviolability secured the link between his physical protection and the stability of the state, by marking him as the representative of

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[79] Cf. Morstein-Marx 2009, 126.

[80] Cic. ad Fam. 4. 5. 2 (Servius Sulpicius, 45 BC).

[81] Cic. Phil. 2. 99; Plut. Vit. Ant. 9.

[82] On Dolabella's career between 47–44, see Münzer 1901, 1304.

[83] On developments in the structures of the courts, especially that of the Senate and the emperor's tribunal, see Santalucia 1998, 233–241; Peachin 2015.

[84] RG 10: *et sacrosanctus in perpetum ut essem et, quoad viverem, tribunicia potestas mihi esset, per legem sanctum est.*

the people as a whole. It might also be added that the application of this term – *sacrosanctum* – to persons, rather than to objects, was fundamentally an innovation of the late first century BC.[85]

But it was more than the person of Augustus that came to gain institutional protections. Some protections attempted to reach the population as a whole. The Julian laws on adultery might be taken here as symptomatic: by criminalizing both *stuprum* and *adulterium* (words that, to the embarrassment of later jurists, the law used interchangeably), Augustus took a first step towards creating an institutional response to another's violation/degradation of one's own dependents, and marking a violation of one's private home as a problem of political order more generally. In the telling of Horace, these attempts at institutional reforms to manage degradation were productive of good government more generally: «Chaste houses are not polluted by acts of *stuprum*; tradition and legislation have conquered filthy sacrilege; women bearing children looking like (their fathers) are praised, and punishment *(poena)* comes right after wrongdoing *(culpam)*.» Horace continues by linking this legislation, and its attendant effects on morality, to the person of the emperor, and to successful foreign policy more generally.[86] Such a sentiment would be hard to find in earlier periods. But while the «moral revolution» that began in 18 BC notionally made the households of all citizens off limits from degradation, some bodies remained more protected than others. Augustus protected his family and reputation in particular by developing the criminal category of *impietas*, which prohibited printed insults directed against him and his family.[87] And in the case of his daughter Julia, at least, illicit sexual behavior became associated with «the ominous name of harm to religion and violation of *maiestas*».[88]

The mention of *maiestas* here is important: as Tacitus reminds us, this was an old category in Republican law, but the scope of the offenses it covered now shifted dramatically. With the benefit of hindsight, he summarizes the changes of the early first century:[89]

(Tiberius) legem maiestatis reduxerat, cui nomen apud veteres idem, sed alia in iudicium veniebant, si quis proditione exercitum aut plebem seditionibus, denique male gesta re publica maiestatem populi Romani minuisset: facta arguebantur, dicta inpune erant. primus Augustus cognitionem de famosis libellis specie legis eius tractavit, commotus Cassii Severi libidine, qua viros feminasque inlustris procacibus scriptis diffamaverat …

[85] A possible exception may be a usage of Cato, apud Festus p. 318: *adfirmat M. Cato in ea, quam scripsit, aedilis plebis sacrosanctos esse*. Whether this is a direct quote, however, is uncertain. On *sacrosanctum*, see Kübler 1920.

[86] Hor. Carm. 4. 3. 21–28, cited with discussion in Edwards 1993, 58–62.

[87] Bauman 1974.

[88] Tac. Ann. 3. 24. See the discussion of Ando 2010, 209f.

[89] Tac. Ann. 1. 72.

«Tiberius had brought back the law concerning *maiestas*, a law which had the identical name among the ancients, but covered other offenses – if someone, by betraying an army or by raising sedition among the plebs or by doing other crimes against the state had reduced the *maiestas* of the Roman people. Acts were alleged, but words were not punished. But Augustus was the first to bring a trial concerning *libelli famosi* under the provisions of this law, being provoked by the lust of Cassius Severus, which had defamed high-ranking men and their wives in his scurrilous texts …»

Accompanying these moves by which sexual advances towards members of the imperial house were folded into the category of *maiestas*, so too were insults directed at the emperor and indeed, at the governing class as a whole.[90] Even potentially hostile treatment of imperial statues came to be imagined as a potential threat to the dignity of the state.[91]

The development of the law of *maiestas* was the final phase in Augustus' institutional response to the chaos of the preceding period. Yet while the name of the offense dates to the Republican period, the content is radically distinct. One would be hard pressed to find a similar concern with degradation and family integrity in Republican-era laws on *maiestas* (much less in pre-existing laws on *vis*). The offense seems rather to be modeled on the praetorian understanding of *iniuria*. That is, the structuring metaphor had shifted: disturbance was no longer the main issue, but rather degradation, either by (attempted) physical violation of the princeps and his household, or through verbal defamation.[92] By what precise mechanism this shift took place it is impossible to say; the best recent reconstruction posits a process of experimentation whereby the new «nature» of *maiestas* was gradually «discovered» through a series of exemplary cases.[93] This is in fact what we might expect if we remember that we are dealing here with structuring metaphors and master categories for thinking about the relationship between violence and the state, and especially considering that institutional responses to these concerns will necessarily be out of step with contemporary beliefs and concerns – even if these are the beliefs and concerns of the unquestioned head of state. By AD 19, however, the institutional response seems finally to have caught up to the conceptual apparatus. We can see the total interpenetration of the two categories in one of the most important texts on *maiestas* in the Imperial period, the *senatus consultum de Pisone Patre*, recording the punishment of Gn. Calpurnius Piso, for acts of *maiestas* relating to the death of Germanicus:[94]

[90] Bauman 1967, 1974; Mackie 1992; Peachin 2015.

[91] Mantovani 2011, 213; Peachin 2015, on the second Cyrene edict (FIRA I 68).

[92] This is readily apparent from the later texts: Dio Cass. 53. 25. 5, recording that Gallus' insults constituted hybris; [Quint.] Decl. Min. 252. 5: *pulsatus civis iniuriarum aget, si magistratus erit maiestatis obligabit*.

[93] Peachin 2015, 535.

[94] Ll. 151–158. Text from Eck – Caballos – Fernández 1996.

Item equestris ordinis curam et industriam unice senatui probari, quod fideliter intellexsisset, quanta res et quam ad omnem salutem pietatemq(ue) pertinens ageretur, et quod frequentibus adclamationibus adfectum animi sui et dolorem de principis nostri filiq(ue) eius iniuris ac pro r(ei) p(ublicae) utilitate testatus sit …

«Similarly the senate praises the care and attention of the *ordo equester* in particular, since they faithfully understood the nature of the situation and how it was connected to our common security and familial devotion, and since they declared through repeated acclamations their agitation and their pain about the *iniuriae* to our princeps and his son and did this for the benefit of the Roman state …»

In brief, in the late first century BC a link between a violent or degrading act and the system of political stability as a whole began to emerge.[95] As the metaphor shifted, institutions followed, and by the turn of the millennium a host of actions that previously were held to be private matters or matters that might be dealt with through the categories of private law, came to be dealt with as a criminal issue, namely, *maiestas*; still, the underlying structure of the offense itself retained traces of its origin in private, praetorian offenses.

This rapid shift in structuring metaphors – and the advent of supporting institutions – posed a series of challenges. How was one to navigate a world in which a seemingly subjective category like indignation was to guide politics? (An all too modern question, one fears.) Just as one can ask the question of how someone is capable of recognizing a violent act as *vis*, one can ask on what grounds a slight, an affront, or even an assault might be interpreted as a (potentially) politically problematic act (rather than something deserved, something part of the normal scope of acceptable forms of violence). Was there some set of principles that could be used to define this new territory, to guide thinking about it, and to preserve a place for other aristocrats to share in the polity, while also rendering sense of new forms of leadership? And how precisely was an aristocrat to behave in this sort of regime? It was with these questions in mind that Labeo turned to *iniuria* – a relatively undertheorized body of law, but one that provided him much-needed space to make sense of his political surroundings.

IV. Bringing Order to Violence: Labeo's Commentaries

In spite of its political urgency, *iniuria* remained relatively undeveloped as a legal category in the Republic. This is not to say that the category itself lacked a history. Although there was a provision in the XII Tables prescribing a fine of 25 *asses* in the case that someone either «did an *iniuria*» to someone else or «treated another injuriously», it is unclear how this statutory penalty became the praetorian *actio iniuriarum aestimatoria*, or precisely when it did (or even if it did).[96] Suffice to say, probably

[95] Cf. Meister 2012, 109–118, on the nexus between state and body.

[96] In general, see Birks 1969; Manfredini 1971; Wittmann 1972; Hagemann 1998; Poláy 1986; Cursi 2002.

sometime in the second century, the praetor included in his edict a provision dealing with *iniuria,* which priced *iniuriae* according to what the plaintiff demanded as recompense for his injuries. Other provisions probably followed. The difficulty lies in reconstructing which provisions might have been in the edict at the turn of the millennium. Here the evidence is extremely exiguous: a reference in Plautus that seems to turn on a case of a beating; a notice in the *Rhetorica ad Herennium* noting that two cases were brought against poets for slander or defamation (in one case leading to a conviction, in the other to an acquittal).[97] There was, in addition, a piece of legislation, the *lex Cornelia de iniuriis* of 79 BC, prohibiting «beating, striking, or entering (another's) house by force». Evidence for this *lex Cornelia* is scant and problematic, but what is striking is that it seems to overlap the category of *vis*, indicating that, at the very least, the content of *iniuria* in the early first century BC was far from clear even to legislators.[98] Among the early jurists, *iniuria* did not provoke particular interest; jurists prior to Labeo discuss it only on the rarest of occasions.[99] A legal theory – some way to make sense of this diversity of material – would continue to be lacking until Labeo wrote his commentaries *On the Edict of the Urban Praetor*, probably sometime in the early first century AD.[100]

Accessing Labeo's thinking, however, is no straightforward task. Most of what remains of his original work is preserved indirectly, largely through the works of the second century jurists Paulus and Iavolenus, and through the third century jurist Ulpian. The material on *iniuria* is preserved almost completely by Ulpian, in his much lengthier commentary *On the Praetorian Edict*, composed in the early third century AD, and later preserved in Justinian's *Digest*. What is more, only rarely do we have Labeo's *ipsissima verba*; rather, we have summaries of his juristic *responsa* on particular issues.[101] Normally, moreover, we have these *responsa* because later jurists found Labeo's opinions and reasoning to be somehow erroneous or problematic (declaring that Labeo was wrong came, in later years, to produce its own genre of writing). Even with these rather substantial caveats, Labeo's work on *iniuria* looms large in Ulpian's discussion, which in turn structures the great bulk of *Digest* 47. 10, «On *iniuriae* and defamatory writings». While later jurists disagreed with him as to particulars, Labeo's

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[97] On defamation, see Manfredini 1979; Scott 2006.

[98] On the problems posed by surviving evidence for this law, see Pugliese 1941, 117–128. Something similar can probably be said for the *lex Cornelia de maiestate*, which also covered actions that might be understood as *vis*. See Cloud 1963, 209, 216f.

[99] Labeo's teacher, Trebatius Testa, mentioned it briefly, as did Labeo's contemporary, Fabius Mela: Dig. 47. 10. 17. 2 (Ulpian, ad Edict. 57) = Lenel 1889, F 86 (Trebatius).

[100] The dating of such works is notoriously problematic. The early years of the first century AD seems to me reasonable enough if we accept an academic floruit in his 50s. Nothing, however, will admit of precision. For attempts at crafting a biography, see supra, nn. 30f.

[101] Lenel 1889 prints all of the material from Labeo's *Commentary* in italics, that is, as summaries of his positions, rather than their *ipsissima verba*.

work determined the contours of the discussion.[102] Taken as a whole, however, they evince a remarkable and sustained interest in the problem of violence, and as part of the deep background of this interest, evidence of extensive thinking about the relation of violence to the polity.

IV.1 Defining Iniuria

When Labeo turned to *iniuria*, he had relatively little to work with, other than the diverse chapters of the praetorian edict. At the time of his writing, some five different clauses in the edict allowed people to sue others for harm: there was the *actio aestimatoria*, which allowed someone to state what particular *iniuria* he had suffered and to propose a penalty for compensation; there was a prohibition on making a *convicium*, as well as one on attacking another's chastity, or *pudicitia*; another clause prohibited someone from doing anything which impugned another's status *(ne quid causa infamandi fiat)*; and finally two clauses dealt with *iniuriae* committed by slaves.[103] Although we cannot with any certainty map the process by which these edicts emerged or the order in which they emerged, what does seem clear enough is that, by the end of the first century BC, they overlapped one another in places. The territory covered by the *actio aestimatoria* overlapped with the edict *ne quid causa infamandi fiat*; the relation between these and the edicts on protecting *pudicitia* and forbidding a *convicium* was similarly unclear.[104]

There was thus the question of finding a legal theory that would satisfy the diverse edicts that dealt with *iniuria*. To establish some order between these categories, Labeo turned first of all to a Greek model. *Iniuria*, he explained, was nothing more than what the Greeks called hybris.[105] The question is whether we should accept this as a mere translation, or as an important move in Labeo's argument.[106] The latter seems to me the more attractive option. *Iniuria* is a perfectly good Latin word, and one whose etymology is in no way confusing. Labeo parsed numerous such Latin words with legal application. Some, he derived etymologically («a *soror* [sister], is so called because she is, as it were, born *seorsum* [outside], and is separated from that family from which she

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[102] Crook 1976, 137, noting that 47. 10 has an especially theoretical bent; Bretone 1984, 173.

[103] Lenel 1985 (1927), 397–403. There was a further edict allowing people in another's *potestas* (and who thus couldn't sue on their own) to sue in cases where their father or guardian could not be found. This edict existed in the *edictum perpetuum* of the second century AD, but there is no evidence that Labeo commented on it.

[104] Bretone 1984, 175.

[105] Coll. 2. 5. 1 (Paul. lib. sing. de iniur.) = Lenel 1889, F 126: *apud praetorem iniuriam* ὕβριν *dumtaxat significare*. This cannot mean that law of *iniuria* follows the same principles as Greek law: Pugliese 1941, 39–58.

[106] Babusiaux 2014b has argued (though not on the basis of this passage) that these citations to Greek terms are ultimately of little importance; this approach seems to be overly-narrow. I prefer the contextualized approach of Moatti 2015.

was born, and transferred to another family»), others historically. His research into Latin was deep enough that three complete books of his posthumous works could be described as being primarily interested in «explaining and illustrating the Latin language» *(ad enarrandam et illustrandam linguam Latinam)*.[107] Linguistic research thus was a major component of his work on civil law, and the derivation of the word *iniuria* was important to other jurists.[108] If he avoided it in this instance, then we might take this as a signal that Labeo was deliberately rejecting one particular tradition of thought to privilege another. He made a similar move when he sought to clarify the nature of contract, another topic that may have been politically sensitive.[109]

But if this translation harkens back to a Greek tradition, then what sort of tradition? Labeo was probably not attempting to recall the Athenian law on hybris. Even if he knew such a thing (from reading Alexandrian editions of Demosthenes' speech *Against Meidias*), the links between the Roman law on *iniuria* and the Athenian law of hybris are too tenuous to demonstrate a connection.[110] A better case might be made for a different Hellenistic antecedent: the provision on hybris given in the Alexandrian Dikaiomata papyrus, which states that «if any person commits an act of hybris against another not provided for in this code, the injured party shall himself assess the damage in bringing his suit, but he shall further state specifically in what manner he claims to have been outraged and the date on which he was outraged. And the offender if condemned shall pay twice the amount of the assessment fixed by the court.»[111] There are certainly formal similarities between the Alexandrian law on hybris and the praetorian edict (especially the *actio aestimatoria*): both traditions conceive of hybris/*iniuria* as a private law offense, and both use a mode of valuation based on the victim's estimate of the damage done.[112] Still, the similarities ought not to be pushed too far: there is no reason to assume Alexandrian influence on Roman law in this period (or earlier), much less that Labeo was interested in foreign legal systems.

There seems a more fruitful option: as Mario Bretone has suggested, Labeo's interest in developing classifications of *iniuria* strayed from the text of the praetorian

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[107] Aul. Gell. NA 13. 10, trans. Rolfe, LCL. Cf. Dig. 42. 2. 1. pr (Paul. ad Edict. 39) = Lenel 1889, F 374: *furtum a furvo, id est nigro dictum Labeo ait …* Other fragments of Labeo's definitions are collected in Huschke – Seckel – Kübler 1909.

[108] On etymological reasoning by jurists more generally, see Babusiaux 2014a.

[109] E.g., Dig. 50. 16. 19 (Ulp. ad Edict. 11) = Lenel 1889, F 5: *contractum autem ultro citroque obligatio, quod Graeci* συνάλλαγμα *vocant*. On the relation of Labeo's account of contract to the *lex Iulia iudiciaria* see Schiavone 2012, 322–333.

[110] Pugliese 1941. Other jurists knew at least some speeches of Demosthenes: Dig. 1. 3. 2 (Mod. Inst. 1).

[111] P.Hal. I = Sel.Pap. II 202. 210–213, trans. LCL with modifications: ὕβρεως. ἐάν τις καθυβρίσηι ἕτερος ἑτέρου τ[ῶ]ν ἀγράφων, ὁ τα̣[.......]μενος τιμησάμενος δικασάσθω, προσγρα[ψά]σθω δὲ ὀνομαστί, τ[ί ἂν φῆι] ὑβρισθ[ῆ]ναι καὶ τὸν χρόνον ἐν ὧι ὑβρίσθη. ὁ δ[ὲ] ὀφλὼν διπλοῦν ἀπ[οτεισάτω,] ὃ ἂν τὸ δικαστήριον τιμήσηι.

[112] Hirata 2008. On the legal meaning of hybris in Ptolemaic law and the law of the province of Egypt more generally, see Rupprecht 1993; Mascellari 2016.

edicts. Instead, he proposed a more general scheme for understanding *iniuria*, based on the claim that the *actio aestimatoria* was really an *edictum generale*.[113] Under the broad heading of the «general» edict, *iniuria* could be subdivided into types. The passage, from Ulpian, deserves close scrutiny:[114]

Iniuriam autem fieri Labeo ait aut re aut verbis: re, quotiens manus inferuntur: verbis autem, quotiens manus non inferuntur, convicium fit: omnemque iniuriam aut in corpus inferri aut ad dignitatem aut ad infamiam pertinere: in corpus fit, cum quis pulsatur: ad dignitatem, cum comes matronae abducitur: ad infamiam, cum pudicitia adtemptatur.

«Labeo says that *iniuria* is committed either physically or verbally: physically, when there is battery; verbally, when there is a *convicium*, but no battery. Every *iniuria* either is directed against the body, or pertains to one's dignity or disgrace: it is directed at the body when someone is hit, it pertains to dignity, when a woman's chaperone is removed, and to disgrace, when someone seeks to test (another's) chastity.»

Labeo thus proposed a two-part typology of *iniuria*: the first part explains, through another two-part typology, how *iniuria* is done (either physically or verbally); the second explains, through a three-part typology, its aims (injury of the body, an assault on one's dignity, and an attempt at disgracing another). These five areas, significantly, differ in part from the main provisions of the praetorian edict: the *edictum generale*, the prohibitions against *convicium*, attacking another's chastity, and impugning another's *dignitas* – impugning *dignitas* is, on this reading, not a broad provision, but rather a narrow provision related to tests of another's chastity.[115] This is in keeping with what Labeo had to say elsewhere:[116]

Ait praetor: «Ne quid infamandi causa fiat. Si quis adversus ea fecerit, prout quaeque res erit, animadvertam.» Hoc edictum supervacuum esse Labeo ait, quippe cum ex generali iniuriarum agere possumus. Sed videtur et ipsi Labeoni (et ita se habet) praetorem eandem causam secutum voluisse etiam specialiter de ea re loqui: ea enim, quae notabiliter fiunt, nisi specialiter notentur, videntur quasi neclecta.

«The praetor says: ‹Let nothing be done to impugn another's status. If anyone acts to the contrary, I will take notice of it on the merits of each case.› Labeo says that this edict is unnecessary, especially since we can sue according to the general edict. But even Labeo himself thought (and he thus holds) that the praetor had this in mind and wished to address it specifically: for there are actions that are blameworthy, but if they are not specifically addressed, they seem practically to be ignored.»

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113 Bretone 1984, 179.

114 Dig. 47. 10. 1. 1–2 (Ulp. ad Edict. 56) = Lenel 1889, F 127.

115 On the breadth of the edict *ne quid*, see Daube 1991 (1951).

116 Dig. 47. 10. 15. 25–26 (Ulp. ad Edict. 57) = Lenel 1889, F 134.

Ulpian records no other analysis of Labeo's in this section of his commentary. This gives an important clue to the nature of Labeo's project: it was overwhelmingly concerned with keeping the scope of the offense narrow. Even in giving his definition, he chose examples that restricted the nature of the offense: if the praetor generally prohibited someone from impugning another's status, this was to be read in the narrow sense: the chapter dealing with *infamia*, he argued, ought to be read as pertaining primarily to *pudicitia adtemptata*. Attacks on someone's *dignitas* (another category that might prove extremely capacious) were to be understood in a similar manner, as being problematic primarily in the realm of sexual honor, not honor in the most general sense.

Rather than mapping the contours of the edict, Bretone suggests that Labeo based his definition on Aristotle, particularly Aristotle's definitions of hybris in the *Rhetoric*.[117] Anger (ὀργή), Aristotle explains, is caused by belittling (ὀλιγωρία), of which there are three types: contempt (καταφρόνησις), spite (ἐπηρεασμός), and hybris. Aristotle continues:[118]

αἴτιον δὲ τῆς ἡδονῆς τοῖς ὑβρίζουσιν, ὅτι οἴονται κακῶς δρῶντες αὐτοὶ ὑπερέχειν μᾶλλον (διὸ οἱ νέοι καὶ οἱ πλούσιοι ὑβρισταί· ὑπερέχειν γὰρ οἴονται ὑβρίζοντες)· ὕβρεως δὲ ἀτιμιία, ὁ δ' ἀτιμάζων ὀλιγωρεῖ· τὸ γὰρ μηδενὸς ἄξιον οὐδεμίαν ἔχει τιμήν, οὔτε ἀγαθοῦ οὔτε κακοῦ …

«The cause of pleasure to those who commit hybris is that they think they themselves become more superior by ill-treating others. That is why the young and the rich are given to hybris; for by committing hybris they think they are superior. Dishonor is a feature of hybris, and one who dishonors belittles; for what is worthless has no repute, neither for good nor evil …»

Bretone's suggestion that Labeo's translation echoes Aristotle, whose mode of classification Labeo also seems to have adopted, is attractive. First, it helps explain why Labeo's definitions seem to fit imperfectly with the existing praetorian remedies, at least as they were interpreted by subsequent generations of jurists. Second, it goes some way towards solving the problem of how one judges *iniuria* – that is, according to the perceived indignation of the victim, or according to the intentions of the offender. If *iniuria* resembled Aritotelian hybris, then the answer was clear enough: it had to be inferred from the disposition of the offender, namely, the offender's desire to commit a deliberate and degrading act.

But perhaps more importantly, there is something of a kinship between Labeo's concerns and Aristotle's. Both were interested, to some degree, in the relation between violence, degradation, and the polity. For Aristotle (and in Greek ethical and political traditions more generally) hybris was linked to the behavior of the politically powerful. It was one of the main categories of action (along with contempt – καταφρόνησις)

[117] Bretone 1984, 180–184, who also gives references to Aristotle's works in Rome in the Republican period. Certainly later jurists based their judgments on Aristotle: cf. Dig. 46. 3. 36 (Julian, ad Urseium Ferocem 1, citing Hist. an. 9[7] 584b26–585a3 [LCL]).

[118] Rhet. 1378b, trans. Kennedy with modifications.

that caused political disorder.[119] Hybris was not just a violent act, but a violent act that came from a person who occupied a position of power, who acted in such a way that he wished to degrade (and thereby disqualify) others who might attempt to share his position. In classical Athenian democratic ideology, all citizens were to refrain from so denigrating their fellows.[120] In Hellenistic thought, these acts of degradation were similarly connected to imbalances in political power: thus those who are politically powerful will tend to commit acts of hybris; these acts of hybris, in turn, lead to civil wars, and eventually, degeneration to an animal-like state.[121] In other words, this may not have been an innocent «borrowing» from a nearby tradition; it might instead have been a deliberate attempt to adapt Greek categories to a problem of contemporary interest.

In other words, the terms of approach signaled that Labeo understood this category of private law as having a fundamental link to problems of public order and political stability. Introducing this particular strand of Greek political philosophy was something of a departure from the pre-existing Roman legal traditions on delict, which had largely conceptualized *iniuria* as a problem of private law. Linking *iniuria* to a long tradition of thinking about political power – and especially the political power of a single, despotic individual, provided new intellectual scaffolding for understanding the potential disruption of the act itself.

IV.2 Iniuria *and Language*

Not only did Labeo seek to define the nature of the act itself, he also sought to find its boundaries. In the law of the second and third centuries AD, many actions might fall under the broad heading of *iniuria*: one could sue for *iniuria* if one had been beaten up, to be sure, but one could also sue someone for *iniuria* for denying them the right to fish on the public seashore, for taking a man's son into a dive bar *(popina)*, or for wearing filthy clothes to another's detriment.[122] Yet these expanding definitions sat

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[119] E.g., Pol. 1302b, 1307a, 1311a, 1313a. On Aristotle's account of hybris, see Fisher 1992, 7–35.

[120] The locus classicus is Dem. Meid. 7. Fisher 1992, esp. 126–129.

[121] E.g., Arist. Pol. 5. 10; Eckstein 1995, 245–247, on Polybius. Cf. Gray 2015, 248, discussing the inscription (reported by Schol. Aesch. 82) set up by the Thirty with a depiction of Oligarchia torching the Athenian Demos because of its hybris. The Thirty understood Demos as both a person and a tyrant. On Demos as a person, see Anderson 2009.

[122] In general, Gai. Inst. 3. 220. On fishing, Dig. 47. 10. 13. 7 (Ulp. ad Edict. 57), discussing the opinion of Pomponius (F 148 Lenel); taverns, Dig. 47. 10. 26 (Paul. ad Edict. 19); filthy garments, Coll. 2. 6. 5 (Paul. de iniur.) with Daube 1991 (1951). The proper restoration of the *Collatio* passage remains controversial, but for reasons he may not have realized, Daube may have been correct: BGU II 611 = Ch.L.Ant. X 418, ii. 21–22 records a reform of Claudius that provides relief to those whose opponents *iam sq[ua]lorem sumere barbam et capillum [su]mmittere*. Could this have been, as Daube thinks, an action for *iniuria* under the edict *ne quid*? Cf. Dig. 47. 10. 44 (Iav. Post. Lab. 9) = F 232 (Iavolenus) Lenel.

more comfortably in the world of the high empire. By contrast, Labeo sought to keep the category relatively narrow.

This urge to deal with a relatively restricted category is most evident in the way Labeo tackles the question of injurious language. The question of what one was allowed to say, and to whom, was of course a major issue in the age of Augustus. Republican culture allowed for a virtually unbridled range of invective; yet now the Roman literary classes found themselves in a new world.[123] Increasingly throughout the reign of Augustus, language (here literary language) came to be deemed treasonous or damaging to the princeps, and thus to the state as a whole.[124] Labeo similarly took interest in this problem. To be sure, he claimed, *iniuria* could be committed *verbis*. Still, he was also keen to point out that this was a relatively circumscribed category – it consisted not of all verbal insults, but of *convicium*:[125]

Ait praetor: «Qui adversus bonos mores convicium cui fecisse cuiusve opera factum esse dicetur, quo adversus bonos mores convicium fieret: in eum iudicium dabo.» Convicium iniuriam esse Labeo ait. Convicium autem dicitur vel a concitatione vel a conventu, hoc est a collatione vocum. Cum enim in unum complures voces conferuntur, convicium appellatur quasi convocium …

«The praetor says: ‹If someone makes a *convicium* against another contrary to good morals, or if someone is said to have aided in producing a *convicium* against good morals, I will provide an action against him.› Labeo says that a *convicium* is *iniuria*. The word *convicium* is related to *concitatio* (mob) or *conventus* (gathering), that is, the joining of voices. When many voices join together against someone, it is called a *convicium*, as if from *convocium* (gathering of voices) …»

Here, Ulpian (in *oratio recta*) expands upon Labeo's definition, but in so doing seems to capture something critical from the text he summarizes. Not all insults are actionable, just insults done against someone by a collectivity, banded together for the purpose of insulting. Here we would do well to remember Labeo's comment on the *turba*, or mob: when the praetor declares that he will give an action against anyone who has caused damages by raising up a *turba* with bad intentions *(dolo malo)*, Labeo qualifies this severely as well: a *turba*, he writes, is a type of violent commotion *(ex genere tumultus)* deriving from the Greek θορυβεῖν; not any group of actors can constitute a *turba*, but only a large, organized group *(multitudinem hominum esse turbationem et coetum)*; anything else is a mere *rixa*. In other words, Labeo's thoughts on public disturbances and verbal *iniuria* move along the same lines: not all groups of people are problematic, only particular types of groups.[126] In the case of speech, only

[123] E.g., Macr. Sat. 2. 4. 21. Cf. Feeney 1992; Barchiesi 1997.

[124] E.g., Ov. Tr. 2. 207–212; 4. 4. 15.

[125] Dig. 47. 10. 15. 2–4 (Ulp. ad Edict. 56) = Lenel 1889, F 132.

[126] Dig. 47. 8. 4. 2–3 (Ulp. ad Edict. 56) = Lenel 1889, F 124. Prohibitions on creating *turbae* were equally a part of *vis* legislation: Dig. 48. 6. 3. pr. A similar attempt to be cautious about what counts as *iniuria* comes in a different form: Labeo says that one can use the *edictum generale* to sue if you have been hit in the head with a sword: «for … this is not understood as something that has a public aspect» (*neque enim utique hoc, inquit, intenditur, quod publicam habet anim-*

the speech of large, disorderly groups, intended to breach the peace, is punished as *convicium*.[127]

Similarly, Labeo argued that even insulting speech might be protected, if done in the appropriate forum:[128]

si quis de honoribus decernendis alicuius passus non sit decerni ut puta imaginem alicui vel quid aliud tale: an iniuriarum tenetur? et Labeo ait non teneri, quamvis hoc contumeliae causa faciet: etenim multum interest, inquit, contumeliae causa quid fiat an vero fieri quid in honorem alicuius quis non patitur.

«If, in a matter of decreeing honors for someone, a person be unwilling that they should be decreed, for example, a statue or the like, can proceedings for insult be brought against him? Labeo says that he is not liable, even if he does this for the sake of insult; he says that there is a great distinction between whether doing a thing for the sake of insult and whether a person will not tolerate the honoring of another.»

This «great distinction» was of course important for preserving the space in which elite men could debate how to respond to the events of their day. It is therefore no coincidence that, among the biographical details preserved about Labeo, the tradition is unanimous that he valued highly his ability to deliberate in the Senate. Both his critics and his admirers noted that he placed heavy emphasis on his *libertas*.[129] The ability to express oneself frankly in public meetings was surely an important part of this, even to the extent of saying things purely to be insulting *(contumeliae causa)*.

To this we might add yet another ruling of Labeo's, and one which surely spoke to a question of recent political interest: in 32 BC Octavian learned from two men of consular rank of the contents of M. Antonius' will, the original of which had been deposited among the Vestal Virgins. He pilfered the will, read out the contents to the Senate and spread them in public, which turned popular opinion sharply against Antonius. Still, Cassius Dio reports that though Octavian had acted most illegally in doing so (παρανομώτατον πρᾶγμα ποιήσας), popular opinion regarded the sin as forgivable.[130] It seems not to be coincidental that Labeo pondered a similar question:[131]

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adversionem). Ulpian thinks this ludicrous: «for who could doubt that the attacker could be sued under *the lex Cornelia* (concerning assassins)?» (*cui enim dubium est etiam hunc dici posse Cornelia conveniri?*) Dig. 47. 10. 7. 1 (Ulp. ad Edict. 57) = Lenel 1889, F 129. Here, Labeo tries to circumscribe the category of «political violence» by keeping it within the traditional sphere of private law, rather than allowing the categories of public law (the *lex Cornelia de sicariis*) and private law to intermingle. A similar problem is evident in Dig. 48. 7. 4 (Paul., ad Edict. 55), where Labeo denies that torturing a slave should fall under the *lex Iulia de vi*.

[127] Cf. Daube 1991 (1951), 491.

[128] Dig. 47. 10. 13. 4 (Ulp. ad Edict. 57) = Lenel 1889, F 130, trans. Watson with modifications.

[129] Above, n. 28.

[130] 50. 3. Cf. Plut. Vit. Ant. 58.

[131] Dig. 16. 3. 1. 38 (Ulp. ad Edict. 30) = Lenel 1889, F 896 (Ulpian), trans. Watson. On jurists engaging contemporary politics through rulings, cf. Macr. Sat. 2. 6. 1 (recording a witty ruling of Cascellinus on riots taking place during the games of P. Vatinius).

Si quis tabulas testamenti apud se depositas pluribus praesentibus legit, ait Labeo depositi actione recte de tabulis agi posse. Ego arbitror et iniuriarum agi posse, si hoc animo recitatum testamentum est quibusdam praesentibus, ut iudicia secreta eius qui testatus est divulgarentur.

«If someone reads out to a number of people testamentary tablets deposited with him, Labeo says that suit can be brought with the action on deposit on account of the tablets. I personally am of the opinion that the action for *iniuria* can also be brought if the will has been read out to those present with the intention that the secret dispositions of him who made the will be divulged.»

Such behavior might be reprehensible; it was not, however, *iniuria*. The ability to speak in public, about matters of public concern, was sharply cleaved from the world of actionable, degrading insults.

The net effect of this reasoning is to carve out a space that still permits a relatively large degree of freedom of speech, and freedom to impugn the acts and characters of others. In this sense, Labeo's thinking might be taken as an attempt to preserve a species of Republican-era *libertas*. To be sure, there were limits: one cannot make a *convicium* but claim that it was not actionable since the putative victim was at that moment out of town, nor can one assault a representation of a person (such as a funerary statue) and avoid a suit.[132] Still, these limits on what can count as verbal *iniuria* are important, for two reasons. First, they reflect his more general interest in defining this category in a narrow way, such that one might recognize the disruptive potential of particular verbal acts (the ones that look most similar to physical violence), while still declining to take all unpleasant verbal acts as falling within the scope of the offense. This, in turn, protects the necessarily unpleasant things that a person must at times say while, for example, engaged in political deliberation. To the extent that this is «Republicanism», then, it is so only in a limited sense; it is better characterized as an attempt to make accommodation with new political realities by acknowledging them, and thinking of them as boundaries which constrain otherwise acceptable behavior.

Labeo's narrow definition of culpable speech differed from the developmental contours of the law of *iniuria* as a whole. As noted above, attempts had been made in the Republic to bring insulting or defamatory speech under the heading of *iniuria*, with mixed results. But in the age of Augustus this process accelerated: anonymous pamphlets defaming the emperor and leading notables came to be treated under the headings of *impietas* and *maiestas*; speech became complex, ambivalent, and policed.[133] Defamation was similarly punished by a *senatus consultum*, of an unknown date.[134]

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[132] Dig. 47. 10. 15. 7 (Ulp. ad Edict. 57) = Lenel 1889, F 130; Dig. 47. 10. 27 (Paul. ad Edict. 27) = Lenel 1889, F 424 (Paulus). The discussion of assaulting a representation was of great contemporary interest, and similarly tied to issues of *maiestas*: the removal of statues was precisely what was at issue in the second Cyrene edict (FIRA I 68, and above, sec. III).

[133] Suet. Aug. 51; Cramer 1945; Bauman 1974; Feeney 1992; Mackie 1992.

[134] On the relation of the *senatus consultum* to the anonymous acts of defamation of possibly AD 6, see, with further references, Peachin 2015, 525.

Understanding the *lex Cornelia de iniuriis* to be the ultimate source of this development (whether it was or not), later jurists made all defamatory behavior actionable:[135]

Si quis librum ad infamiam alicuius pertinentem scripserit composuerit ediderit dolove malo fecerit, quo quid eorum fieret, etiamsi alterius nomine ediderit vel sine nomine, uti de ea re agere liceret et, si condemnatus sit qui id fecit, intestabilis ex lege esse iubetur. Eadem poena ex senatus consulto tenetur etiam is, qui epigrammata aliudve quid sine scriptura in notam aliquorum produxerit: item qui emendum vendendumve curaverit. Et ei, qui indicasset, sive liber sive servus sit, pro modo substantiae accusatae personae aestimatione iudicis praemium constituitur, servo forsitan et libertate praestanda. Quid enim si publica utilitas ex hoc emergit?

«It is provided that if anyone write, compose, or publish a writing pertaining to the disgrace or disrepute of another or deliberately bring it about that any of these things be done, whether the publication be in someone else's name or anonymous, then action may be brought over the issue, and if the culprit be condemned, he shall become infamous under the statute. The same penalty is extended by *senatus consultum* to anyone who produces epigrams or an anonymous writing defaming another, as also to one concerned to traffic in such things. And for the person who exposes such offenses, whether he be free or a slave, there is provided a reward according to the wealth of the accused, to be assessed by the judge and, in the case of a slave, liberty may also follow. For it may be that public good emerges from the exposure.»

Here we see the traffic between private law and concerns with public order: for Ulpian (and for the Imperial senate), publishing defamatory material was not only an offense against its victim, it was an offense against the public peace, substantial enough to provide rewards for slave informants. The gap between Labeo and Ulpian here is telling: Labeo privileges narrow definitions, designed to limit «violence» to only particular cases of relatively direct harms to the person, and to deny most other forms of unpleasant behavior the status of being publicly disruptive.

IV.3 Private Law and Public Order

I close with one further example of how Labeo imagined the relationship between *iniuria* and political stability in a changing world. To his more general concern with the scope of the offense we can connect another fragment of Labeo's, probably not from his commentary on the praetor's edict, but from his work *On the Twelve Tables*, where he sought to explain the origins of *actio iniuriarum aestimatoria*. This fragment is preserved not in the *Digest*, but by Aulus Gellius, who sets it within a dialogue about the relation between law and philosophy:[136]

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[135] Dig. 47. 10. 5. 9–11 (Ulp. ad Edict. 56), trans. Watson.

[136] Aul. Gell. NA 20. 1. 13 = Lenel 1889, F 3, trans. Rolfe, LCL, with modifications.

«L. Veratius fuit egregie homo inprobus atque inmani vecordia. is pro delectamento habebat os hominis liberi manus suae palma verberare. eum servus sequebatur ferens crumenam plenam assium; ut quemque depalmaverat, numerari statim secundum duodecim tabulas quinque et viginti asses iubebat. propterea» inquit «praetores postea hanc abolescere et relinqui censuerunt iniuriisque aestumandis recuperatores se daturos edixerunt.»

«‹One Lucius Veratius was an exceedingly wicked man and of cruel brutality. He used to amuse himself by striking free men in the face with his open hand. A slave followed him with a purse full of *asses*; as often as he had buffeted anyone, he ordered twenty-five asses to be counted out at once, according to the provision of the Twelve Tables. Therefore›, he continued, ‹the praetors afterwards decided that this law was obsolete and declared that they would appoint *recuperatores* to calculate the damages for *iniuriae*.›»

It should be noted that only on rare occasions do jurists tell such stories. Part of the reason for this rarity might be that such things were eliminated in the compilation of the *Digest*, in favor of a different historical narrative of the growth of law that had become canonical by the age of Justinian (Pomponius' narrative, as preserved in his *Enchiridion*). But even in the fragments of Roman jurisprudence preserved outside of the *Digest* these bits of narrative are incredibly scarce, which means that they deserve especially close attention.[137]

Labeo's story about Veratius is often cited as a historical reason for the introduction of the praetorian *actio iniuriarum*, which replaced the statutory action of the archaic Twelve Tables (which prescribed a fine of 25 *asses*). Whether it has independent historical value is, unsurprisingly, disputed.[138] It is certain, however, that it uses *iniuria* to make a potent point about political community: Veratius is framed as a person whose wealth and desires lead to violence, and that violence is framed as politically destabilizing. These moral concerns about wealth and desire are highly traditional; they would not have been alien, for example, to Sallust. In Veratius' case, his propensity to slap his fellow citizens (recall here the *os percussum* of the *Digest*) takes on political ramifications, causing the praetors to notice the disparity between the law as written and sound social practice and to innovate accordingly in order to stabilize the situation. In Labeo's account, the praetors (guided by jurists) are undoubtedly the heroes in this story, for they can decide that a law has become obsolete and replace it with a procedure designed to ensure substantive justice. It is similarly no accident that this sort of massive «correction» of statute was precisely what the Augustan *lex Iulia iudiciaria* aimed to avoid.[139]

Such a story would be interesting enough of its own right for understanding how Labeo framed his project on *iniuria* generally, as well as the relationship between *iniuria* and political community. It is all the more interesting, therefore, that Labeo's story

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[137] Bryen 2016a.

[138] Birks 1969; 1974; Scarano Ussani 1992. For a different perspective, Bryen 2016b, 327 f.

[139] Schiavone 2012, 325–333.

has a doublet, one told by his rival, C. Ateius Capito. According to Capito, writing after Labeo's death, Labeo was possessed by an excessive and crazed love of liberty: *libertas quaedam nimia atque vecors* – recall here the *immanis vecordia* of Lucius Veratius, which gives Capito's characterization a particular sting.[140] Capito gives as a particular example that Labeo was once sued by a woman, and in the course of the proceedings refused a summons from the tribunes when he was away at his villa, claiming that the tribunes may have had the right of arrest in Rome, but that they certainly did not have the right to summon someone when that person was outside the city. But while criticizing Labeo, Capito also echoed him, telling a competing story about the relationship between violence and political stability:[141]

Aulus Hostilius Mancinus aedilis curulis fuit. is Maniliae meretrici diem ad populum dixit, quod e tabulato eius noctu lapide ictus esset, vulnusque ex eo lapide ostendebat. Manilia ad tribunos plebi provocavit. apud eos dixit comessatorem Mancinum ad aedes suas venisse; eum sibi recipere non fuisse e re sua, sed cum vi inrumperet, lapidibus depulsum. tribuni decreverunt aedilem ex eo loco iure deiectum quo eum venire cum corollario non decuisset; propterea, ne cum populo aedilis ageret intercesserunt.

«Aulus Hostilius Mancinus was a curule aedile. He brought suit before the people against a courtesan called Manilia, because he said that he had been struck with a stone thrown from her apartment by night, and he exhibited the wound made by the stone. Manilia appealed to the tribunes of the people. Before them she declared that Mancinus had come to her house in the garb of a reveler; that it would not have been her business to admit him, and that when he tried to break in by force, he had been driven off with stones. The tribunes decided that the aedile had rightly been refused admission to a place to which it had not been seemly for him to go with a garland on his head; therefore they forbade the aedile to bring an action before the people.»

Mancinus was that year's curule aedile, that is, he was the patrician magistrate in charge of the regulation of city commerce and the giving of games, a position that also involved the regulation of the city's prostitution industry (though the precise contours of his authority are unclear).[142] But Mancinus' status and office, we might surmise, also gave him a sense of desert. So when he appeared at Manilia's door, he would have expected that she let him in, drunk or not. Clearly she disagreed, and fended him off with a shower of rocks. His pride wounded, he sought to treat her as a criminal by hauling her in front of the popular assembly for conviction and punishment. She would manage to save herself, however, by changing the nature of the accusation: it was Mancinus, she claimed, who was committing *vis*, not she: he broke into her home, and she naturally drove him off (here she echoes the great provision of Roman natural law: *vim vi repellere licet*).[143]

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140 Aul. Gell. NA 13. 12.

141 Aul. Gell. NA 4. 14 (trans. Rolfe, LCL with modifications).

142 McGinn 1998, 201.

143 Dig. 46. 16. 1. 27 (Ulp. ad Edict. 69): *vim vi repellere licere Cassius scribit idque ius natura comparatur*.

Both of these stories, told by competing jurists, attempted to understand the relationship between political order and degradation. In Labeo's story, the problematic actor was the aristocrat who, because of his tremendous wealth, abused the bodies of free citizens to sate his lust for violence; for Capito, the paradigmatic violator was the person who acted under cover of law to do the same. Both of their stories are emblematic of the deep links made between acts of violence and broad historical shifts that their contemporary Livy addressed in his history. Both tried to parse the relatively new concern with degradation with problems of public order and authority – both, that is, sought to anchor this newly shifted set of structuring metaphors for understanding the relationship between violence and politics to specific historical events that could historicize and explain them, and allow conclusions to be drawn from them.

But the conclusions they drew were different. For Labeo, the problematic and paradigmatic place for violence was outside and in public; for Capito, the problem was with the violation of a space (a brothel) that sat uncomfortably between public and private; connected to acts of violence and degradation, it evoked the shadowy and distinctly un-civic world of the *leno* (and it bears reminding that *lenocinium* was a key feature of the adultery laws).[144] For Labeo, violence and degradation remained firmly linked to the tradition of private remedies: praetorian correction, at the end of the day, allowed the imbalance in social and economic power to be rectified, through a remedy that allowed praetors to calibrate the nature of the harm done to the status of both doer and victim. What is more, the situation that resulted, as between the injurer and the victim, was one of obligation, whereby the victim must be compensated for the harm done to him. The assailant, though he may suffer civic disgrace *(infamia)*, nevertheless remained a part of society. For Capito, by contrast, the situation was one resolved through public/criminal law, a field in which Capito was expert – after all, Mancinus did not sue Manilia in the praetor's court, but accused her before the people.[145] Those best placed to intervene were the tribunes – a status linked, in Capito's day, to the emperor himself. For Capito, such violent degradation demanded the special status of being scrutinized as a crime, for which the doer suffered criminal punishment and ultimately, exclusion; for Labeo, concerned to keep limitations on what kinds of violence might be politicized, it was not.

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144 McGinn 2004, 88. *Lenocinium* as an un-civic act: cf. Tab. Heracleensis (RS 24), ll. 108–123: *nei quis in eorum quo municipio colonia praefectura <foro> conciliabulo <in> senatu decurionibus conscreipteisque esto … queiue lenocinium faciet <feceritue>*. Perhaps it is significant that this is the final prohibition.

145 Bauman 1989, 30f. Not accidentally, Capito appears *scribendo* – as a draftsman – for the *senatus consultum de Pisone Patre*, on which see above, sec. III. For another instance of Capito's involvement in thinking about disgrace, albeit in a distinct vein, see AE 1978, 145.

V. Conclusions

Labeo's concern, then, was to place limits on this new understanding of political violence as degradation. In this, he was unsuccessful, both politically and jurisprudentially.[146] The metaphors through which violence made sense had shifted, and jurisprudence is ill-suited to rearrange them. Wrenching violence and degradation back into the language of private law anyway smacked of a psychological displacement, and what's worse, one constructed by an aristocrat deeply ambivalent about the violence in which his own family had participated. Still, this attempt to come to terms with such a shift – one with important consequences for the later history of political and legal theory – is nonetheless remarkable, if only as testament to the ways in which the language of private law might serve as a resource for thinking through broad social and political shifts in a register that was conservative, compressed, and seemingly politically neutral. There remains a tendency in contemporary scholarship that takes this appearance at face value, and assumes that lawyers are mere technicians, content to tinker at their hypotheticals without taking much account of their political or economic circumstances. This tendency is, mercifully, fading, but it surely accounts at least in part for why one of the most interesting and prolific (albeit fragmentary) writers of the age of Augustus remains largely marginal – never treated with the same degree of care and attention as, say, Ovid or Livy. I have tried to show, in this article, that this tendency is problematic, and that with the right hermeneutic tools we can understand jurisprudence as we understand poetry and historiography – as a mode of thinking carefully and deeply about one's contemporary world, and one that admits of being historicized.[147] To be sure, the texts of the Roman jurists are hard to penetrate; the discourse of the jurists is technical, compressed, and casuistic; the language of private law is a poor medium for discussing broad political shifts precisely because it is private; the primary genre through which it was discussed – the running commentary on individual chapters of the praetor's edict – furthermore impedes the articulation of political concepts. Such a list could indeed be extended. Still, as I hope to have shown, we might still be able to extract from these technical texts something of value for the cultural history of politics.

Similarly, I have tried to bring some closer attention to the ways that we think about violence. Violence is not something that ought to be reified in our accounts, either of the age of Augustus or, for that matter, anywhere else. Violence remains one of the most elusive analytical concepts in the writing of history.[148] In part, this difficulty emerges because of the very breadth of the term, and the fact that most complex soci-

[146] Indeed, it appears that Capito's accusation stuck: cf. Porphyrius' commentary on Hor. Serm. 1. 3. 82, with Bauman 1989, 34.

[147] Important moves in this direction have already been made by Frier 1985; Fögen 2002; Schiavone 2012. Still, much remains to be done.

[148] Starting points: Zimmermann 2009; Shaw 2011 (with discussions in JLA, 2013, 197–263); Bryen 2013.

eties have some concept that might be analyzed under the framework of «violence».[149] This makes «violence» productive of comparisons, but also frustrates attempts at specificity of definitions. Some part of this frustration, I have argued, is that the structural metaphors and normative images that underwrite these categories of violence differ so widely by time and place. What I have attempted to show, in this paper, is one moment where the ground shifted, so to speak, and old metaphors and symbols – and the institutions created around them – no longer worked. It would be left to others, no doubt with less political squeamishness than Labeo, to make them make sense.

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[149] E.g., Scheper-Hughes – Bourgois 2004.

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