

Lese Majesty and Absolutism

by

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As Nancy Roelker has suggested, my lecture this evening has special poignancy for the memory of William Farr Church, for it deals with the scholarly endeavor upon which he was engaged when he died. Allow me first to say that it was Nancy herself who conceived the plan, to which Bill agreed, to have Don Kelley and me come to visit Bill in his last days. The details of Bill's discourse then on his lese majesty project may largely slip from my memory, but never can be forgotten the equanimity of Bill's comportment. The harsh realities of his declining health never perturbed the serious talk about his work. To the end of his days he was committed to the life of the mind. For that reason, no more fit way to honor the memory of him could be had than these annual lectures bearing his name.

Much of what I shall deal with this evening would have fallen within the scope of the book Bill intended to write—indeed, he may have chosen for it the very title I have given this lecture, "Lese Majesty and Absolutism". Bill's purpose was to show the special role played by lese majesty—i.e, simply put, by the Roman Law of treason—in the array of devices included in the policy of "reason of state" that was used by the French kings and their ministers—especially Louis XIII and Richelieu in the 1620s, 30s & 40s— to promote absolute rule by the central royal administration. Reason of state, *raison d'état*, may have pretended to be a formal theory of rulership, but in fact it was a high-sounding term designed to legitimize tough policy against all forms of insubordination. The wide reaches of this were shown by Bill Church in his last published major work, *Richelieu and Reason of State*, in 1972. Lese majesty receives considerable attention there, but Bill had learned a great deal more about the subject than he thought was appropriate for that book. Indeed, he had decided that lese majesty in France during the age of absolutism needed a book of its own.

One thing that especially piqued Bill was the suddenness, besides the ruthlessness, with which lese majesty had come to be used in seventeenth-century France after several centuries of what might be called "normal" existence in the complex of French jurisprudence. Bill Church, if anyone, knew that lese majesty had not enjoyed much attention at all in "Constitutional Thought in Sixteenth-Century France". That was the title of his first major work, in 1947. Bill knew that he would have to go back to the sixteenth century, and even before, and assess the status in France of the Roman law of lese majesty before absolutism if he were to provide a reasonable appreciation of how Richelieu and his successors used treason trials as an instrument of *Raison*

d'etat. That's where Don Kelley and I came in. We had both, like Bill Church—and deriving much of our inspiration from him—worked on Roman law in late medieval and Renaissance times.

The first thing I propose to do this evening is to offer an explanation of "Lese Majesty Before Absolutism", based upon work done in an article soon to be published—an article dedicated to the memory of Bill Church. Most of my conclusions fulfill what he guessed would be the case, although one revelation about which I shall speak lies in something which neither he nor I suspected in advance.

The second thing I propose to do this evening is to offer an oddity about the role of "Lese Majesty During Absolutism"—to wit, the subject of "Divine Lese Majesty". Lese Majesty Divine served as a helpmate to "Human Lese Majesty"—i.e., treason as we are used to thinking of it. I adopt a rather cynical stance towards "Divine Lese Majesty", as I do believe Bill Church would also have done.

Lastly, then, I will offer this evening a sketch of "Lese Majesty After Absolutism"—that is, during the last decades before the Revolution and during the Revolution itself. The appearance of the concept *Lèse Nation*, treason against the nation, tells the story in a nutshell. The execution of Louis Capet, sometime King Louis XVI, as a national traitor shows how readily the law of treason adapts itself to changed political circumstances. That will provide the basis for some concluding remarks on treason throughout the ages.

1. Lese Majesty Before Absolutism.

The difficulties that Roman law's *crimen laesae maiestatis* faced in expressing itself in medieval France stemmed from two basic inhibiting factors. The first derived from the uneasiness of French kings concerning the viability of Roman law in general. The *Corpus Iuris Civilis*—i.e., the codified form of Roman law made under Emperor Justinian in the 5th century A.D.—had been in limbo for centuries, as far as western Europe was concerned, before it was revived in Italy in the 1100s. Within a century of that, it began to be studied and applied in southern France. Before long, all of southern France was dubbed the *pays de droit écrit*, the land of the written law, in contrast to the north, the *pays de droit coutumier*, the land of customary law, of which there were scores of different ones. The French crown's problem in accepting Roman law lay not in the fact that it was foreign and ancient in origin, but that it was contemporary in its application to the Holy Roman Emperor, whose claim to be the legal successor to the ancient Roman Emperors was universally recognized. In the thirteenth century the kingdom of France, like all the other western kingdoms, was engaged in an ideological battle to assert its sovereign independence from the Empire.

The emperor's claim to superiority may have been merely titular, but the personal possession of "Majesty" gave him a specific mandate for the enforcement of the laws of treason. Other monarchies did in fact use the Roman law of lese majesty, arguing that its principles belonged to the law of nations—that "Majesty" meant the office of rulership in general—but the fact remained that the Emperor alone had "Majesty" as a personal title. The political tension between the Holy Roman Emperor and the diverse national monarchs is clearly exposed—and perhaps we should say also relieved—by the formulation in the early 14th century of the famous doctrine that the "king is emperor in his own realm". On one hand this is an assertion of the national kingdoms' independence—and indeed, the notion that the "king is emperor" turned out to be a key notion in following centuries for the development of the modern theory of national sovereignty—but on the other hand, that formula could just as well be taken to legitimize the use by kings "in their own realms" of imperial law. This certainly reinforced the *de facto* application of lese majesty in monarchies that I mentioned a moment ago.

The other inhibiting factor to Roman lese majesty in later medieval France was the existence of a rival, the feudal law of treason. In France the primary term was *félonie*. For the English, too, that was the primary term at first, but by the fourteenth century at least they had shifted to the term "treason" to specify the highest form of "felony", injury to the ruler. The French might occasionally use their equivalent word, *trahison*, to designate high political crimes, but by far one finds used most often the term *félonie*—or, in the south, *lèse majesté*.

The durability of the feudal law of *félonie* in later medieval France is a sign of the continued strength of the nobility. According to feudal law, nobles were entitled to trial by their peers. They were not tried as subjects of the king, but as individuals bound to him personally according to the acts of faith and homage. Therein lies the essential difference between *lèse majesté* and *félonie*: the former, based on ancient imperial law, conceived all persons as subjects of the ruler; the latter, based on a pact among equals, where the king was only *primus inter pares*, the first among the peers. The courts that handled the two forms of treason had to be different. If lese majesty was the charge, ordinary royal courts could try the case; if *félonie* were the charge—or even if lese majesty, but the accused was a noble—then the court of competence, although it might be formally a royal one (usually, in fact, the highest court, the Parlement), it had to be engrossed for the occasion with a number of nobles of equal or higher rank than the accused. The nobility thus enjoyed much greater protection against charges of treason than lesser folk.

That this circumstance prevailed down to the early 1500s is shown dramatically in the most famous of all treason trials in France "before absolutism", the trial of Charles, Duc de Bourbon, in 1527. In the documents relevant to the several sessions of that trial, one finds the following terms, mixed together in different combinations: lese majesty used eight times;

rebellion, six times; *transfugate* (i.e., deserter), four times, *félonie*, three times, *perduelle* (a rebel) and *trahison* once each. A century later, in the early bloom of royal absolutism in France, only one term would be found in such a case: *lèse majesté*.

The triumph of the Roman law of treason over its feudal rival during the course of the century from the 1520s to the 1620s can be regarded as an inevitable development in the rise of the modern doctrine of sovereignty: everyone, including nobles, had to be regarded as a subject—which is just what the Roman law of lese majesty always assumed. The noble privilege of trial by peers had to give way. This is exactly what happened on the level of judicial procedure during the ministry of Richelieu: the tradition of having a "Parlement engrossed with nobles" was suppressed in favor of extraordinary commissions, composed of hand-picked royal judges, none of them necessarily even of an equal status to the accused. Lese majesty in the age of absolutism, therefore, was the *coup de grâce* against nobiliary insubordination. The noble class continued to flourish, but rarely—and after the 1650s never—did it dare openly defy the absolute monarch.

But what about the first "inhibition", the general unease over the application of Roman law in France? Did it simply fade away in the sixteenth century? It certainly declined, but I believe I have found another event that acted as a "dis-inhibitor" (if I may be allowed a nonce-word) that lifted the Roman taint from the application of lese majesty.

In the 1550s, during the reign of Henri II, the title *Majesté* was adopted in a deliberate fashion for the king of France. It became at once the only proper title, and remained such until the Revolution. When speaking to the king, one said *Votre Majesté*, your majesty--just as one addressed the English sovereigns when they adopted the practice in the following century. Speaking about the monarch in the third person, one would say in English either "His Majesty" or "Her Majesty", depending upon the sex of the ruler. In French, however, relative pronouns must follow the gender of the noun they modify; French *Majesté*, like Latin *Maiestas*, is feminine; therefore one must speak always of the king as *Sa Majesté*, not *Son Majesté*--i.e., literally in English, not "His Majesty" but "*Her Majesty*". Such gender associations are inherent in the French language, of course, and in this case it would not mean anything if one were speaking of, say, the quality of kingship. But *Sa Majesté* was a personal name, and so when one utilized the personal pronominal form, one had to say *Elle*, not *Il*--i.e., "she", not "he". So, "She comes, she goes, she has been..." that's how one spoke about *Sa Majesté*, the king of France. These vagaries of the use of *Sa Majesté* did not fall easily on the ears of some French during the first generation of its practice; one finds delicious satirical poems about it. But it became the norm.

Aside from its amusing grammatical aspects, use of *Sa Majesté* had significant legal consequences. Adopting the title *Majesté* into the parlance of French court society provided the rationale for use of the term lese majesty in French judicial courts. One can find authors in the later 1500s saying (without even hinting at any Roman nexus) that the French king's majesty is

the reason for the law of *lèse majesté*. What is more: Henri II's adoption of the title *Majesté* was done in imitation of the King of Spain's having done so not long before. But the King of Spain in question, Charles I, was also the Holy Roman Emperor, Charles V. The fact is that during medieval times, "Majesty" as a quality, and "Your Majesty" as a form of address, had belonged (at least among all secular rulers) only to the Emperor. (As we shall see shortly, it was also used for God and for the Pope.) Therefore, the French king Henri II, in the 1550s, was imitating the Emperor, pure and simple. We might deem it as the final step in the process of nationalizing the Imperial ideal—i.e., completing the process that began in the early fourteenth century by the formulary "the king is emperor in his own realm" by attributing to the king, in the sixteenth century, the title that had long been an exclusively Imperial prerogative.

To summarize the story of "Lese Majesty Before Absolutism" in France, the heart of the problem is the rivalry of Roman law with feudal law, of a law of treason based on objective ruler-subject relations *vs.* a law of treason based on personal lord-vassal ties. The latter was doomed to fade in the face of the former. Then, in just the decades when the feudal law of treason faded, the French king adopted for himself the title of *Majesté*, imitating the Roman ruler's *Maiestas*, the precise term upon which the law of lese majesty was based.

I have no reason to believe that adopting the title had anything to do with the wish to boost the credit of Roman *lèse majesté* in France, but I have lots of evidence that things ran in the other direction: the sudden appearance of the title of "Majesty" eased the way for the law of lese majesty to its final triumph in French jurisprudence.

2. Lese Majesty Divine

In the heyday of absolutism in France, which is usually regarded as equaling the span of the four Bourbon kings that bore the name of Louis—Louis XIII, XIV, XV, and XVI—from 1610 until the Revolution, there flourished a form of lese majesty that was a companion to the lese majesty we have been dealing with. In French it is called *lèse majesté divine*, which, when put in parallel with its human counterpart, forced the latter to be called "human lese majesty" (*lèse majesté humaine*). What is involved in *lèse majesté divine* is obvious enough: outrage to God and the Christian faith—i.e., heresy, sacrilege, blasphemy and the like. Not clear at all, however, is why a new legal classification of such crimes should have appeared in early modern France, under the rubric of lese majesty, after centuries during which all such crimes had been very effectively dealt with under specific headings in both civil and canon law.

It seems to me quite certain that Italian juriconsults were the confectioners of "divine lese majesty", and French juriconsults just consumers of it at a later date. There may well exist some comprehensive work on "divine lese majesty" in European law, unknown to me, which

would render amateurish some of the sweeping remarks I am prepared to make about the subject, but I do not think that what I am about to say concerning "Divine lese majesty and French absolutism" is wrong; to the contrary, it is quite relevant to my topic this evening.

A few minutes ago, when I sought to establish the case that the final triumph of Roman lese majesty over feudal *félonie* was helped by the abrupt adoption by the French king in the 1550s of the theretofore exclusively Imperial title of *Sa Majesté*, I said parenthetically that the title "Majesty" was also imputed to two other non-secular personages: to God himself and to the pope. Simply put, the legal category of "divine lese majesty" that appeared in the later middle ages was justified in the first place by the fact that God in heaven and his spiritual vicar on earth had long been called majesty. In both cases it was a matter of imitating the Roman emperor. To quote an eminent scholar of the early church: "As Imperial Majesty became more and more enthroned and elevated, Christians had to make divine majesty equal. So, in the frescoes of the fourth century, 'God in Majesty' appears enthroned, father or son." Thus appeared the notion of "divine majesty."

The title "Apostolic Majesty" was applied to the pope in the 9th century, not long after the so-called "translation" of the Roman Empire from Byzantium to the west by Charlemagne in the year 800. If centuries earlier the principle was valid that "what was good for the Roman Emperor was good for God" all the more certain would it be said—and now, with very explicit political overtones—that "what was good for the Frankish emperor would be good for the Roman pope."

I have been speaking here simply of post-classical attributions of the quality and title of "Majesty". The interplay between it and the law of lese majesty does not occur until after the revival of the Roman law in the west mid-12th century. And after that it took some time before the concept of divine lese majesty begin to assume concrete form in the writings of Italian jurisconsults. Most interesting is the dual form of "divine lese majesty" in those Italian jurists. The first part, relating to God, borrowed its substance of preexistent laws and forensic practices, as I have said. The second part, relating to the pope, was clearly modeled on imperial lese majesty: physical attacks upon the pope or the cardinals were equivalents to the same upon the Emperor and his family; outrages committed against the authority of the Church matched Roman law's definition of outrages against the authority of the Empire.

I believe that protecting the "apostolic majesty" was the primary motive for the creation of "divine lese majesty", for which the invocation of lese majesty against God was a felicitous—though not, in philosophical terms, inappropriate—way to legitimize a papal borrowing from the Emperor. Medieval canon lawyers were performing for the pope, in terms of the law of treason, what Christians in late antiquity had done for God himself, in terms of the title of majesty: borrow from the Emperor.

Given the political circumstances of Italy during the 14th and 15th centuries, one has to consider the pope's status as a prince, the head of the Papal states, as providing the motive for "curialized lese majesty". Italian jurists contrived by one legal fiction or another to interpret imperial lese majesty so that it was applicable to protect the rulers of every kind of Italian polity, republican or despotic. But the pope alone enjoyed the title of "Majesty" (for the Holy Roman Emperors were seldom in Italy) so that his claim to a special guarantee against lese majesty (very much like the Emperor's) made special his status among Italian princes.

Political motive-seeking is a risky business. Above and beyond that, I believe, another motive was operative in the creation of "divine lese majesty". Establishing the majesty of God as its basis may have been opportunistic in some respects, but in one fashion it must have met with universal approval: it Christianized an originally pagan custom. That is to say, by constructing a system of treason based upon the supremacy of the one and only true majesty, God, the Roman law of lese majesty was made to appear as just a secular derivative of a principle of divine law. We may see this in the fact that the principle of treason is found, after all, in the custom of all peoples. The legal commentaries on Roman lese majesty never failed to cite scriptural antecedents and parallels. The wonderfully codified nature of Roman Law made it the most coherent and most useful body of jurisprudence to use, but its principles had to be compatible with Christian notions of justice.

The "Christianizing effect" that "divine lese majesty" had upon the original Roman law of treason had to be felt from the fact that if Italian jurisconsults did deal with "divine lese majesty—and by no means did all of them do so—they always located it in their texts immediately before their treatments of "human lese majesty". Divine lese majesty thus appeared as the font of all laws of treason in philosophical-theological terms.

Turning now to France, the first thing to notice is that only one part of the Italian bipartite definition of divine lese majesty—i.e., as a crime against God and a crime against the pope—was preserved in France. Needless to say, that is the part dealing with God. There is no need to suppose hostility to the Holy See involved in the French unconcern for "Apostolic lese majesty"; the problem was simply Italy's, not France's. In any event, when the notion of "divine lese majesty" began to thrive in France, it referred only to outrages committed against the Majesty of God.

I am quite certain that divine lese majesty did not have real significance in French law before the 17th century. It can be found mentioned often enough before that, but just coincidentally and without much elaboration, as if the authors knew there was such a thing (as they should have known from the works of their Italian counterparts) but did not regard it as important. Only when traditional Roman lese majesty triumphed in France—which, as we have seen, was in the early 1600s—do we find "divine lese majesty" taken seriously.

The first analytical treatment of *lèse majesté divine* I have found in France—and to say analytical is to stretch matters—is in a treatise on criminal law dating from the 1620s. It precedes the treatment of *lèse majesté humaine*, and since it does not have in it the Italian element of "Apostolic lese majesty", one moves directly from God to the King of France when the shift is made from the category of divine to that of human lese majesty. I do not believe that this was simply a coincidence, based on the fact that the French jurists were not interested in the pope's place in "divine lese majesty". I am inclined to believe that the French jurists became interested in "divine lese majesty" precisely because, if de-papalized, the French king would appear to be the earthly beneficiary par excellence of the protection against treason that belonged supremely to the Divine Creator.

We noted that the French kings were always uneasy about the currency of Roman law in their realm. Adopting the title *Sa Majesté* helped to Gallicize lese majesty; prefixing "divine lese majesty" to "human lese majesty" helped camouflage the Roman nexus by providing a sacred Christian basis for the whole concept of treason.

Another hint that "divine lese majesty" in France was au fond just a rather cynical facade for the brutal application of the Roman law of treason in order to further the ends of an absolutist regime comes from the following oddity. In the later seventeenth century there appear charges for lese majesty *divine et humaine*--that is, compounded spiritual and secular treason. Not one or the other, or both for different reasons, but one act having both effects. The benefits from this can work only for the secular majesty who is affronted: his majesty is made to appear very similar to God's. It is not surprising—at least to me—that this happened in the reign of Louis XIV. This is not the place to argue whether and how this relates to the almost sacral cult of the Sun King. Whoever carries Bill Church's work through to completion will be the one to show us that. "Divine lese majesty" has but a modest role in the play of "Lese Majesty During Absolutism" in France, but it imparts an unpleasant aspect to the whole story.

3. Lese Nation

I have spoken about how the personal title *Majesté* and its juristic companion *lèse majesté* were domesticated in France during the later sixteenth and early seventeenth centuries and made to serve the purposes of absolutism; let us now consider how that process was reversed during the later eighteenth century, when discussions of the meaning of *majesté* and *lèse majesté* served the purposes of republican thought in the decades leading up to the revolution.

It was typical of the fashion of intellectual discourse during the Enlightenment to avoid explicit references to the actualities of absolute rulership in France and to pose questions of political theory in terms of abstract principles and to debate the particulars of exercising political

power in terms of far distant historical events, above all those of antiquity, especially Rome's. We notice this in the first great political treatise of the Enlightenment, Montesquieu's *Spirit of the Laws*, where lese majesty is discussed in several chapters of Book XII. He is particularly concerned, as every reasonable thinker on the subject has always been, with the vagueness of the charges. "If the crime of lese majesty be indeterminate," he declares (XII, vii), "this alone is sufficient to make the government degenerate into arbitrary power." Most of his examples of the "indeterminate" are drawn from Roman history. One of them has to do with a late Imperial law making injury to the emperor's ministers equivalent to injuring the sovereign himself. Interesting for our present purposes is how Montesquieu turns this upon French absolutism, by noting that in 1642 the Roman law of lese majesty was cited explicitly by the judges in the trial of Cinq-Mars, who was convicted and executed for trying to oust Richelieu from the ministry—one of the exquisite examples of the conjunction between lese majesty and absolutism.

Lese majesty could also be the specific subject of debates held in provincial academies during the later eighteenth century. The question of crime and punishment was much *au courant*, and enlightened thought was leaning heavily against the death penalty. Three authors agreed, at a meeting of the Academy of Chalons-sur-Marne in 1780 that the death penalty should be limited to attacks upon the sacred person of the king—i.e., the primary instance in all times of lese majesty—and to high crimes that concern the "state and nation." The king was losing his grip upon *Majesté*. On the eve of the revolution, it would slip further, when we find reference—by a royalist at that—to the king as "the representative of the Majesty of the French people".

Of the king's rivals as possessors of *Majesté*—the people, the state, the nation are the most used—the nation proved to be the most powerful. This has been well documented from the declarations of the highest court in the land, Parlement, as well as among political thinkers. The whole argument is summed up in one incident that occurred not long after Bastille Day, when a hero of the American Revolution, the Marquis de Lafayette, made the motion in the National Assembly which decreed the punishment for crimes of lese nation. The intended victims were royalists, but it was not clear whether they were actually trying to help Louis XVI or to accelerate his departure or demise.

The term "lese nation" did not take root in Revolutionary law, but its spirit abounded. We look for it above all, of course, in the speeches leading up to the greatest treason trial of the Revolution, that of "citizen Louis Capet", heretofore addressed as *Sa Majesté*. The debate in the Convention took place in November to January, 1792-1793. Among many speakers that could be quoted, I choose the words of just one, Morisson, who was among those most inclined to be lenient to the erstwhile king Louis XVI: in French "*il a trahi la nation française*"; in English (if I may be allowed a bit of reverse *Franglais*, to overcome the absence of the verb "to treason") "he

has treasoned the French nation". The erstwhile absolute Majesty had wounded the current popular Majesty. Nothing shows more simply the political base of the law of treason.

To complete this quick survey of the fortunes of *lèse majesté* in France, we need only quote a few passages from the *Code Civil*, the so-called Napoleonic Code, which is the basis of French Constitutional law today. In the *Code Civil*, what ancient laws called "first degree" (*premier chef*) instances of lese majesty—i.e., outrages upon king's person—were now labeled "crimes against the external and internal security of the state", and "second degree" lese majesty of olden times—outrages upon the royal authority at large—were now designed as "specific offenses against the respect and obedience due to the law and to the authority of the powers constituted to enforce the law." The whole apparatus of lese majesty was thus transferred to the popularly constituted French nation.

The effective demise of *majesté* during the course of the French Revolution evokes the beginning of the term over two millennia earlier, in the time of the Roman Republic. *Maiestas* originated as a designation of the sacred power of the Roman people; the culprits in the beginning were magistrates who offended the majesty of the people. When the emperors became the embodiment of the sacred power of the people, they were the victims and individual subjects the culprits. A curious analogue to this can be found in the development of the oldest form of treason in France, the feudal law of felony. In the earliest versions of the French medieval romances, the *chansons de geste* one finds that the vassals were the victims, the lord the felon because he had failed in his duty to render justice: the vassals, that is, were resisting "traitorous" (or felonious) lords. This situation changed, within perhaps just a century's time, so that the lord was the one offended, the vassal the felon. The texts of some *chansons de geste* were even altered—updated, as it were—to reverse the designation of who was committing *félonie*.

This reversal of the felon's role in feudal law had already occurred by the time that Roman law was revived in the 12th century. *Félonie* and *lèse majesté* were therefore complementary during the later middle ages with respect to the "superior"—feudal lord or sovereign ruler—being the victim of treasonable actions. The demise of feudal law left the field open to the Roman law of lese majesty, to which the French kings—especially after they expropriated for themselves the Imperial title of *Majesté*—gladly wedded themselves; "divine lese majesty" was the bridegroom, so to speak. The Bourbon dynasty proceeded then to become the closest analogue in modern times to the Roman Emperors of antiquity with respect to "absolute" rule. If that conjecture be allowed, then the French Revolution brought lese majesty back to where it began, for the French people snatched from their kings what the Roman people had lost to their emperors.

Conclusion

"The crime of lese majesty, once so fertile in application, tends more and more to disappear." So reflected Émile Durkheim, France's premier social philosopher, towards the end of the nineteenth century. That has been true ever since, with a few notable, and regrettable, exceptions, in all mature democracies. One reason for this is the autonomy the judiciary enjoys in relation to politics in democracies, plus the ever greater concern for the exercise of due process in regard to the civil rights of citizens.

About the same time that Durkheim wrote the words just quoted, the wisest of English legal historians of the time, and perhaps of all time, Frederick William Maitland, composed the following dictum regarding treason: "treason is a crime which has a vague circumference and more than one centre." The enigmatic quality of treason is so well captured in that metaphor that something is lost if one tries to comment upon it. Still, I shall use it as a general organizational device for my concluding remarks on "lese majesty and absolutism."

As for the notion in Maitland's geometrical metaphor that treason has "more than one centre" I see three. The first is the legal, as found written in the laws I have been talking about this evening. The second centre of treason is located in the vicissitudes of politics in history, nowhere more easily shown than in events of 1648-9 in England and 1792-3 in France, when erstwhile monarchs protected by the laws of treason and lese majesty were beheaded as traitors themselves. The third centre, then, is the arbitrary will of the ruler. This above all imparts to treason its "vague circumference", in Maitland's words. For whenever the person who is protected against a crime is the same as the one who declares what constitutes that crime, then the most trivial affronts to the dignity of the ruler can be made equal to outrages upon him physically, depending upon his whim.

All writers in modern times who deal with lese majesty during the ancient Roman Empire divide the Emperors in the good and the bad, according to whether, on one hand, they disdained to allow trivial insults to themselves to constitute treason or, on the other, multiplied the categories of actions that did so. Several early modern French jurists made this distinction. Writing at the time when the fortunes of lese majesty were on the rise in their country, they made elliptical remarks about the abuses to which lese majesty had been prone in antiquity. I feel certain they were pleading for sanity in their own times. They turn out to have had premonitions about the course of history a generation afterwards.

One of those late-1500s writers was François Baudouin, who broached what is the greatest conundrum of all: how does one distinguish between a treasonable act against the ruler and the righteous act of killing a tyrant? By asking whether Caesar's death was regicide or tyrannicide, Baudouin shows us how readily the political issue overwhelms the legal one when

the very life of the ruler is at stake. It should be a sobering thought in this regard to reflect upon the history of our own country: our founding fathers were surely traitors, according to the laws they had accepted faithfully, beginning from the moment they took up arms against their king.

Baudouin brings up another even more telling example of the moral ambiguity of lese majesty in ancient times. Christians were charged with lese majesty if they refused to perform sacrifices at the altars of the emperor erected in cities everywhere throughout the empire. That makes it so that all those who now profess the Christian faith have a spiritual ancestry tainted with treason. Now I will admit that such intimations--that both religious conviction and patriotism were fostered in the environment of treason--are at least silly, and probably offensive. Yet the truth is that they are made so only by the fact that Christians were finally tolerated and our founding fathers won their war of independence. Unless you adopt a providential view of history, neither one of those eventualities was inevitable.

Not only is treason's circumference vague, but also any and all of the actions it contains can change their character, in an instant, from being heinous crimes to being heroic feats. This makes very difficult the task of the historian. One cannot deny that every commonwealth has the right to protect itself against subversion from within as well as against invasion from without. The basic need for some form of laws of treason cannot be denied. Thinking once more of France, and accepting the historical fact that that absolutism was the device by which the country was finally made into a unified nation--no absolutism, no revolution-- then the use of lese majesty to stamp out seigneurial, provincial and municipal dissent takes on the aspect of a grim necessity. As for the historian who accepts to make a profound study of this very important issue, the challenge is formidable. How to weigh the centrifugal forces emanating respectively from the laws of lese majesty, the politics of "reason of state", and the personal whims of the absolute monarch and his ministers?

To be pragmatic yet compassionate, to avoid judging individuals and peoples of the distant past by standards they did not have and could not have had, and yet to preserve a basically moral vision of humankind in all ages: such should be the character of whomever essays a profound study of the role of prosecution for lese majesty in the making of modern France. William Farr Church was such a person, and Such is the challenge to whomever undertakes the task which fate denied him the chance to fulfill.