

*MANDATA*: BONDS OF TRUST AND OBLIGATION IN ROMAN SOCIETY

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BONDS OF TRUST AND OBLIGATION  
IN ROMAN SOCIETY

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A Thesis  
Submitted to the School of Graduate Studies  
in Partial Fulfillment of the Requirements  
for the Degree  
Master of Arts

McMaster University

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MASTER OF ARTS (2010)  
(Classics)

McMaster University  
Hamilton, Ontario

TITLE: *Mandata: Bonds of Trust and Obligation in Roman Society*

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SUPERVISOR: Dr. Claude Eilers

NUMBER OF PAGES: v, 92

## ABSTRACT

The Latin word *mandata* referred to a variety of relationships in Roman society that were based on trust, honor, and obligation. These conventions united the private and the public spheres, the personal and the political, and the domestic and the foreign. Modern scholarship has tended to study these phenomena in isolation. Legal scholars have investigated the workings of the contract of mandate as a form of agency between private citizens. Others have focused on the imperial *mandata* that emperors sent to provincial governors to facilitate administration. The aim of this study is to bridge the gap between these seemingly disparate elements. The first chapter exposes the social norms operating behind the legal contract of mandate, and looks to examples from the early Latin playwright Plautus to illustrate the dynamics of interpersonal trust that gave shape to the law. The second chapter is devoted to the works of Cicero, and shows how the conventions of *mandata* in personal settings carried over into political and diplomatic duties. In the third chapter I argue that the late 1<sup>st</sup> century BC authors Caesar, Sallust, and Livy reinforce the patterns found in Cicero, and their writings demonstrate that diplomatic *mandata* were effectively their own genre. The final chapter focuses on the surviving texts from Suetonius, Tacitus, and Pliny the Younger, and addresses the development of imperial *mandata* and their impact on Roman society. The literary evidence makes it clear that the Romans did not approach personal, public, and international relations as discrete fields of action, and that they conceptualized their roles within these various spheres according to the same set of values.

## ACKNOWLEDGEMENTS

This thesis would not have been possible without the direction and encouragement of my supervisor Dr. Claude Eilers. I owe him my deepest gratitude for recommending this topic and for carefully critiquing and editing my work. I would also like to thank my other committee members, Dr. Evan Haley and Dr. Michele George, for sharing their time and expertise. It has been a pleasure and a privilege to work with and learn from all of the faculty members in the McMaster Classics department over the last two years. In that time I have received generous funding from the department, as well as a Joseph-Armand Bombardier Canada Graduate Scholarship from the Social Sciences and Humanities Research Council of Canada, and an Ontario Graduate Scholarship, which have allowed me to devote my full attention to my studies. I would especially like to thank the department's administrative assistant Mrs. Carmen Camilleri; I have greatly appreciated her attention to detail and ability to solve problems before they arise. I am also indebted to my fellow graduate students for their friendship and advice, but especially to Sarah-Jane Evans, who has always been willing to listen, and whose intellect and dedication have been a constant source of inspiration. In addition, I am grateful for the continued support and friendship of Dr. Debra Nousek of the University of Western Ontario. Finally, I must extend my thanks to my family and friends, who have always been supportive of my endeavors, and who have shown incredible patience and understanding throughout this process.

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## INTRODUCTION

The handshake, as a sign of greeting, celebration, gratitude, or trust, is a gesture that exists all over the world and has been around for some time, judging by ancient archaeological and textual evidence. The Latin verb *mandare* and its corresponding noun *mandata*, whose etymology derives from *manus*, ‘hand’, and *dare* ‘to give’, represented the linguistic equivalent of this gesture when it was used to express trust in Roman society. In basic terms, the subject of *mandare* was enlisting another individual to act as his agent, while *mandata* referred to the actions that were assigned to the agent to be carried out on subject’s behalf. These words appear in many different contexts, and English translators render them in a variety of ways, ranging from ‘entrust’ to ‘demand’ for the verb, and from ‘instructions’ to ‘proposals’ to simply ‘message’ for the noun. There is no single word that fully encompasses the concept; this gap in our vocabulary contributes to a tendency to look at the various categories of *mandata* in isolation rather than taking advantage of their similarities to inform our understanding of Roman culture.

In Justinian’s *Digest*, the 6<sup>th</sup> century AD compilation of Roman law, the first half of book seventeen deals with *mandata* in the sense of contracts between private citizens. Watson<sup>1</sup> and, more recently, Zimmermann<sup>2</sup> have done thorough studies on the *actio mandati* and related laws of obligation, which have shed light on mechanisms of social interaction in the Roman world and the values that shaped them. Trust and honor were

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<sup>1</sup> Alan Watson, *Contract of Mandate in Roman Law* (Clarendon Press, 1961).

<sup>2</sup> Reinhard Zimmermann, *The Law of Obligations: Roman Foundations of the Civil Tradition* (Oxford, 1996).

important qualities in a contract of mandate, which was legally characterized as consensual and gratuitous, arising from duty and friendship, *ex officio et amicitia*.<sup>3</sup>

Surprisingly, the term *mandata* does not appear very often in the work of social historians, but it would be quite comfortable alongside the terms of obligation and benefaction that dominate discussions of *amicitia*. The term *amicitia* covered a broad spectrum of relationships in Roman society, from those based on genuine affection to those based on expediency.<sup>4</sup> Furthermore, *amicus* was often used indiscriminately as a label for friends of equal status and as a courtesy for social inferiors.<sup>5</sup> Likewise, the exchange of *mandata* could occur between those of similar or dissimilar status, and had different levels of motivation. Issuing and accepting *mandata* not only facilitated the transfer of goods and services, it was also a method of forming, reinforcing and renegotiating bonds. Ideally, reciprocal exchange was not supposed to be the purpose of *amicitia*, but, as Saller observes, it was probably uncommon for Romans to think of one without the other.<sup>6</sup>

Through *mandata* the beneficiaries of favors achieved what they might not otherwise accomplish on their own. The capacity to give others what they needed or

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<sup>3</sup> *Digest* 17.1.1.4.

<sup>4</sup> P. A. Brunt, "Amicitia in the Late Roman Republic," *Proceedings of the Cambridge Philological Society* 191 (1965): 20.

<sup>5</sup> Richard Saller, *Personal Patronage Under the Early Empire* (Cambridge University Press, 1982), 11.

<sup>6</sup> Saller, *Personal Patronage*, 15.

wanted was a mark of status and honor in Roman society.<sup>7</sup> Asking someone for a favor, on the other hand, could mean sacrificing security and self-sufficiency for dependence and vulnerability; it was simultaneously a solution to problems and a source of anxiety.<sup>8</sup> On another level, giving someone a mandate implied that that person was trustworthy and capable; to paraphrase Bourdieu, the challenge conferred honor.<sup>9</sup> This was especially true of the kind of unequal friendships that Saller and Garnsey describe as that of patron and protégé (to distinguish it from patron and client in the technical sense).<sup>10</sup> For a protégé, *mandata* from a mentor represented a chance to prove himself and earn public praise from his patron. For individuals of equal status, exchange was at once cooperative and competitive;<sup>11</sup> where the giver enhanced his honor, the recipient suffered a corresponding loss of honor, but he could ameliorate that loss by returning the favor at a later time. The inability to quantify the value of favors or expressions of gratitude contributed to the perpetuation of reciprocal exchange and the relationship itself.

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<sup>7</sup> Saller, *Personal Patronage*, 126.

<sup>8</sup> Paul J. Burton, "Amicitia in Plautus: A Study of Roman Friendship Processes," *American Journal of Philology* 125 (2004): 220.

<sup>9</sup> Bourdieu, *Outline of a Theory of Practice*, trans. Richard Nice (Cambridge, 1977), 11.

<sup>10</sup> Peter Garnsey and Richard Saller, *The Roman Empire: Economy, Society and Culture* (University of California Press, 1987), 156.

<sup>11</sup> Garnsey and Saller, *Roman Empire*, 155.

P.J. Burton has observed that the discourse, practices and behavior of interpersonal *amicitia* also crossed over into the realm of international relations.<sup>12</sup> *Mandata* form an important part of this model in two respects. First of all, Latin authors consistently used *mandata* to refer to the dispatches that envoys carried back and forth during diplomatic negotiations. One such communication quoted by Sallust in the *Bellum Catilinae* inspired Kathryn Williams to ask whether this kind of *mandata* were typically oral or written, and how this affects our interpretation of historical texts that feature them.<sup>13</sup> K. Williams analyzed Sallust's style and compared instances of the noun *mandata*, in its various declensions, in his works with those in the works of Cicero, Caesar, and Livy; she concluded that *mandata* tended to refer to oral messages and that scholars ought therefore to treat them more as literary compositions than as historical documents. K. Williams raises a valid point, but her investigation is primarily historiographical and does not address the moral and social implications of *mandata* as a form of communication.

Diplomatic *mandata* exchanged between neighboring peoples essentially articulated the conventions that were implicit in the exchange of *mandata* between individuals. Such messages typically opened with expressions of goodwill and reminders of past services, then listed proposals with accompanying justifications, and ended with

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<sup>12</sup> Paul J. Burton, "*Clientela* or *Amicitia*? Modeling Roman International Behavior in the Middle Republic," *Klio* 85 (2003): 365.

<sup>13</sup> Kathryn Williams, "Manlius' Mandata: Sallust *Bellum Catilinae* 33," *Classical Philology* 95 (2000): 160-171.

references to the consequences of acquiescence or refusal. The structure and tone of these messages are fairly consistent throughout the writings of several Latin authors; thus *mandata*, in a diplomatic sense, are effectively a genre within historical narratives. The fact that authors framed diplomatic exchanges in this way does not necessarily reflect the true nature of the negotiations, but it does speak to the Romans' conceptualization of international relations.

The second respect in which *mandata* played a role in international relations is that *mandare* was often used in the sense of entrusting someone with public office, and *mandata* for the instructions or limitations set out for office-holders by the senate and later the emperor. Millar envisioned imperial *mandata* as a fundamental element in provincial administration, since they might be the only unprompted communication from the emperor to a governor during his entire term.<sup>14</sup> The honest and integrity of his agents was a reflection of the emperor's own judgment in choosing them. Potter pointed to imperial *mandata* as evidence that the immediate, individual decisions of the emperor and governors were more consequential than any discernible foreign policies.<sup>15</sup> Provincial governors were well placed to accommodate the needs and desires of friends, clients, and constituents; this allowed them to fulfill outstanding obligations to the people that had supported their careers, and to cultivate connections that could aid them in the

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<sup>14</sup> Fergus Millar, *The Emperor in the Roman World* (Cornell University Press, 1977), 317.

<sup>15</sup> David Potter, "Emperors, their Borders and their Neighbors: The Scope of Imperial *Mandata*," in *The Roman Army in the East*, ed. D.L. Kennedy (Ann Arbor, 1996), 49.

future, all while seeing to the needs of their province. Imperial *mandata* were thus important administrative tools, but also evidence of the emperor's personal investment, his trust in his representatives and the honor with which he regarded them.

Diverse approaches to *mandata* have produced significant contributions to classical scholarship but few have focused on the associations between *mandata* of various categories or tried to reconcile the widely different contexts and uses of the language. Looking at the problem in this way allows us to understand the Romans on their own terms. Since there was little differentiation between private and public roles in Rome,<sup>16</sup> studying these areas in tandem, or, at the very least, acknowledging the parallels between them, provides a fuller picture of Roman society than examining these subjects in isolation. As Cicero says,

*Nulla enim vitae pars neque publicis neque privatis neque forensibus neque domesticis in rebus, neque si tecum agas quid, neque si cum altero contrahas, vacare officio potest in eoque et colendo sita vitae est honestas omnis et neglegendo turpitudine.*

There is no aspect of life public or private, civic or domestic, which can be without its obligation, whether in our individual concerns or in relations with our neighbor. Honorable behavior lies entirely in the performance of such obligations, and likewise base conduct lies in neglecting them.<sup>17</sup>

When it came to the values that governed behavior in Roman society, there were no boundaries between the different aspects of a person's life. A citizen had to prioritize his responsibilities but he did not compartmentalize them. A good citizen ought to behave

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<sup>16</sup> Saller, *Personal Patronage*, 30.

<sup>17</sup> Cicero *De Officiis* 1.4 (trans. P.G. Walsh).

honorably in his legal transactions, his personal relationships, his public duties and his services abroad; all of these elements together affected his standing in society, and all of them enter into an analysis of *mandata*.

In investigating the phenomenology of *mandata*, I have used the legal sources and scholarship as a starting point because they provide a firm basis for the practical and ethical features of *mandata* with regard to interpersonal relations. The plays of Plautus, from the late 3<sup>rd</sup> and early 2<sup>nd</sup> centuries BC, include *mandata* of the sort that were exchanged between friends, and may even predate the *actio mandati* that was intended to govern such transactions. Plautus is also important as a source for social dynamics among the lower classes as Rome; the rest of the authors in this study come from the upper classes. Cicero, Caesar, Sallust, and Livy writing in the 1<sup>st</sup> century BC, use *mandare* and *mandata* for a wide range of situations that go beyond the private contexts of Plautus and the legal sources, as well as the diplomatic settings that are the focus of K. Williams' study. Rather than simply repeat K. Williams' experiment I have widened the scope for my own analysis: linguistically, by including forms of the verb *mandare* in my search, and chronologically, by looking at evidence that came before and after the late Republican period. Suetonius, Tacitus, and Pliny, writing in the late 1<sup>st</sup> and early 2<sup>nd</sup> centuries AD, display a similar range of usage to the earlier authors, but the *mandata* of the emperor hold a special place. Pliny's letters to the emperor Trajan, from book ten of his *Epistulae*, are particularly valuable for their insight on imperial administration, and supplement the material that survives from epigraphic remains.

Latin authors of the classical period exhibit shared patterns of usage for the words *mandare* and *mandata*, and, more importantly, a shared concept of the social values and behavioral conventions that were intrinsic to these terms. In the private sphere, a mandate was never a simple exchange of goods or services; it was fundamentally tied to the honor of those involved and the balance of the bond between them. Private values necessarily overlapped with the public sphere, as friendships and benefactions helped individuals to navigate Roman politics. Bonds of trust also linked upper class office-holders to the regular citizens whose interests they represented, both at home and abroad. The Romans further conceived of their relationships with neighboring peoples using the same language, values, and mechanisms that served them in personal and domestic situations. This familiarity and consistency provided stability in an increasingly complex society, and instilled confidence in Roman authority. *Mandata* therefore served as social and linguistic markers of the traditional Roman values that were such important factors in Rome's longevity and influence.

## CHAPTER 1: The Legal and Social Characteristics of Mandate

Before attempting to make sense of the various ways in which Latin authors employed *mandatum* and *mandare*, it will be useful to examine the origins and characteristics of the concept, both legal and social. It is often said that in order to understand Roman history one must have some understanding of Roman law. Alongside brief passages in other legal sources, Justinian's *Digest* supplies an entire title on mandate in the sense of contract law. Building on earlier scholarship, Alan Watson's *Contract of Mandate in Roman Law* (1961) and Reinhard Zimmermann's more recent *The Law of Obligations* (1996) provide a thorough analysis of the classical juristic sources, tracing the development of mandate law and the social mechanisms behind it. The *actio mandati* had a very broad application, but there were still instances where the law could not or would not be used to remedy a dispute over an interpersonal exchange. Brunt has observed a reluctance among the aristocracy to display open hostility toward their peers,<sup>1</sup> but even if a guilty party was not accused under the *actio mandati* and penalized with *infamia*, he would still suffer a loss of honor according to the conventions of reciprocal exchange. Evidence from Plautus suggests similar attitudes among the lower classes.

### Overview of the Contract of Mandate

It is generally agreed that mandate existed as a long-standing social custom before it became a contract enforceable under Roman law during the republic. Based on the etymology of *mandatum* from *manus*, meaning 'hand', and *dare*, meaning 'to give',

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<sup>1</sup> Brunt, "Amicitia," 20.

Zimmermann links the concept with the gesture of a handshake and notes that this intimate sign of friendship would have been reserved for grand and important occasions in Roman society, and not taken as lightly as it is in some cultures today.<sup>2</sup> This emphasis on friendship and personal confidence fits with the jurist Paul's (early 3<sup>rd</sup> century AD) claim that mandate originated *ex officio et amicitia*.<sup>3</sup> The contract of mandate was largely confined to dealings with close friends and relatives, whereby "one party undertakes gratuitously to perform some service for the other."<sup>4</sup> In classical law it was listed as one of the four contracts that were formed through *consensus*. *Emptio venditio* (sale) and *locatio conductio* (hire) were wholly commercial in nature, while *societas* (partnership) and *mandatum* (agency) seem to have had their origin in the familial sphere, even though they might at times involve commercial activity. The distinction lay in the interests of each party; in sale or hire the parties had opposing interests and each sought a profitable deal, whereas partnership and mandate required the parties to have a special trust in each other.<sup>5</sup> Furthermore, in mandate it was typically only the principal, or mandator, who stood to gain from the contract.<sup>6</sup> The importance of *fiducia* (trust, confidence) and *officium* (duty, service) in Roman social relations becomes even more clear when we

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<sup>2</sup>Zimmermann, *Law of Obligations*, 424 n.27.

<sup>3</sup> *Digest* 17.1.1.4.

<sup>4</sup> H.F. Jolowicz and Barry Nicholas, *Historical Introduction to the Study of Roman Law*, 3<sup>rd</sup> ed. (Cambridge University Press, 1972), 297.

<sup>5</sup> Jolowicz and Nicholas, *Study of Roman Law*, 289.

<sup>6</sup> Watson, *Contract of Mandate in Roman Law*, 21.

consider that a condemnation in an *actio pro socio* or *mandati* resulted in *infamia* (social disgrace and diminished legal protections), while there was no such stigma attached to a breach in matters of sale or hire.<sup>7</sup> Thus the Romans enshrined in law the consensual and gratuitous nature of the relationship and the association with personal honor.

### Origins of the Contract of Mandate

The earliest cases of *actio mandati* to which we can assign definite dates come from the *Rhetorica ad Herennium*, a treatise of unknown authorship dating to the mid-80s BC.<sup>8</sup> The relevant passage (2.13.19) relates how M. Drusus, the urban praetor of 115 BC, granted an action on a breach of contract against an heir, whereas Sextus Julius, the urban praetor of 123 BC, had earlier refused to grant a similar action. This provides a possible *terminus ante quem* of 123 BC for the introduction of the *actio mandati*. Jolowicz and Nicholas point to the *lex Aquilia* as a *terminus post quem*, arguing that the second chapter of this law would have been unnecessary if the *actio mandati* had existed;<sup>9</sup> Zimmermann echoes this statement.<sup>10</sup> The date of the *lex Aquilia* is itself uncertain and debated by modern scholars. It must be later than the XII Tables, as the jurist Ulpian (early 3<sup>rd</sup>

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<sup>7</sup> Jolowicz and Nicholas, *Study of Roman Law*, 289.

<sup>8</sup> Harry Caplan, [Cicero's] *Rhetorica ad Herennium* (Harvard University Press, 1954), xxvi. This date is based on internal evidence, but it is possible that it was composed at a later date.

<sup>9</sup> Jolowicz and Nicholas, *Study of Roman Law*, 297 n.9.

<sup>10</sup> Zimmermann, *Law of Obligations*, 958.

century AD) records that it repealed some of their provisions,<sup>11</sup> and it was probably later than 287 BC when the *lex Hortensia* gave *plebiscita* the force of law, since the *lex Aquilia* was technically a *plebiscitum* (i.e. it was passed by the assembly of plebeians, *concilia plebis*).<sup>12</sup> Also according to Ulpian,<sup>13</sup> M. Junius Brutus discussed the *lex Aquilia* in his commentary, so it must have been in effect for some time by the middle of the 2<sup>nd</sup> century.<sup>14</sup> This range of dates, along with stylistic and linguistic arguments, corresponds to Byzantine sources,<sup>15</sup> which date the law to the first half of the 3<sup>rd</sup> century BC and connect it with a secession of the plebs and the passing of the *lex Hortensia*. This still leaves a rather broad range of possibilities for the introduction of the *actio mandati*, somewhere between the first half of the 3<sup>rd</sup> century BC and the mid-2<sup>nd</sup> century BC.

Watson would put the date of the *actio mandati* in the latter half of this range and credit the urban praetor, following the example of actions on other consensual contracts, for its introduction.<sup>16</sup> He disagrees with Arangio-Ruiz,<sup>17</sup> who believes that mandate was

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<sup>11</sup> D. 9.2.1 pr.

<sup>12</sup> D. 9.2.1.1.

<sup>13</sup> D. 9.2.27.22.

<sup>14</sup> Zimmermann, *Law of Obligations*, 957.

<sup>15</sup> Theophilus, one of Justinian's commissioners who codified the laws in the 6<sup>th</sup> century AD (in Latin); and a scholiast to *Basilica* 60.3.1, a late 9<sup>th</sup> – early 10<sup>th</sup> century AD codification (in Greek) initiated by emperor Basil and completed under his son Leo; cf. Zimmermann, *Law of Obligations*, 955-957.

<sup>16</sup> Watson, *Contract of Mandate*, 23.

<sup>17</sup> Vincenzo Arangio-Ruiz, *Il mandato in diritto romano* (Napoli, 1949), 44-6.

first recognized by the *praetor peregrinus* (an official overseeing civil matters involving foreigners) at a much earlier date and included in the *ius gentium* (regarded as the laws that applied to all peoples). Several texts ascribe the three other types of consensual contracts to the *ius gentium* and although there is no text that specifically includes mandate, Arangio-Ruiz sees its inclusion among the consensual contracts as a deciding factor; Watson does not support this assumption.<sup>18</sup> Watson's assertion that the *actio mandati* was not in force until the middle of the 2<sup>nd</sup> century implies that none of the many references in Plautus' plays deal with *mandata* in a legal sense.<sup>19</sup> The wide variety of social situations which Plautus illustrates using *mandatum* or its related verb has led Watson to conclude that the contract of mandate would also have had a very broad scope when it was finally introduced.<sup>20</sup> In his view, mandate filled a gap that other existing forms of agency did not cover. Among these, he notes the parallels between the mandatary and the public official. A magistrate gained office through public elections and was theoretically unpaid for his work since it was considered a noble duty rather than a privilege; thus, the two institutions shared the features of consensus, gratuitousness, and an emphasis on duty.<sup>21</sup> There were, of course, differences in scope and liability, and it

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<sup>18</sup> Watson, *Contract of Mandate*, 18.

<sup>19</sup> *Ibid.*, 11.

<sup>20</sup> *Ibid.*, 15.

<sup>21</sup> *Ibid.*, 2.

may not be the case that mandate law developed from the legal position of state officials, but that the Romans reacted to two similar issues in the same way.<sup>22</sup>

### **The Function of A Mandate**

The usual goal of a mandate was that the agent, or mandatary, should engage in contractual relations with a third party on behalf of the mandator<sup>23</sup> but, strictly speaking, mandate exists where a service is done gratuitously when it would otherwise fall under *locatio* if the service was done for payment.<sup>24</sup> For instance, there are many references in Cicero's correspondence to his friend Atticus making purchases on his behalf. In the extralegal social value system of the Romans a person would be bound by honor to carry out the commission entrusted to him. His actions were not motivated by financial gain but by the expectations inherent in a social ethos based on *fides*, *reverentia* and *amicitia*.<sup>25</sup> The association of mandate with noble qualities is reinforced if one examines the types of examples that appear in the legal sources. Where the *Digest* includes roughly thirty examples of mandates to buy there are only five involving sale, reflecting the social prejudices of elite Romans against mercantile activities.<sup>26</sup>

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<sup>22</sup> Watson, *Contract of Mandate*, 17.

<sup>23</sup> Ibid., 78.

<sup>24</sup> Gaius *Institutes* 3.162.

<sup>25</sup> Zimmermann, *Law of Obligations*, 415.

<sup>26</sup> Watson, *Contract of Mandate*, 84.

The primary requirement of a contract of mandate was the consent of the participating parties. There were, however, no set rules for how that consent might be expressed. Thus the jurist Paul notes that a contract could arise by means of a messenger or a letter, and any formula of words might be employed, such as *rogo* ('I ask'), *volo* ('I wish'), or *mando* ('I give a mandate').<sup>27</sup> Modestinus (mid-3<sup>rd</sup> century AD) goes so far as to say that even a simple nod (*nutu solo*) was sufficient.<sup>28</sup> Watson interprets these passages as suggesting that *consensus* might also be reached in the absence of any words or deeds, since there was none specifically required.<sup>29</sup> He envisions a scenario where one of the parties proposed the terms of the contract and the other freely demonstrated his acquiescence through silence. The constraints of good faith would prevent a silent mandator from claiming that the agent acted without his authority, and a silent mandatory need only act on the commission as evidence of his consent. In other words, silence was no excuse, but Watson admits that there is no evidence for a situation where the mandate was communicated via letter but no reply was given.<sup>30</sup>

Thus a mandate could be entered into using a variety of formulae, whether written or oral, and there is no indication that one form was preferred over the other, or that a written agreement might supplement verbal consent. Whether a mandate was

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<sup>27</sup> *D.* 17.1.1.1-2.

<sup>28</sup> *D.* 44.7.52.10.

<sup>29</sup> Watson, *Contract of Mandate*, 62.

<sup>30</sup> *Ibid.*, 64.

communicated orally or in writing was probably a function of proximity and availability of each party. After all, a primary motivation for engaging an agent to perform a task on one's behalf was precisely that matters of distance and time would make it inconvenient for the mandator himself to do it. Neither those involved in the contract nor any witnesses were likely to remember the exact words of the relevant conversation, but all would understand the basic provisions of the verbal contract. A written mandate, on the other hand, would not provide an easy opportunity for discussion or clarification so the precise wording becomes more important.<sup>31</sup> In any event, the singular, relatively simple tasks that were governed by legal mandate would probably not require extensive instructions. Furthermore, it does not seem likely that the average mandate concluded verbally would be subsequently recorded in written form. To suggest that some other form of assurance beyond the personal honor and good faith of each party was needed would undermine the basic spirit of the relationship.

### **Responsibilities of Each Side**

The obligations of each party in a contract of mandate reflect the values of duty and friendship. The mandatary, having agreed to the contract, was bound to carry out the task properly and promptly. In most cases this would not be a problem, since a mandator would scarcely make a request of a friend that was exceedingly difficult or time consuming; likewise, a mandatary would scarcely object to performing a task that would

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<sup>31</sup> Watson, *Contract of Mandate*, 62.

otherwise inconvenience his friend.<sup>32</sup> There were, however, certain restrictions on the type of task that could be set. A mandate requiring someone to do something illegal or immoral was considered void. If an individual followed through on a commission to rob a temple, or wound or kill someone, he would not be able to recover any potential expenses under the *actio mandati* because these actions were *contra mores* (contrary to good moral customs).<sup>33</sup> Unfortunately, the legal texts do not give any other examples of immoral behavior that would nullify a mandate, and doubtless some cases were more clearly categorized than others. Presumably anyone who entered into a contract of questionable validity did so with the understanding that there could be no recourse to legal action in the event of a dispute. It is also likely that a *mandatum incertum* (where the object of the mandate was not clearly identified)<sup>34</sup> was invalid, since any contract required a certain degree of specificity regarding the object, although the mandatary might have some discretion on smaller details.<sup>35</sup> The legal sources do specify that *mandata* could be subject to conditions<sup>36</sup> and that these limits ought to be scrupulously observed.<sup>37</sup>

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<sup>32</sup> Watson, *Contract of Mandate*, 130.

<sup>33</sup> D. 17.1.22.6.

<sup>34</sup> Adolf Berger, *Encyclopedic Dictionary of Roman Law* (Philadelphia: American Philosophical Society, 1953), 575; it was, however, possible to have a *mandatum generale* where the mandatary was granted general authority over all of the mandator's affairs.

<sup>35</sup> Zimmermann, *Law of Obligations*, 422.

<sup>36</sup> D. 17.1.1.3.

<sup>37</sup> D. 17.1.5 pr.

There are three passages from the *Digest* that emphasize the mandator's obligation to reimburse his agent for *bona fide* expenses. At D.17.1.27.4 the jurist Gaius (mid-2<sup>nd</sup> century AD) affirms that the mandator had to pay out any expenses incurred in the execution of the mandate, regardless of whether he could have accomplished the task on his own for less. Ulpian adds that the mandatary was also entitled to the interest on any of his own funds employed in carrying out the commission.<sup>38</sup> A comment from the jurist Papinian (late 2<sup>nd</sup>-early 3<sup>rd</sup> century AD) further demonstrates the principle that the mandatary should not suffer for having undertaken a commission: even if the mandatary should fail to complete the task he was still entitled to be reimbursed for the cost of the attempt.<sup>39</sup> In essence, mandate followed the utility principle whereby the loss ought to be shifted to the person who stood to benefit.<sup>40</sup> The need to judge what constituted a *bona fide* expense complicated the issue, and the classical jurists were far from unanimous on this point.<sup>41</sup> Furthermore, the mandator could appeal to the *actio mandati* if he felt the mandatary did not live up to his obligations.

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<sup>38</sup> D. 17.1.12.9.

<sup>39</sup> D. 17.1.56.4; Berger, *Dictionary of Roman Law*, 575; in a *mandatum pecuniae credendae*, where a person was commissioned to lend money to a third party, the mandator was obliged to act as surety for the mandatary.

<sup>40</sup> Zimmermann, *Law of Obligations*, 430.

<sup>41</sup> Watson, *Contract of Mandate*, 161.

The jurists are consistent on the point that a mandate that is wholly in the interest of the mandatary is invalid.<sup>42</sup> Gaius lists five categories of *mandatum* that were valid, according to the interest involved: the advantage may lie with the mandator only (*mandatum mea gratia*); the mandator and the mandatary simultaneously (though not necessarily equally); a third party (*mandatum aliena gratia*); the mandator and the third party; or the mandatary and the third party.<sup>43</sup> Where one instructed an individual to look after his own interests – a *mandatum tua gratia* – there was no legal obligation on the part of the would-be mandator, and it was regarded more as advice.<sup>44</sup> An agent acting in good faith must not have retained any profit from the commission unless this was foreseen and intended by the mandator.<sup>45</sup> Moreover, if a mandatary failed to carry out the mandate or even neglected to give it due attention out of concern for or in collusion with an independent party with opposing interests, he was liable under the *actio mandati*.<sup>46</sup> If the mandate turned out to be impossible to accomplish, or the mandatary failed despite his best efforts, there is no evidence that he would have been liable; this is not surprising

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<sup>42</sup> Zimmermann, *Law of Obligations*, 422.

<sup>43</sup> D.17.1.2 pr.

<sup>44</sup> Berger, *Dictionary of Roman Law*, 575.

<sup>45</sup> Watson, *Contract of Mandate*, 178.

<sup>46</sup> D. 17.1.8.10.

given that *mandata* were primarily contracts between individuals and their friends or individuals and their kin.<sup>47</sup>

### Liability

There is a lack of agreement and consistency among classical jurists regarding the standard of liability in mandate. The main issue is whether liability was for *dolus* (fraud or deceit), or for *culpa* (negligence), or for both. Watson and Zimmermann both believe that the standard was variable due to the wide range of circumstances and differing degrees of interest that were possible in such contracts.<sup>48</sup> It seems that *dolus* was the original starting point, but that liability became an increasingly flexible issue in response to social developments.<sup>49</sup> The legal and social realms met where condemnation in an *actio mandati* (or an *actio pro socio*, for disputes between partners) led to *infamia*, whereas the consensual contracts of a commercial nature, sale and hire, were not subject to this censure.

There were occasions where the lapse of a mandate was allowable. The mandator had the right to revoke, though this carried with it the obligation to inform the mandatary as soon as possible; otherwise the mandator would be liable for any expenses that might have already been incurred. In the mid-2<sup>nd</sup> century AD, it would seem that the mandatary did not have a similar right to renounce, but in practice, if the mandator had not suffered

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<sup>47</sup> Watson, *Contract of Mandate*, 188.

<sup>48</sup> Watson, *Contract of Mandate*, 215; Zimmermann, *Law of Obligations*, 428.

<sup>49</sup> Zimmermann, *Law of Obligations*, 428.

a loss his agent would not be condemned for the breach.<sup>50</sup> By the early 3<sup>rd</sup> century AD the mandatary seems to have been able to renounce the contract provided it was *mandatum integrum* (meaning that he had not yet begun the task); in essence, following the same usage as Gaius.<sup>51</sup> If an agent had a good reason for acting contrary to his *mandatum* he would still need to seek approval from the principal. This feature of legal contracts can be seen in Pliny's letters to Trajan regarding imperial *mandata*. Even in instances where Trajan supports Pliny's proposed course of action, Pliny still needs the emperor's approval to countermand his original *mandata*.

### **Mandate and Death**

Issues of validity were even more prominent where the death of one of the contracting parties was concerned. Several legal passages state the general rule that mandate was ended by death, *mandatum morte solvitur*.<sup>52</sup> If the mandate was *integrum* upon death, the contract lapsed and no action needed to be taken. If, however, the commission had been begun or completed, the heirs might have grounds for action. With the death of the mandator, his heir could sue to have the task completed if it had already commenced. Furthermore, if the task was completed but the heir was not satisfied that the terms of the contract had been met he could then too take action. The mandatary, on the other hand, could sue the heir for reimbursement if the task were underway or complete

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<sup>50</sup> Watson, *Contract of Mandate*, 77.

<sup>51</sup> Ibid.

<sup>52</sup> Gaius *Institutes* 3.160; *D.* 17.1.26 pr.; *D.* 17.1.27.3; specific cases are dealt with at *D.* 17.1.34.1 and *D.* 17.1.57.

upon the mandator's death. In a case where the mandate was *integrum* upon death, but the agent, in ignorance of this fact, carried out the task he could put forward an action against the heir.<sup>53</sup> Gaius<sup>54</sup> and Paul<sup>55</sup> cite *utilitas* as the reason for this: a mandatary fulfilling his obligations in good faith should not suffer a loss because he was not informed that the contract had lapsed. Where it was the mandatary who died, his heir might be expected to complete the mandate if it had already been commenced.<sup>56</sup>

*Mandatum* depended on the mutual confidence of the parties, and such a personal obligation could not simply be shifted to an heir *re integra*.<sup>57</sup> The principle behind this also prevailed in the case of imperial *mandata* to provincial governors; whenever a new governor entered office or an emperor died new *mandata* were issued, highlighting the personal responsibilities of each party.

The emperor Justinian deviated from the general opinion of the classical lawyers on the validity of *mandata post mortem*, i.e. contracts that required action only after the death of one of the parties.<sup>58</sup> The death of the mandatary, for obvious reasons, would not be an issue, but there is no solid evidence that *mandata post mortem mandatoris* (after the

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<sup>53</sup> Watson, *Contract of Mandate*, 133.

<sup>54</sup> Gaius *Institutes* 3.160.

<sup>55</sup> *D.* 17.1.26 pr.

<sup>56</sup> Zimmermann, *Law of Obligations*, 425.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

death of the mandator) were invalid,<sup>59</sup> despite the objections of the jurists that they were in conflict with the personal nature of *mandatum*.<sup>60</sup> An example of such a *mandatum* would be instructions to build a tomb for the mandator upon his death, or to see to its future maintenance. As with any other type of *mandatum*, it is likely that the moral and social pressures to fulfill such obligations would have been greater than the legal ones. Moreover, with the mandator dead his heirs would bear the responsibility for initiating legal action, and it is likely that the mandatary and heir were often the same person.

Given the gratuitous and personal nature of *mandata*, it seems unlikely that someone would make a request that could only be fulfilled after his death if he were not confident that his agent would carefully, if not gladly, carry it out. Suetonius records that Augustus left behind three scrolls along with his will (*Aug.* 101); one was the text of the *Res Gestae*, another was a summary of the condition of the empire, and the third contained *mandata* concerning his own funeral arrangements. At the end of the *Laudatio Turiae* inscription,<sup>61</sup> an epitaph from the late 1<sup>st</sup> century BC, a grieving husband states that he will treat his dead wife's *mandata* as if they were law. These examples far predate Justinian's decision to regard *mandata post mortem mandatoris* as valid, but they speak to the older social customs that gave rise to *mandata* in the first place. A dutiful relative or friend would observe the final requests of the deceased out of regard for basic morality

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<sup>59</sup> Watson, *Contract of Mandate*, 151.

<sup>60</sup> Zimmermann, *Law of Obligations*, 425.

<sup>61</sup> *CIL* VI.1527 = *ILS* 8393; see Erik Wistrand, *The So-Called Laudatio Turiae* (Göteborg, 1976) for text, translation and commentary.

and normative social values. Only much later did such situations require the support of the law; Justinian hints at abuses that frustrated the wishes of the contracting parties by means of subtle legal arguments.<sup>62</sup> Pliny records an example where the wishes of the deceased were disregarded. In *Epistula* 6.10 he laments that Verginius Rufus' tomb is still unfinished after ten years despite the fact that the care of this task was entrusted (*cura mandata est*) to his heir. Pliny can only express his outrage in a letter to a friend, having no grounds for legal action, since the heir and the 'mandatary' are the same person and the commission likely did not constitute a valid legal contract anyway.

### Specialized Services

There were certain professional relationships that could fall under the scope of *mandata*. These included the services of advocates, surveyors and architects, if not performed under a contract of *locatio conductio* (lease or hire). Money still changed hands, since such professionals would still be reimbursed for their expenses per the conditions of a *mandatum*, but they did not accept money in the form of a salary.<sup>63</sup> In the Roman value system there was a certain degree of honor attached to these professions, largely due to the high social status of the individuals and the fact that what they provided was their free time, on which it would be difficult to set a price. By law, philosophers,<sup>64</sup>

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<sup>62</sup> *Codex Iustinianus*, 4.11.1.

<sup>63</sup> Zimmermann, *Law of Obligations*, 413.

<sup>64</sup> *D.* 29.4.

surveyors,<sup>65</sup> and advocates<sup>66</sup> had no means of suing for reward; in reality, it was perfectly acceptable, and with time even expected, for the mandator to provide an honorarium in return for services rendered.<sup>67</sup> Thus, even if those practicing in the *artes liberales* (professions fit for a free man, generally of an intellectual nature) earned enough profit from honoraria to make a living, they still preferred to be viewed as selfless and generous benefactors. These social perceptions began to change over the course of the Principate, as evidenced by corresponding changes in late classical law.

In Zimmermann's view the changes in social perceptions and private law were not unrelated to reforms of public magistracies. Imperial functionaries had typically received a lump sum to cover the costs of equipment and travel, but under Augustus imperial officials outside Rome, including those of senatorial and equestrian rank, became salaried officials.<sup>68</sup> To some extent, there existed the notion that citizens who held public office could only be politically independent if they were materially independent,<sup>69</sup> but under the Principate the political independence of magistrates was limited by the primacy of the emperor and the practical demands of running a vast empire. Since it was not dishonorable at this stage for an ex-consul to administer a province for payment, it

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<sup>65</sup> D. 36.3.

<sup>66</sup> D. 36.1.4.

<sup>67</sup> Zimmermann, *Law of Obligations*, 415.

<sup>68</sup> Ibid., 417.

<sup>69</sup> Ibid., 416.

became less objectionable for those in the ‘unpaid professions’ to ask for a reward for their services, and there was increasing pressure to have legal protection for agreed upon *salaria*.<sup>70</sup> The *cognitio extra ordinem* procedure allowed a mandatary to sue for agreed upon payment,<sup>71</sup> while at the same time he still had recourse to the *actio mandati* for reimbursement of expenses. There were no changes to the old legal institutions; *mandatum* remained gratuitous by definition, but the law now recognized alternative arrangements.

In summary, by about the mid-2<sup>nd</sup> century BC Roman law defined contracts of agency as gratuitous and consensual service on someone’s behalf. Normative social values would have held most people to their bonds; the *actio mandati* merely offered a legal avenue to recover losses when things went wrong. Regardless of whether there was any currency being exchanged, a mandate always affected the honor of those involved. Each side had their own responsibilities, some enforced by custom and others by law as well. These obligations could even be strong enough to transcend death, not because the law called for it, but – what was more meaningful – because honor demanded it. The *mandata* in the plays of Plautus are examples of the sort of personal favors that might fall under the scope of the *actio mandati* in the right circumstances, but even when they do not fit within the legal definition, trust, honor and obligation are still central.

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<sup>70</sup> Zimmermann, *Law of Obligations*, 417.

<sup>71</sup> *Codex Iustinianus*, 4.35.1; outlined in a rescript from Severus and Antoninus.

### ***Mandata in Plautus***

The works of the Latin playwright Plautus, writing in the late 3<sup>rd</sup> and early 2<sup>nd</sup> centuries BC, are an important source for early Roman social life, and especially for the attitudes of the lower classes. The plays frequently featured scenarios and language that were or would later be prominent in Roman law, including *mandata*. The plays present some difficulty, in that the plots of the Greek originals, on which Plautus based his plays, do not always fit easily in a Roman retelling; nevertheless, one can point to plays like *Mercator* as evidence for the Roman social and moral values behind arrangements described using *mandatum* and *mandare*. The situations in Plautus provide early examples of a social practice whereby individuals undertook tasks on behalf of others, and the consequences of success and failure on such relationships.

The words *mandatum* and *mandare* are relatively ubiquitous in the plays of Plautus, appearing over fifty times, versus a mere four instances in the surviving plays of Terence. The question is how much Plautine usage can reveal about the social and legal nature of mandate. As previously mentioned, Watson does not believe that Plautus used these words in a technical sense because he does not believe that the contract was legally enforceable in Plautus' time. Secondly, based on the belief that *mandata* were contracted between free persons, several of the scenarios in the plays could not constitute proper mandates because they involve slaves. Thirdly, some of the tasks, though neither illegal nor immoral, do not fit the criteria of *mandata* because there would be no actionable loss or recognizable legal obligation. For Watson, the value of Plautus' use of the words lies in his illustration of the varied circumstances where the terms could customarily be

employed, which explains the breadth of application when the legal contract did finally arise.<sup>72</sup>

Not all scholars agree with Watson. Karakasis argues for the legality of Plautine *mandata*, particularly in the case of *Trinummus*.<sup>73</sup> His argument is not altogether convincing as it is based on details of phrasing, and relies for support on scholarship that is a century out of date,<sup>74</sup> while failing to address the chronological points raised by Watson. In the *Trinummus*, Charmides entrusts (*mandat*) the care of his property, his daughter and his son to his friend Callicles in his absence. This, as W.M. Green observed as early as 1929, more closely resembles the position of *procurator omnium bonorum* (one who oversees another's affairs in their absence), and would have made Callicles in effect a substitute *paterfamilias*, yet Callicles seems to have no legal powers whatsoever.<sup>75</sup> In light of this, Green suggests that the situation has less to do with Roman mandate than with the original Greek plot and the absence in Attic law of recognized powers of agency.<sup>76</sup> It was possible in Attic law to make a third party the temporary *kyrios* of a woman in his family, but there was no direct parallel in Roman law and this

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<sup>72</sup> Watson, *Contract of Mandate*, 11-16.

<sup>73</sup> Evangelos Karakasis, "Legal Language in Plautus with Special Reference to *Trinummus*," *Mnemosyne* 56 (2003), 194-209.

<sup>74</sup> Including E. Costa, *Il diritto privato romano nelle commedie di Plauto* (Torino, 1890); O. Fredershausen, *De iure Plautino et Terentiano* (Berlin, 1906) (*non vidi*).

<sup>75</sup> William M. Green, "Greek and Roman Law in the *Trinummus* of Plautus," *Classical Philology* 24 (1929), 185.

<sup>76</sup> Green, "Law in the *Trinummus*," 186.

would only apply to Charmides' daughter in any case; Plautus may have tried to resolve this discrepancy by appealing to the well-known Roman custom of mandate. A full eleven plays use *mandatum* or *mandare* in situations involving women, whether it is a father entrusting a daughter to the care of her husband (*Menaechmi* 1.783) – analogous to a change of *kyrios* in Attic law, as well as carrying the moral obligations of Roman mandate – or a commission to a friend to purchase a favored slave-girl (e.g. *Mercator*) – akin to what would later be a legally valid mandate to make a purchase on behalf of the mandator. The obligations of mandate need not have been enshrined in law at this point for Plautus' analogy to be effective. Furthermore, the absence of legal validity need not disturb Karakasis' thesis that Plautus uses such language to develop character and plot; the only difference is that *mandata* belong to the realm of morality and social custom in this period, and only later became legally enforceable.<sup>77</sup>

Plautus' *Mercator* is especially useful for delineating the social dynamics of mandate that are evident in the later legal aspects. When Charinus arrives home from a business trip in a troubled state his father Demipho advises him to go home and rest, but Charinus responds that he wishes to attend to his commissions (*mandatis*, *Merc.* 1. 374) first. Upon his father's insistence that he wait a day or so Charinus reminds him, "But, father, I have often heard you say yourself that all sensible men should give a commission their very first attention".<sup>78</sup> The context suggests that Charinus has received

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<sup>77</sup> Karakasis, "Legal Language in Plautus," 194.

<sup>78</sup> *Saepe ex te audiui, pater: rei mandatae omnis sapientis primum praevorti decet*; Plautus *Mercator* 1.376, trans. P. Nixon.

instructions over the course of his trip to perform certain tasks upon his return to Athens. The exchange between father and son reveals that promptness of action on behalf of the mandator ought to take precedence over any minor personal discomforts of the mandatory. Moreover, the values that govern a wide variety of social obligations are here being reinforced by members of different generations.

The language of mandate comes up again in the play when Charinus and Demipho are each trying to acquire the same slave-girl without the other becoming suspicious. In this case it is not distance that drives the need for agency but secrecy. Demipho claims that an old man, *senex* (*Merc.* l. 426), has commissioned (*mandavit*) him to buy the girl, while Charinus claims that he has an identical commission from a young man, *adulescens* (*Merc.* l. 428). When each fails to persuade the other they both turn to their friends in order to get the girl, Demipho commissions (*mandabo*, *Merc.* l. 467) his friend Lysimachus, while Charinus appeals to Lysimachus' son Eutychus (*Merc.* l. 495) for assistance.

Charinus' reaction to Eutychus' failure to obtain the girl is informative. Charinus rails at his friend, calling him a lame, blind, mute, maimed weakling (*Merc.* l. 630). Eutychus' failure to keep his promise is viewed as a betrayal, as if he had deceived Charinus about his capabilities. It is also interesting that Eutychus' social gaffe is described in terms of a physical defect. When the dismayed Charinus announces he is going to leave the city Eutychus worries that people will think Charinus' departure was a result of Eutychus' idleness, *mea ignavia* (*Merc.* l. 662). Following through on a friend's commission was a matter of honor; a failure – even a perceived one – could have lasting

repercussions for one's reputation and relationships. Eutychus finally resolves to find the girl because to do otherwise would demonstrate a lack of reliability and a disregard for *officium et amicitia*; Charinus and others might never entrust another task to him, and he might find his own options limited if he should need a favor in the future. Although mandate as a custom, and later under law, was designed to primarily benefit the mandator, the mandatary gained honor through success, and risked losing it should he neglect his obligations, hence the importance of consensus from the start.

Burton observes that Plautus had a preoccupation with the volatility and asymmetries that characterize *amicitia*.<sup>79</sup> Judging by the interactions in his plays, the Romans seem to have been concerned that friendships could easily lapse in the absence of frequent contact and nurturing.<sup>80</sup> This anxiety is certainly evident in Cicero's letters to his friends, as we shall see. *Mandata* were an important part in nurturing relationships at all stages.

Plautus provides insight into *mandata* from a time before the principles governing this custom were established in law in the first half of the 2<sup>nd</sup> century BC. The key features common to both informal social arrangements and legally valid contracts included consensus, gratuitousness, and consequences for personal honor. Even after the *actio mandati* became law, the social norms surrounding agency continued to operate at a parallel, if not superior, level. Later textual evidence reveals that the language of *mandata*

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<sup>79</sup> P. J. Burton, "Amicitia in Plautus," 240.

<sup>80</sup> Ibid., 218.

was used for a variety of situations that did not fall under the already broad scope of legal mandate. The following chapters will examine how these social values shaped behavior and relationships in the personal, public, and diplomatic settings that are presented by Latin authors of the late Republic and early Empire.

## CHAPTER 2: The Uses of *mandata* and *mandare* in Cicero

The volume and variety of surviving Ciceronian texts is useful for studying *mandata* and their associated social values. Cicero's letters, orations, and philosophical writings, covering a range of political, historical, and moral issues, provide context and commentary for the many different uses of *mandata* and *mandare*. His usage of these words stretches far beyond the realm of simple, interpersonal relations portrayed in Plautus' plays, as well as the neatly defined legal aspects that were discussed in the previous chapter. More than anything, Cicero reveals the great extent to which matters private and public, personal and official were united by the same system of values and attitudes. Private citizens issued *mandata* to take care of tasks that they could not do themselves, from making minor purchases to influencing politics. The people and senate of Rome mandated their magistrates to conduct the duties of their office with honesty and integrity. Provincial governors, military commanders and envoys also received *mandata* that had serious consequences for the empire and international relations. Trust, honor and obligation were prominent in all of these settings.

### Personal Favors and Cicero's Private Letters

Unlike strictly financial or commercial transactions, the relationships that involved one party issuing and the other accepting a mandate lasted beyond the specific exchange and entailed a certain amount of public acknowledgement.<sup>1</sup> Another

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<sup>1</sup> Suzanne Dixon, "The Meaning of Gift and Debt in the Roman Elite," *Echos du Monde Classique* 37 (1993): 462.

fundamental feature of such relationships was faith; as Cicero says, “[t]he foundation of justice is good faith (*fides*), in other words truthfully abiding by our words and agreements.”<sup>2</sup> Witnesses and written contracts were not required, because of the magnitude of giving one’s word. In the *De Officiis* (3.70) Cicero writes:

*Q. quidem Scaevola, pontifex maximus, summam vim esse dicebat in omnibus iis arbitriis, in quibus adderetur EX FIDE BONA, fideique bonae nomen existimabat manare latissime, idque versari in tutelis, societatibus, fiduciis, mandatis, rebus emptis, venditis, conductis, locatis, quibus vitae societas contineretur*

True, Quintus Scaevola the chief priest used to say that there was supreme force in all judgments to which were appended the words IN GOOD FAITH. He believed that the expression ‘good faith’ had the widest terms of reference, being applicable to cases of guardianships, partnerships, trusts, **commissions**, buying and selling, hiring and letting – activities which form the structure of our communal life.<sup>3</sup>

In any of these situations the stakes were higher than the value of the goods or services exchanged because every time a person appealed to another’s good faith he put his own honor and reputation at risk. Only the most shameless, dishonest, impious individual would disregard these norms. One must even keep those promises made to an enemy, as the story of Regulus demonstrates. He promised his Carthaginian captors that he would return after travelling to Rome to negotiate a prisoner exchange, and dutifully presented the *mandata* he had been given, but refused to vote on the proposals since he was bound

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<sup>2</sup> Cicero *De Officiis* 1.23 (trans. P. G. Walsh).

<sup>3</sup> Trans. P. G. Walsh.

by oath to the enemy. Despite the pleas of his friends and relatives to stay, he kept his word and returned to face his death.<sup>4</sup>

Forms of *mandare* and *mandata* appear frequently in Cicero's personal letters in the context of requesting and granting personal favors. Not surprisingly, since his published correspondence is largely one-sided, there are more instances of Cicero issuing *mandata* rather than receiving them, but he makes reference to both sides of the exchange in the *Epistulae Ad Atticum* and the *Ad Familiares*. About half of the time the details are vague or unspecified, often reminders or reassurances concerning commissions that had clearly been agreed upon earlier. The *mandata* he does provide information for range from making purchases on his behalf (e.g. *Ad Att.* 1.10), or seeing to his household affairs while he is absent (e.g. *Ad Att.* 5.14), to relaying messages or making inquiries (e.g. *Ad Att.* 9.7), which might simply be of a personal nature but often had political ramifications. Cicero, in turn, is found performing similar favors for Atticus and his other correspondents.

The same language is used for a wide variety of activities, regardless of whether they would be legally covered under the *actio mandati* in the event of a dispute. Cicero uses *mandare* when addressing his freedman and his daughter (*Ad Fam.* 7.23) as well as for Tiro, his loyal slave (*Ad Att.* 15.15; cp. *Ad Fam.* 16.21). If he were dissatisfied with one of them over a commission he would not need to resort to the *actio mandati*, nor could they expect the same level of gratitude or reciprocity as when peers performed

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<sup>4</sup> Cicero *De Officiis* 1.39, 3.100 (*mandata*); Horace *Odes* 3.5.

services for each other, but the language is the same because the values are the same, albeit in lesser degrees. Caesar behaves in much the same way when he issues orders to his subordinates using *mandare*, because he conceived of military commands as a sort of good faith contract.

It is clear in several passages just how dearly Cicero regarded his friendships and how important it was for each party to carry out the other's wishes. In *Ad Att.* 5.14 he writes that the only thing more pleasing than when Atticus writes to him is when he achieves what Cicero has asked of him (*quae tibi mandavi confeceris*). And at *Ad Att.* 5.16, although Cicero is travelling and only has time for a brief note, he assures Atticus that he has not forgotten his commission (*ne me immemorem mandati tui putares*). One situation presents a conflict of interest: Marius had commissioned Cicero to purchase a property for him, unaware that Cicero was among those who had inherited said property and therefore stood to gain from a high sale price (*Ad Fam.* 7.2). Cicero jokes that he will attempt to drive up the price, before assuring his friend that he will attend to his business just as he ought, with diligence (*sicuti debeo, diligenter*). Cicero could have simply declined to accept Marius' commission, but instead he decided to show his quality as a friend by carrying it out, despite disadvantage to himself. In doing so he likely earned even more gratitude from Marius than if there had been no conflict at all with his agency.

Enlisting anyone to act as an agent involves taking a risk and so the choice of agent becomes immensely important. A representative ought to be able to follow instructions precisely but must also exercise good judgment. Cicero is conscious of the importance of timing when approaching someone or bringing a letter (*Ad Fam.* 11.16):

*Si autem, ut spero, nihil te perturbat, nihil impedit, et ille, cui **mandavi** satis scite et commode tempus ad te cepit adeundi, confido me, quod velim, facile a te impetraturum.*

If however (and I hope it is so), you have nothing to disturb, nothing to embarrass you, and my messenger has been clever and tactful enough in choosing the moment to approach you, I feel I shall have no difficulty in getting you to do what I desire.<sup>5</sup>

If the request is within the limits of decency, and the presentation of the request is as courteous and well timed as possible, the addressee ought to have little reason to refuse. On the other hand, if a task should go awry through the fault of the mandatary, the mandator can distance himself from the blame and even seek legal action if merited, in order to preserve his own reputation and any friendships that might have been affected by the arrangement.

Amanda Wilcox would gloss *amicitia* as “the constellation of Roman practices founded both on rivalry and mutual benefit” and contextualizes correspondence like that of Cicero within this social milieu.<sup>6</sup> In a letter to Manius Curius, assured that they hold each other in equal esteem, Cicero concludes that it remains for them to contend with one another in services (*Ad Fam.* 7.31).<sup>7</sup> Ideally, according to Cicero and Seneca, friendship and favors ought not to stem from a desire for recognition<sup>8</sup> but, practically, these were

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<sup>5</sup> Trans. D. R. Shackleton Bailey.

<sup>6</sup> Amanda Wilcox, “Sympathetic Rivals: Consolation in Cicero’s Letters,” *American Journal of Philology* 126 (2005): 253.

<sup>7</sup> ...ut officiis certemus inter nos...

<sup>8</sup> Cicero, at *De Officiis* 1.42-44, observes that acts inspired by ostentation rather than kindness do not constitute generosity; Seneca urges the giver to remain silent and let the recipient publicize any generous acts (*De Beneficiis* 2.11).

precisely the factors that drove Roman politics and aristocratic society. Mutual support was the common feature both of relationships based on affection and of those based on utility, thus the vocabularies overlap.<sup>9</sup> A benefaction produces an obligation to reciprocate, which could mean another benefaction or a public expression of gratitude that enhances the honor of the giver.<sup>10</sup> Successful relations require that the counter-gift be different and come at a later date; otherwise, to immediately return a gift of identical value would be like refusing the original gift and thus constitute an insult.<sup>11</sup> According to Seneca, to be anxious to discharge a debt and to avoid owing anyone was to appear ungrateful (*De Beneficiis* 4.40.5). On the other hand, failing to provide a counter-gift of adequate value was risking a loss of honor and status.<sup>12</sup> The safest route was to reciprocate with a gift of greater value, which perpetuated the relationship.

Just as an unprompted gift tested the recipient's honor by provoking him to reply,<sup>13</sup> asking for a favor, no matter how small, provided a challenge and an opportunity for him to prove his usefulness and loyalty. This mechanism for the distribution of power and services operated in all three of the exchange relationships identified by Garnsey and Saller: those between equal friends, those between superior and inferior friends (patrons

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<sup>9</sup> David Konstan, *Friendship in the Classical World* (Cambridge, 1997), 128.

<sup>10</sup> Benjamin Fiore, "The Theory and Practice of Friendship in Cicero," in *Greco-Roman Perspectives on Friendship*, ed. John T. Fitzgerald, (Atlanta, 1997), 66-7.

<sup>11</sup> Bourdieu, *Outline of a Theory of Practice*, 5-6.

<sup>12</sup> Garnsey and Saller, *Roman Empire*, 155-6.

<sup>13</sup> P. J. Burton, "Amicitia in Plautus," 233.

and protégés), and those between patrons and clients.<sup>14</sup> The traditionally held view that senators were prohibited, or at least discouraged, from engaging in many types of commercial activities, as well as simple logistics, meant that they had to find other ways of doing business. They would have utilized clients, relatives and non-senatorial friends to perform their business dealings, relying on the traditional bonds of *beneficia* (mutual favors), *gratia* (obligation for favors rendered), *necessitas* (dependency), and *obligatio* (indebtedness).<sup>15</sup> In return for economic and political support, a senator's responsibilities would be to look after the interests of these associates whenever their affairs fell under his jurisdiction.<sup>16</sup> Lower status citizens could perform those tasks that were unseemly for senators, earning their gratitude and thus gaining access to the upper strata of Roman society and politics.

### Public Offices

Cicero unequivocally states more than once in his philosophical writings that the interests of the state should come before those of oneself and one's friends. To engage in wrongdoing on behalf of a friend is unacceptable but especially heinous if it involves acting against the state (*De Amicitia* 40). The hierarchy of obligations begins with the gods, then the state, then one's parents and finally everyone else along a scale of descending importance (*De Officiis* 1.160). This is true for any citizen but particularly

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<sup>14</sup> Garnsey and Saller, *Roman Empire*, 149.

<sup>15</sup> N. Rauh, "Cicero's Business Friendships: Economics and Politics in the Late Roman Republic," *Aevum* 60 (1986): 4.

<sup>16</sup> Rauh, "Cicero's Business Friendships," 6.

important for a magistrate who is in fact the personification of the state and therefore responsible for maintaining its dignity, glory and laws, which have been entrusted to him in good faith (*De Off.* 1.124). Here Cicero articulates the obligations that are inherent in holding office, and it is no coincidence that *mandare* is used frequently by Cicero and other writers when describing the appointment of magistrates, commanders and envoys.<sup>17</sup> The values governing one's public behavior as a magistrate are the same as those governing one's private relationships, the difference is merely one of degree.

Cicero elaborates on the similarities in the *Pro Sex. Roscio Amerino*. When the senior Sextus Roscius of Ameria is murdered and his property confiscated a delegation of men from Ameria is sent to address the confiscation on behalf of the deceased's son, Cicero's client. Cicero asserts that one of the delegates, Titus Roscius Capito, a kinsman of the deceased, conspired to arrange the confiscation and frame his client for the murder in the hopes of profiting from the property seizures. The details of this case are quite complex and the subject of some debate among scholars,<sup>18</sup> but, fortunately, the difficulties do not appreciably affect the present discussion. In section 111 and following, Cicero points to the severity of the penalty for breach of trust in private affairs – and here

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<sup>17</sup> For example: *honoribus mandandis* (Cic. *De Imperio* 2); *mandandis magistratibus* (Cic. *Pro Murena* 74, *Pro Plancio* 15); *magistratus mandaverat* (Caesar *BC* 3.59); *mandaretur consulum nomen imperiumque* (Livy *AUC* 3.33); *consulatum mandandum* (Sallust *BC* 23).

<sup>18</sup> Cf. W.B. Sedgwick, "Cicero's Conduct of the Case *Pro Roscio*," *Classical Review* 48 (1934): 13; T.E. Kinsey, "A Dilemma in the *Pro Roscio Amerino*," *Mnemosyne* 19 (1966): 270-271.

he is speaking of the legally defined contract of mandate – and argues that Capito's betrayal is worse:

*Si hanc ei rem privatim Sex. Roscius mandavisset ut cum Chrysogono transigeret atque decideret, inque eam rem fidem suam, si quid opus esse putaret, interponeret, ille qui sese facturum recepisset, none, si ex eo negotio tantulum in rem suam convertisset, damnatus per arbitrum et rem restitueret et honestatem omnem amitteret? Nunc non hanc ei rem Sex. Roscius mandavit sed, id quod multo gravius est, ipse Sex. Roscius cum fama vita bonisque omnibus a decurionibus publice T. Roscio mandatus est; et ex eo T. Roscius non paululum nescio quid in rem suam convertit sed hunc funditus evertit bonis, ipse tria praedia sibi depectus est, voluntatem decurionum ac municipum omnium tantidem quanti fidem suam fecit.*

If as a private person Sextus **had entrusted** this matter to him to settle and make an agreement with Chrysogonus, and, if he thought it necessary, give his word to promote that object; and if Capito had undertaken this mission, and had made ever so little profit out of the transaction, would he not be condemned before an arbitrator to make restitution and entirely lose his good name? As it is, it was not Sextus Roscius who **entrusted** the matter to him but – **what is far more serious** – Sextus Roscius himself, together with his reputation, life, and all his property **was publicly entrusted** by the decurions to the care of Titus Roscius, who has converted no small trifle connected with the affair to his own advantage, but has ejected my client from his property neck and crop and bargained for three farms for himself, and has shown as little regard for the intentions of the decurions and all his fellow-townsmen as for his own honor.<sup>19</sup>

By betraying the embassy of which he was a part, Titus Roscius betrayed not just his kinsman but also his fellow envoys and all of his fellow citizens. He deceived his nine colleagues, who carried out their task honorably, and whose reputations will suffer for not foreseeing his betrayal (*Pro Roscio Amer.* 117). By disregarding the mandate of the decurions and the citizens they represent he disrespected them and demonstrated his own dishonorable nature. Such behavior weakens the relationship between government and

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<sup>19</sup> Cicero *Pro Roscio Amerino* 114-115, trans. J.H. Freese.

people. Citizens take a leap of faith when they entrust officials with power, and there is much more at stake when one individual is representing the interests of many than when he is simply the agent for another individual. Failure, disappointment and betrayal in this context harm not just a single relationship and one person's credibility, but the credibility of the entire system.

### **The Intersection of Private and Public Obligations**

Being a provincial governor was an honor in itself, but it also provided opportunities to earn friends or strengthen existing bonds by using one's political authority to protect and further friends' interests in that province. Modern readers are naturally inclined to question the ethics of this behavior. J.M. Kelly observes a basic incompatibility between the concepts of *gratia* (favor) and *iustitia* (justice). He dismisses the saving clauses typical of letters of recommendation (e.g. 'so far as your dignity and justice will permit') as stock phrases that were essentially meaningless to sender and recipient alike.<sup>20</sup> Hannah Cotton disagrees; she points to Cicero's refusal to accommodate Brutus' *mandata* regarding a position for his agent as evidence that at least one governor did not view such epistolary courtesies as mere lip-service.<sup>21</sup> She observes that such letters rarely refer to the official authority (the *imperium* or *postestas*) of the recipient or request official acts on his part; rather, they ask that he extend his friendship (*fides*, *amicitia*, etc.) to the person recommended. Although the tone and language of the letters

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<sup>20</sup> J. M. Kelly, *Roman Litigation* (Oxford, 1966), 61.

<sup>21</sup> Hannah M. Cotton, "The Role of Cicero's Letters of Recommendation: 'Iustitia versus gratia'?" *Hermes* 114 (1986): 450.

is not intimate, they nevertheless remain private communications even when addressed to officials.<sup>22</sup> In the absence of any formal system to train and test administrative competence, senior officials had to rely on these personal recommendations when appointing subordinates.<sup>23</sup>

Brutus had given Cicero a volume of commissions (*mandatorum...libellum*) to attend to during his governorship of Cilicia (51-50 BC). Atticus had previously urged Cicero to cultivate Brutus' friendship: as Cicero paraphrases, "if I took nothing else away from this province except Brutus' goodwill, that would be enough."<sup>24</sup> Among these *mandata* was a request to provide Brutus' associate Scaptius with a prefecture and aid him in recovering a debt from the people of Salamis. This posed a problem because Cicero had made it a policy not to bestow prefectures on businessmen like Scaptius, and also because the rate of interest Scaptius was seeking was four times the maximum that Cicero had decreed for his province. To add to his problems, Cicero soon learned that the money was in fact Brutus' own, thus putting greater pressure on him to comply, but he concluded that he could not do so if it meant compromising his own honor. If Brutus was angered by his decision, Cicero would be more disappointed in the man himself than sorry that he offended him, he writes. In most cases, however, even if Cicero denied a

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<sup>22</sup> Cotton, "Letters of Recommendation," 443-4.

<sup>23</sup> Saller, *Personal Patronage*, 205.

<sup>24</sup> Trans. Winstedt.

person's request he would find a way to compensate him and thus preserve the relationship and further opportunities for mutual benefaction.<sup>25</sup>

One downside of serving in the provinces was being unable to participate in politics at Rome. This put a governor in the position of needing help from his friends and allies at home, and relying on them to reciprocate for any favors he might do for them as governor. Alongside his instructions about purchases and domestic affairs, Cicero includes *mandata* pertaining to political matters in his letters. He tells Atticus that he had commissioned (*mandavi*) Hortensius to prevent the extension of his term of office if he could (*Ad Att.* 5.2), and urges (*mando*) Atticus to approach his friends to the same end (*Ad Att.* 5.9). Conversely, an official might be eager for an extension of his term: T. Quinctius urges his friends and relations (*amicis et propinquis mandaverat*) to secure the extension of his command against Philip (Livy, *AUC* 32.32). If he stayed in command long enough to bring the war to a successful conclusion the resulting honor and glory would put him in a position to return the favor. Cicero provides us with examples of his services to others. Writing from Beneventum in May 51 BC, while on his way to Cilicia, Cicero tells Atticus that he will learn for him what Pompey is going to do about five prefects (*Ad Att.* 5.4). Ten days later, from Tarentum, Cicero writes that Pompey is going to appoint five new prefects with exemption from jury service (*Ad Att.* 5.7). Shackleton-Bailey identifies these prefects as officials to be appointed by Pompey in his Spanish

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<sup>25</sup> Rauh, "Cicero's Business Friendships," 22.

provinces, and presumes that Atticus had candidates to recommend.<sup>26</sup> In a letter of July of the same year, Cicero mentions prefects again and tells Atticus do to as he pleases.<sup>27</sup>

There were checks on the powers of a provincial governor in the form of general senatorial supervision, charters of cities, and the threat of prosecution for crimes at Rome; nevertheless, the system of provincial government was flexible and an official had very wide discretion. This meant that his actions were acceptable so long as they could be tolerated by public opinion and the governor's own conscience and regard for his *existimatio*, his reputation for integrity and clemency.<sup>28</sup> Although select individuals might benefit from provincial corruption, it was important for the Roman state as a whole to punish abuses. It would be harmful to the stability of the empire and the consensus that Rome ought to rule if the authorities were perceived as ordering or condoning abuse. Cicero is eager to deprive Verres – and anyone else who might be listening – of the notion that plundering the province of Sicily was what the senate and people of Rome had intended him to do: *quasi vero aut populus Romanus hoc voluerit aut senatus tibi hoc mandaverit* (*In Verrem* 2.48). Cotton suggests that conspicuous abuses may have eclipsed what was in fact a regular practice in provincial administration. Without this practice of exchanging favors and recommendations, governors would have lacked the

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<sup>26</sup> D. R. Shackleton-Bailey, ed., *Cicero's Letters to Atticus*, volume 3 (Cambridge University Press, 1968), 200.

<sup>27</sup> D.R. Shackleton-Bailey, *Cicero's Letters to Atticus*, vol. 3, 208 notes that the prefects of *Ad Att.* 5.11 need not be the same as those of *Ad Att.* 5.4 and 5.7.

<sup>28</sup> Cotton, "Letters of Recommendation," 452.

necessary machinery for accomplishing various judicial and administrative responsibilities.<sup>29</sup> Governors and magistrates received *mandata* from the senate regarding their official duties and responsibilities, but often from their friends and associates as well concerning personal favors that fell within their jurisdiction. Trust, integrity and diligence were essential to both situations, and the reciprocal relationships that arose were an integral part of Roman social, political and administrative life.

### ***Mandata and Diplomacy***

All of the 1<sup>st</sup> century BC authors discussed herein<sup>30</sup> used *mandata* for communications carried out through envoys. In these contexts the bond of trust is two-fold: firstly, the envoys themselves are entrusted with the responsibility of conveying a message and negotiating terms on behalf of their people or government; secondly, the negotiating parties must trust each other to treat honestly and to abide by the terms of their agreement. The same language that is used between personal friends at Rome appears in discussions between rival politicians during the civil wars, as well as diplomatic relations with foreigners.

In his letters to Atticus (esp. 7.16) in the days leading up to the outbreak of the civil war, Cicero seems resigned to the fact that most of the demands contained in Caesar's *mandata* are likely to be granted, though he finds them impudent (*impudentissime*) and laments the loss of dignity to the state. Nonetheless Cicero

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<sup>29</sup> Cotton, "Letters of Recommendation," 450-1.

<sup>30</sup> *I.e.*, Cicero, Caesar, Sallust and Livy.

remained largely inactive in the dispute at this stage, a fact for which Caesar was apparently grateful (*Ad Att.* 8.11). Cicero seems to have learned his lesson from his experiences with Caesar, judging by his markedly negative response to Antony's actions after Caesar's death, as evidenced by his *Philippics*. Where Cicero was merely dissatisfied with the results of the negotiations with Caesar, who had not commenced outright hostilities at that point, he outright condemned the notion of negotiating at all with Antony after he had raised arms against a Roman army. In one speech he cautions that no matter how stern the mandates given to the envoys (*severa legatis mandata*) are, the very name of envoys (*nomen ipsum legatorum*) will weaken the resolve of the Roman people against Antony (*Phil.* 5.25). Echoing Pompey's earlier sentiment that to send a delegation implies weakness,<sup>31</sup> he warns that sending an embassy unsolicited is a mark of fear (*Phil.* 5.26). Because Antony has become a public enemy and raised arms against Roman citizens, it is no longer appropriate to use the language of diplomacy and friendship in dealings with him. Cicero would not have this be an embassy (*legatio*), but rather a declaration of war (*denuntiatio belli*) if Antony does not submit to the senate and people of Rome (*Phil.* 6.4). In Cicero's view, Antony has degraded his status as an elite Roman citizen and descended to the level of a foreign gladiator, *myrmillone Asiatico*, who has no understanding or respect for traditional Roman morality (*Phil.* 6.10). Negotiating peace terms with a real enemy, like the Carthaginians, would be warranted

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<sup>31</sup> Caesar *BC* 1.32.

(*Phil.* 5.27), but asking a fellow citizen to cease being an enemy and making war on his own people is redundant.

### **Conclusion**

Plautus showed how failing a friend could damage a friendship, and the law set a severe penalty for betrayal of a contract, but what Cicero illustrates is that politics and public life followed the same dynamics as private life, and individuals had to be able to respond to the potentially simultaneous and conflicting demands of each. The struggle, which is apparent from Cicero's writings, to satisfy both personal and civic obligations demonstrates that private and public relationships made similar claims on an individual's honor, loyalty, and resources. Understanding Roman society in this way can help explain the apparent inconsistencies and contradictions in their behavior.

### CHAPTER 3: *Mandata* and *mandare* in Late Republican Authors

The works of 1<sup>st</sup> century BC historians differed from those of Cicero in genre, but also in style and scope. Caesar's commentaries deal with his exploits from the beginning of his proconsulship in Gaul in 58 BC to the end of the civil war in 45 BC. Sallust was a generation younger than Caesar and his surviving works, the *Bellum Catilinae* and the *Bellum Jugurthinum*, are brief monographs on the Catilinarian conspiracy of 63 BC and the Jugurthine War of 112 BC. Livy was younger than both men, and survived into the first century AD, living through the changes that occurred under Augustus. His task was more ambitious: *Ab Urbe Condita* was meant to be a history of Rome from its earliest beginnings to his own time, although the sections from the early first century BC onwards do not survive. All of these authors, however, display a similar usage of the terms *mandata* and *mandare* and have a shared concept of the underlying values. Furthermore, in diplomatic contexts, the structure and tone of their *mandata* are consistent enough to constitute a genre.

#### Caesar

##### Diplomacy

The vast majority of occurrences of the word *mandata* in Caesar's *Commentarii de Bello Civili* relate to negotiations between himself and Pompey being carried out through various messengers. Looking at *mandata* in the sense of messages complicates matters. The term is common both in personal letters between friends and in official communications from the senate, and there is usually no attempt to distinguish them. This is not all that surprising given that our evidence is limited to the writings of the elite

whose private and public dealings were often one and the same. In addition, there is confusion between the medium and the message. On the one hand, there was a relationship of trust between the mandator and his addressee; on the other hand, the originator of the communiqué was placing a great deal of trust in the messenger, particularly if it was a spoken message. Sometimes a messenger was just a messenger, he could be a slave or a freedman or a friend simply delivering a written letter or spoken message. There was a certain amount of trust involved in this relationship – one would tend to employ the more reliable couriers more often – but there was not the sense of obligation or honor that seems to be associated with *mandata*. The choice of mediator is a subject that comes up often when Caesar talks about *mandata*.

Early on in Caesar's dispute with Pompey and the senate, while he is at Ariminum, Lucius Caesar arrived on some unspecified task and revealed to Caesar that he had *privati officii mandata* from Pompey (Caesar *BC* 1.8); what followed was presented in indirect discourse. Pompey wished to explain himself as acting for the state, which he had always considered more important than his private interests, and reminded Caesar of his duty to behave likewise. Switching back to direct discourse, Caesar reports that Lucius and the praetor Roscius added more along the same lines as what Pompey had said. In the next section (*BC* 1.9) Caesar notes that none of this had anything to do with redressing his grievances, but that he sent the two men back to Pompey anyway with his own demands (*postulata*). These included Pompey departing for Spain, a complete demobilization of troops in Italy, and free elections, along with a request that they should meet to settle the terms and ratify them with an oath. Caesar relates the outcome at *BC* 1.10:

*Acceptis **mandatis**, Roscius cum Caesare Capuam pervenit ibique consules Pompeiumque invenit; postulata Caesaris renuntiat. Illi deliberata re respondent **scripta**que ad eum **mandata** per eos remittent, quorum haec erat summa: Caesar in Galliam reverteretur, Arimino excederet, exercitus dimitteret; quae si fecisset, Pompeium in Hispanias iturum. Interea, quoad fides esset data Caesarem facturum quae polliceretur, non intermissuros consules Pompeiumque dilectus.*

Taking this **message**, and accompanied by Lucius Caesar, Roscius reached Capua and there found the consuls and Pompey; he reported Caesar's demands. After considering the matter, they responded and sent back with Roscius and Caesar a **written message**, which in brief was this: Caesar was to return to Gaul, withdraw from Ariminum, and disband his armies; if he did this, Pompey would go to Spain. In the meantime, until guarantees had been given that Caesar would do what he promised, the consuls and Pompey would not stop levying troops.<sup>1</sup>

Is there any significance to the addition of '*scripta*'?<sup>2</sup> While the language of the earlier exchange suggests a private negotiation between Caesar and Pompey, this particular message came from the consuls, acting on behalf of the senate and people of Rome; perhaps their intent was to emphasize the official nature of their message and thereby his obligation to obey it. There is support for this view in a passage from Livy (*AUC* 39.33). The Achaean League defended their decision to refuse a Roman envoy an audience with their council by citing one of their laws whereby the council could only be summoned on questions of peace or war, or when delegates came from the Roman senate bearing dispatches or written instructions (*litteris aut scriptis mandatis*). The Roman senate does not accept this justification, countering that the Achaeans always had a duty to grant Roman envoys an audience, whether they bore written messages or not, since the

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<sup>1</sup> Trans. J. M. Carter.

<sup>2</sup> On the question of oral versus written *mandata*, see the section on Sallust below.

senate did so for the Achaeans in turn. This passage shows that there was room for ambivalence in the absence of written communication. The senate expected their authority to be obeyed at all times, but written orders ensured that there was no room for interpretation or evasion.

Cicero provides an account of the exchange of *mandata* between Caesar and Pompey in his *Letters to Atticus* (*Ad Att.* 7.14, 16, 17, 18). The difficulty of translating a word like *mandata* becomes clear in the 1913 Loeb edition of Cicero's *Letters to Atticus* where Winstedt uses 'ultimatum' in reference to the communiqués between Caesar and Pompey sent via Lucius Caesar in 7.14, 7.16 and 7.17, but then switches to 'negotiations' in 7.18 when it is followed by *de pace*. Whatever the reality of the situation, 'ultimatum' is too strong a term for the language that Cicero is using. 'Negotiation' gives a better idea of the task that may be required of an intermediary or the pleas and justifications contained in *mandata*, but it will not work in every context. Shuckburgh's 1900 translation translates these four occurrences consistently as 'messages' and this is a very common rendering of *mandata* in this type of exchange across many Latin texts. 'Messages' does a satisfactory job of making sense out of the text but it is a rather neutral term that lacks the social implications of *mandata*.

At one point in *de Bello Civili* (1.32) Caesar relates a remark that Pompey had earlier made in the senate, "that to receive a delegation implied authority, and to send it, fear."<sup>3</sup> Caesar dismisses this as the sentiment of a weak and shallow spirit; he could

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<sup>3</sup> Trans. J. M. Carter.

hardly agree with the sentiment when he had just suggested sending a delegation to Pompey to arrange a settlement. Pompey himself sent representatives to Caesar early on (BC 1.8), although this correspondence through Roscius and Lucius Caesar is described as *privati officii mandata*, implying that it was somehow meant to be different from an official delegation. Sending a delegation could be a sign of impending defeat or surrender, but in the absence of open hostilities or an obvious imbalance of power it was simply a conversation between friends, who were supposed to be able to rely on each other for favors. Communication is a running theme in *de Bello Civili*. As Caesar reports it, the entire time he was gathering and maneuvering his troops he was also sending letters and *mandata* to Pompey and his allies through various intermediaries, and insisting that he and Pompey should meet face to face to settle their differences. Caesar is reluctant to openly express hostility towards someone with whom he had previously enjoyed amicable relations, even against the background of armed conflict.<sup>4</sup>

After the exchange of *mandata* at BC 1.8-10 Caesar expresses his disappointment with the senate's terms, and especially with Pompey's lack of an offer to hold a conference with Caesar. Caesar interprets this as a sign that there is no hope for peace and so he prepares for war, having neatly put the blame on his opponents for forcing his hand when he was willing to negotiate. When one of Pompey's officers is captured Caesar sends him back to Pompey *cum mandatis*, again pressing for a meeting, since the

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<sup>4</sup> Brunt, "Amicitia," 12.

same results could not be expected from negotiations at a distance through others as when they could discuss everything face to face (*BC* 1.24).

Yet again, when another of Pompey's officers falls into Caesar's hands, he is sent back *cum mandatis* to Pompey; Caesar summarizes the contents at *BC* 3.10. He argues that they both have a duty to end hostilities, that they have both suffered losses and will likely suffer more; since they could not come to terms they should submit the dispute to the senate and people of Rome, in the meantime taking an oath in a public assembly that they would both disband their forces. Meanwhile Caesar continues to march his troops toward Pompey's position, and Vibullius Rufus rushes to Pompey's side no less to deliver Caesar's message than to warn of his advance. Caesar often expresses concern over the choice of mediator. He chooses men that are both close at hand but also considers their integrity, describing both Lucius Caesar and Roscius (*BC* 1.9) and Vibullius Rufus (*BC* 3.10) with the adjective *idoneus*, or 'suitable'. Vibullius is also a good candidate because he has received *beneficia* from Caesar, and thus owes him, and also has *auctoritas* in Pompey's estimation and thus influence over him. Later, Caesar sends Clodius to Scipio with *litteras mandataque* because he is a *familiaris* of both (*BC* 3.57). Caesar again includes a summary of the contents in indirect speech, complaining "that he had made every effort toward peace, and imputed the ill success of these efforts to the fault (*vitio*) of those whom he had employed to conduct those negotiations; because they were afraid to carry his proposals (*mandata*) to Pompey at an improper time."<sup>5</sup> On

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<sup>5</sup> Trans. W. A. McDevitte and W. S. Bohn.

the whole, Caesar presents himself as having made every effort to negotiate and compromise, leaving the responsibility for ongoing hostilities with his obstinate opponents and ineffectual mediators. Modern readers might be skeptical of Caesar's sincerity in these attempts at reconciliation and clearly Pompey was, but, as Brunt has observed, a lack of sincerity did not mean that outward courtesies were abandoned.<sup>6</sup>

Evidence from the *de Bello Gallico* shows that *mandata* in a diplomatic context followed a general formula. Concerning an embassy to the German leader Ariovistus, Caesar sends legates *cum mandatis* (BG 1.35). He begins by reminding Ariovistus of the benefits he has received from both Caesar and the Roman people, and chides him for refusing to have a conference to discuss important matters. Caesar then makes demands concerning troops, hostages and hostilities against Roman allies, adding that Ariovistus would enjoy the perpetual goodwill and friendship (*perpetuam gratiam atque amicitiam*) of the Roman people if he complied, but that Caesar would protect Roman allies if Ariovistus refused. Caesar then reports Ariovistus' reply, which follows a similar format: he claims his actions are justified, counters with terms of his own, and warns of the consequences should Caesar provoke him (BG 1.36). The two men elaborate on these same arguments when they later meet (BG 1.43-44). In this case there is no clear winner in the argument as both men make good points. Caesar also portrays the Gallic leader Vercingetorix communicating with his allies in this way. Besieged by Caesar's forces, Vercingetorix instructs (*mandat*) his cavalry to return to their own countries and bring

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<sup>6</sup> Brunt, "Amicitia," 7.

more fighting men. His *mandata* also include a reminder of everything he had done for the cause of common liberty and a plea that they not abandon him and his men to the enemy (*BG* 7.71). He is taking a great risk by letting them go and trusting that they will return; his life rests on their sense of honor and loyalty.

### **Sallust**

Sallust provides the fewest examples of *mandata* or *mandare* among the authors of the late 1<sup>st</sup> century BC, but this is to be expected since the amount of text that survives is proportionately less than that of Caesar, Cicero or Livy. Despite the limited occurrences in the *Bellum Catilinae* and the *Bellum Jugurthinum*, however, Sallust still covers the range of uses that appear in the other authors. He uses *mandare* twice in the sense of bestowing the consulship (*BC* 23; *BJ* 73), and *mandata* three times in a diplomatic context (*BC* 32 (33); *BJ* 103, 104). The other five examples involve tasks of some sort, ranging from the distribution of villainous duties among the Catilinarian conspirators (*BC* 32, 44) and murders on behalf of King Jugurtha (*BJ* 12, 35), to the pursuit of enemy soldiers (*BJ* 58), and a reference to what seem to be politically motivated favors in the *Fragmenta Historiarum* (14). That all of these cases are covered by so few examples testifies to the fact that the values governing private and personal behavior were inseparable and at times indistinguishable from those governing public, official relations.

#### **Diplomacy: Manlius' *mandata***

Section 33 of Sallust's *Bellum Catilinae* is a communication from Manlius, the leader of a rebel army, to Marcius Rex, a Roman commander, via legates. Sallust presents

the message using first-person plurals in direct discourse, and introduces it in section 32 with *C. Manlius ex suo numero legatos ad Marcium Regem mittit cum **mandatis** huiusce modi*. Kathryn Williams has analyzed this passage in detail, arguing that Sallust has presented this passage as a speech rather than a letter, and discusses the ramifications of this.<sup>7</sup> As part of her investigation she looked at examples of *mandata* in the works of Sallust, Caesar, Cicero and Livy and concluded that these authors used the term *mandata* far more frequently to refer to spoken communication than to written. A deeper analysis of Sallust's style led her to conclude that the *mandata* presented in *BC* 33 has more in common with the speeches in his works than any letters he included. As a result, she argues, Manlius' *mandata* must be viewed as a Sallustian creation and cannot be scrutinized for historical evidence by scholars looking to make sense of the Catilinarian conspiracy.<sup>8</sup> Williams makes a good argument but falls short of disproving the possibility that Manlius' *mandata* could have existed in written form at some stage. In private contexts *mandata* could be arranged in person through a verbal agreement or from a distance via letter or representative. As discussed in chapter one, there was no specific formula or document required to make the deal legally valid, only the consent of both parties, which need not even be positively expressed. If neither the law nor circumstances required a written record, to insist on one might be perceived as an insult in a society as conscious of personal honor as Rome was. The complexity and importance of tasks in

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<sup>7</sup> K. Williams, "Manlius' Mandata," 160-171.

<sup>8</sup> *Ibid.*, 166.

public or official settings might warrant written *mandata*, but this was by no means the rule in the late Republic.

In diplomatic settings – which are the focus of Williams’ inquiry – each side would have certain priorities outlined in their *mandata*, written or not, and they would instruct their envoys accordingly, but the presentation and negotiation of terms was often at the discretion of the envoys. The importance of envoys was their ability to persuade and negotiate acceptable terms on issues that fell within the scope of their *mandata*. This would usually involve speeches from (perhaps multiple) individuals on both sides and would be far too much material to include in a historical narrative. Summarizing the key points was economical but it was also a stylistic choice that allowed the author to play with voice, tone and rhetorical effect within his composition. Williams points to Sallust’s introductory phrase *huiusce modi* as evidence that *BC* 33 is a speech (since Sallust never uses this formula to introduce letters in his texts, although there are not very many letters to begin with),<sup>9</sup> but the use of this phrase goes beyond a simple oral-written distinction to cover instances where an author is summarizing or paraphrasing a source – whether oral or written – rather than quoting verbatim. Caesar does something similar at *BC* 1.10, using *quorum haec erat summa* to introduce the contents of the senate’s *mandata*, which he specifically describes as *scripta*. He had a written copy at his disposal, but simply

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<sup>9</sup> K. Williams, “Manlius’ Mandata,” 163.

chose not to include it, probably for reasons of length. At any rate, the full text was available to those who were interested.<sup>10</sup>

When it comes to *mandata* of a diplomatic nature, the content and goals define the type more than the medium. The content of Manlius' *mandata* includes the rebels' justification for taking up arms, appeals to past conflicts between the senate and the commons and their resolutions, and a plea to remedy the injustices they claim to have suffered. This parallels *mandata* found in similar situations in Caesar, Cicero and Livy. I agree with K. Williams when she suggests that Manlius' message may be formulaic in the same way as pre-battle speeches in ancient historiography. She goes on to note the similarities between Manlius' *mandata* and an exchange between Sulla and Bocchus in Sallust's *Bellum Jugurthinum* (102.12-14).<sup>11</sup> Sallust does not identify this particular passage with any reference to *mandata*, but the word appears twice in the following sections (103-104) in the context of continued negotiations through Bocchus' envoys, and it need not be assumed that authors used the word *mandata* every time they included them in their texts.

The goal of diplomatic *mandata* was to build, reinforce or restore a sense of trust among parties that were engaged in or near to conflict, that is, both enemies and allies. The recollection of a long-standing friendship, assurances of goodwill, explanation of perceived wrongs, and promises of future aid or obedience were standard features. These

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<sup>10</sup> As Cicero informs us (*Ad Att.* 7.17), Pompey intended this message for publication, so there would have been copies available.

<sup>11</sup> K. Williams, "Manlius' Mandata," 167.

principles were also those of exchanges between friends and fellow citizens, as outlined above.

### **Personal Favors: For Better or For Worse**

Some of the key figures in Sallust's narratives rather paradoxically uphold the values inherent in *mandata* while engaging in illegal and immoral activities. In his account of the Catilinarian conspiracy Sallust reports that Lentulus gave Volturcius a letter for Catiline along with a verbal message, *mandata verbis* (BC 44), both of which Sallust includes in his text. Williams takes this as further proof that *mandata* are typically spoken,<sup>12</sup> but I would argue that there are other, more important differences between the two messages. The letter is admonitory and cautious, Lentulus urges Catiline to seek help even from the lowest, *infumis*. In the *mandata* Lentulus not only includes details that would be dangerous to put in writing, specifying that Catiline should seek help from slaves, *servitia*, but also reminds Catiline that he has a responsibility to follow through with his plan, since his collaborators had done their part in making preparations as he had ordered. At BC 32 Sallust writes that Catiline had commissioned (*mandat*) Lentulus and others to do various tasks, including plotting against the consul and preparing for murder and arson. Secrecy is the reason for Lentulus' verbal addition, what distinguishes the *mandata* from the *litterae* is the appeal to their mutual obligations.

There is a similar example in Livy. While advising the Seleucid king Antiochus III in his war with Rome, the exiled Hannibal sought to gain the support of his

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<sup>12</sup> K. Williams, "Manlius' Mandata," 162.

countrymen but would not risk sending written communications lest they be intercepted and his plans revealed (Livy, *AUC* 34.61). Instead, he sent a Tyrian servant to Carthage with *mandata*, inducing him with bribes and promises, and gave him secret signs by which Hannibal's friends might know they were indeed his *mandata*. When Hannibal's enemies in Carthage detected these machinations the servant Aristo defended himself before the senate by citing the absence of any written evidence. Before quietly departing, Aristo left a message claiming that his *mandata* were not meant for private citizens, but publicly addressed to the senate, thus alleviating suspicion of those he had personally spoken with. What threatened the Carthaginian authorities was not simply the fact that Hannibal was communicating with individuals at home, but that he was appealing to his personal relations to realize his own agenda, which was contrary to that of the state.

Sallust too applies Roman social values to his depictions of foreigners. A Numidian named Bomilcar was executing the *mandata* of his king Jugurtha when he arranged the murder of a rival while in Rome. The Romans put Bomilcar on trial when they discovered the crime, and although Jugurtha protected his agent and denied the crime at first, he soon realized that it would be best for both of them to leave Rome. His reasoning was that if Bomilcar suffered the penalty – and it seemed likely that he would – the rest of his subjects would be afraid to follow his orders in the future (*BJ* 35). Jugurtha's actions were motivated more by expediency than friendly concern, but they exhibit the principle found in the legal codes that the mandatary ought not to suffer as a result of undertaking the task.

## Livy

### Diplomacy

Livy's usage of *mandata* and *mandare* is fairly consistent with that of the authors discussed above. The historical scope and annalistic style of *Ab Urbe Condita*, however, means a greater frequency of the terms in association with public offices or tasks and the conduct of diplomacy. The Roman senate was often very specific about the authority and tasks given to envoys, and Livy occasionally summarizes the *mandata*. The same delegation has *mandata* for two parties at *AUC* 31.11: they are to inform the Carthaginians that continued peace relies on their recall and surrender of the troublesome Hamilcar, and their arrest of deserters in accordance with the treaty; their second task is to congratulate Masinissa on regaining his throne, and to request his assistance in the war against Philip V of Macedon. The implications for each are that continued friendly relations with Rome are contingent upon their positive response to these requests.

Rome's hostility toward Philip arose when he sought an alliance with Carthage in 215 BC after witnessing Hannibal's success in Italy. When Roman forces intercepted Philip's delegation, their leader improvised, claiming that he was bringing his *mandata* to the consuls and senate and people of Rome. Thanks to his shrewdness the envoys were able to pass safely through Italy until they reached Hannibal's camp and arranged a treaty (Livy, *AUC* 23.33). The envoys were not so lucky on the return voyage, however, when the Romans detained one of their ships and arrested everyone when they discovered the Carthaginian agents on board (Livy, *AUC* 23.34). One ship did manage to make it back to Philip only to reveal that his agents and his letters had been seized. At a loss as to what

agreements had been made or what proposals Hannibal had sent, Philip dispatched a second embassy with the same instructions, *cum eisdem mandatis* (Livy, *AUC* 23.39). This episode illustrates well the importance of sending reliable and intelligent envoys on sensitive tasks, along with the risks facing envoys in times of war. It also shows Livy applying Roman language to the behaviors of non-Roman peoples, who might have different ways of conceptualizing their relationships that do not make use of the language of friendship, but Livy uses what he knows.

Even if envoys were sent with written or very specific *mandata*, they would more than likely be expected to speak publicly on the matter in question. Their ability to persuade was dependent on their effectiveness in speaking and the quality of their arguments. Although the envoys from the Greek allies filled most of their address with attacks on Philip at *AUC* 32.37, what weighed most with the senate, as Livy reports, was their account of the geographical features of the region that contributed to the strength of Philip's position. The king's envoys then began a lengthy address, until they were interrupted by a question about Philip's willingness to evacuate three particular cities. When the envoys had no response, because their *mandata* did not include anything about these cities, the Romans dismissed them. Sometimes the speeches of envoys might be completely irrelevant to the outcome. At *AUC* 37.45 Livy claims that the Roman authorities in Asia had already decided what reply would be given to the envoys of Antiochus before they even came. In this case Antiochus was well aware of the weakness of his position, and had mandated his envoys to accept any peace terms. It is remarkable that even when such interactions were negotiations in name only, both parties still

observed the formalities of diplomacy and Livy still uses *mandata* to denote their policies.

### Conflicts of Interest

At *AUC* 39.5 Livy includes a speech from a senate meeting that explicitly addresses the potential for conflict between personal and public obligations. The passage echoes Cicero's sentiments that the interests of the state ought to come before private interests. It is all the more pertinent because it features not merely a regular citizen, but a publicly elected magistrate. Since it brings together so many of the themes and concepts discussed thus far, it seems an appropriate passage on which to end this chapter.

On his return from Aetolia the victorious M. Fulvius asked the senate to decree a triumph in his honor, but his rival, the absent consul M. Aemilius, had entrusted a tribune, M. Albutius, to use his veto to delay a vote on any such motion until Aemilius could return and speak against it. The entire senate sided with Fulvius, but was powerless against a tribune's veto; only the exhortations of his fellow tribune Tiberius Gracchus could persuade Albutius to withdraw his veto. Gracchus puts his colleague to shame with his speech, of which the following is a part:

*... adstipularique irato consuli tribunum plebei; et quid priuatim M. Aemilius mandauerit, meminisse, tribunatum sibi a populo Romano **mandatum** obliuisci, et **mandatum** pro auxilio ac libertate priuatorum, non pro consulari regno. ne hoc quidem cernere eum, fore ut memoriae ac posteritati **mandetur** eiusdem collegii alterum e duobus tribunis plebis suas inimicitias remisisse rei publicae, alterum alienas et **mandatas** exercuisse.*

A tribune who becomes the tool of an angry consul and is careful to remember what M. Aemilius **entrusted** to him privately, forgets that the tribuneship was **entrusted** to him publicly by the people of Rome, and **entrusted** to him for the protection and liberty of private citizens, not for the defense of an autocratic consul. Albutius does not see that it will **go down** to posterity that of two

members of the same college of tribunes one subordinated his private quarrels to the interests of the State, the other took up a quarrel which was not even a private one, but was **entrusted** to him by some one else.<sup>13</sup>

The correlation of public and private obligations and the priority each ought to hold in the life of a Roman citizen could not be clearer than in this passage, where some form of *mandare* or *mandata* appears no fewer than five times. Albutius cannot possibly satisfy both his personal and public obligations, and he errs in putting the needs of a friend before the dignity of the office he holds—or, perhaps more accurately, he errs in revealing his true motivations, which are not even his own. Aemilius ought not to have even asked such a favor of the tribune; he argues that Fulvius will lose nothing from delay, without considering what it costs the people to lose a tribune to the whim of a consul. To do so openly compounds the insult. This is not just a matter of using one's personal affiliations to sway opinion and gain votes; Albutius is actually preventing a vote from taking place by means of the authority of his office. His actions cross a line, betray a trust, and Gracchus is quick to point out that Albutius' actions will be remembered forever. Those present in the senate house will remember his actions, and Livy ensures that future generations will possess this example by committing it to writing. By trying to honor his agreement with the consul, the tribune dishonored himself and his office.

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<sup>13</sup> Livy *AUC* 39.5 (trans. Rev. Canon Roberts).

## Conclusion

Due to the differences in style and subject of the various authors, it is difficult to draw any conclusions about the development of the usage of *mandata* and *mandare* as terms over time— if indeed there was any development throughout this period. Caesar's commentaries are loaded with diplomatic *mandata* because his exploits involved dealing with foreign peoples and negotiating at a distance with his own. Sallust's surviving works comprise much less text than those of Cicero, Caesar or Livy, and his style is more literary, but he still includes all of the uses of *mandata* and *mandare* that appear in the others. Livy's annalistic narrative covers hundreds of years of Roman history with a focus on politics and empire, so he tends to use *mandare* with respect to public offices and international diplomacy. In diplomatic contexts there is a similarity of structure and tone to the *mandata* that are summarized in the historical texts; they are consistent enough that they could be regarded as a genre. In the imperial era a parallel standardization arose with respect to the *mandata* given to public officials, and this will be the primary focus of chapter four.

#### CHAPTER 4: Authors and *mandata* of the Imperial Era

For this chapter I have confined my choice of authors to Suetonius, Tacitus, and Pliny the Younger for a number of reasons. Pliny's correspondence parallels that of Cicero in many ways, providing insight into both everyday life as well as politics and provincial administration. Between Suetonius and Tacitus there survives a body of text that is comparable in scope and style to the writings of the historians covered in chapter three. Together, these authors supply a significant amount of Latin prose and abundant examples of the use of *mandata* and *mandare*. Suetonius was of equestrian rank, and his *De Vita Caesarum* survives as a twelve part biographical survey, beginning with Julius Caesar and covering all of the emperors up to Domitian. His slightly older contemporary Tacitus, a senator, tasked himself with composing a historical account of the same period in the *Annales* and the *Historiae*, though only parts of these works survive. Pliny the Younger knew both of these men personally, and he is best known for his published correspondence, the *Epistulae*. All three authors continued to use *mandare* and *mandata* in ways similar to the authors of the Republican period when dealing with diplomatic situations and personal dealings, but the position of the emperor atop the social and political hierarchy changed the way the Romans thought of and wrote about *mandata* when they originated from him. *Mandata* appeared more frequently in written form and took on a special significance for provincial and imperial administration. Book Ten of Pliny's *Epistulae* was devoted to his correspondence with the emperor Trajan during his governorship of Bithynia and Pontus, and frequently features exchanges between the two men regarding specific policies in imperial *mandata*. Occasionally, governors chose to

publish certain sections of their *mandata* from the emperor, and some remnants of these survive in the form of inscriptions. These sources reveal changes in the conventions and perceptions of *mandata* that occurred in response to the new realities of a growing population that was now under the authority of a single individual.

### Suetonius

Throughout his work, Suetonius used a form of the verb *mandare* or its participle twenty-five times. These instances often had similar contexts to those described in earlier chapters, including giving orders, entrusting administrative officials and military commanders with various tasks, and seeing to funeral arrangements. There are also examples like those from Cicero and Livy of people being entrusted to the care of another party, or of events being entrusted to memory; recall the episodes where Tiberius and Caligula were sent to nearby towns for safekeeping in troubled times (*Tib.* 6; *Cal.* 9), or when Nero turned over his mistress Poppaea Sabina to Otho's care (*Otho* 3). And at *Caligula* 8, Suetonius used *mandare* to refer to historians who entrusted the affairs of Augustus to memory, *qui res Augusti memoriae mandarunt* (*Cal.*8). There was nothing new or exceptional about these occurrences to distinguish them from usage patterns in earlier authors.

Likewise, Suetonius followed his predecessors in his use of the noun *mandata* in diplomatic settings. In an example from the *Life of Tiberius* he described Parthian envoys delivering *mandata* to Augustus in Rome and then to Tiberius in Germany (*Tib.* 16). There is no indication in the text of whether the envoys' messages were oral or written, or how much authority they had to negotiate. Regardless, like anyone who undertook a task

on behalf of another, they had an obligation to follow the spirit, if not the letter, of their instructions. Suetonius also used *mandata* for negotiations between Romans, just as Caesar did in *De Bello Civili*; in the *Life of Galba* he reported that envoys brought *mandata* from the disgruntled army of Upper Germany to the Praetorians in Rome demanding an alternative to Galba as emperor (*Galba* 16). The soldiers were not the only ones who disliked Galba.

### **Murderous *Mandata***

On two occasions in the *De Vita Caesarum* Suetonius employs the noun *mandata* to refer to alleged communications between the emperor and a subordinate concerning murder. In the *Life of Galba* (9), Suetonius reports that one factor influencing Galba's decision to pursue imperial power was that he intercepted (*deprenderat*) secret *mandata* from Nero to his *procurators* ordering Galba's death. This seems to indicate that he gained possession of written orders, or else that he had witnesses who testified to the fact, though in that case one might expect a mention of messengers or captives. In an earlier example at *Tiberius* 52, Suetonius reports the rumor that Tiberius had had a hand in the death of Germanicus and that Piso, the governor of Syria who was charged with the murder, had threatened to reveal his *mandata* from Tiberius as proof of the emperor's involvement. Unfortunately the text is corrupt at this point, and we have no way of knowing whether this claim is true, although Tacitus repeats the rumor at *Annales* 3.16.

The importance of these passages rests on the use of the *mandata* as documentation of the emperor's instructions to his *legatus* to commit an immoral deed. Both legal and philosophical sources tell us that *mandata* ought not to require any

immoral or illegal activities,<sup>1</sup> and even though friends could sometimes push the boundaries of what was socially acceptable—as we saw with Cicero and Brutus, there are few examples in the Republican authors of such blatantly inappropriate mandates. Only Sallust offers something similar in his account of the Numidian king Jugurtha commissioning the murders of his brother Hiempsal (*BJ* 12) and a rival, Massiva (*BJ* 35). Significantly, lavish bribes and promises were necessary to motivate his agents, contrary to the ideal of gratuitous *mandata*. Jugurtha, however, was a foreigner and suffered the backlash of an outraged Roman populace; for Suetonius to depict Romans – let alone emperors – commissioning murders and leaving written evidence behind is a significant development. Suetonius was certainly among those who attributed Nero’s demise to his corrupt behavior, and one wonders what would have happened if evidence of Tiberius’ guilt had come to light. In a curious incident from when Augustus was still alive, Tiberius was suspected of sending *mandata* of an ambiguous nature to several unspecified persons via his centurions, with the supposed intention of inciting a revolt (*Tib.* 12). When Augustus informed him of this suspicion, Tiberius denied any ill will and requested that someone be appointed to oversee his words and actions. In a society where so much rested on reputation and honor, everyone was subject to scrutiny, and those in positions of power most of all. The potential for them to bend or disregard the traditional conventions of *mandata* was obviously a point of concern.

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<sup>1</sup> *D.* 17.1.22.6; Cicero *de Amicitia* 40: “Therefore let us enact this law concerning friendship (*amicitia*), that we should not ask disgraceful (*turpes*) things, nor do them if asked” (trans. J. G. F. Powell).

Tacitus also highlights some of the moral issues associated with *mandata* from the emperor. In the first Senate meeting after the death of Augustus one Messala Valerius proposed an annual oath of allegiance to Tiberius, and confirmed that he did so not at Tiberius' own bidding, using the word *mandante* (*Ann.* 1.8). This calls to mind the episode in Livy where a tribune used his veto at the behest of a consul (*AUC* 39.5), and the uproar this caused in the senate. The Romans were always anxious to prevent abuses of power, and this became all the more important under the empire when so much power was concentrated in the person of the emperor.

Later at *Annales* 2.71, a dying Germanicus urges his friends to avenge him, declaring that men will neither believe nor forgive those who stand behind *scelesta mandata*. He is referring to the alleged *mandata* from Tiberius to Piso that is also mentioned in Suetonius. For Germanicus, and perhaps Tacitus as well, even the emperor's orders were not sufficient justification for carrying out ignoble deeds. These sentiments evident in the authors writing in the late 1<sup>st</sup> and early 2<sup>nd</sup> centuries AD were more than likely related to the legacy of Domitian's tyranny. Pliny's *Panegyricus* to Trajan is full of hope that he will be a better emperor than his predecessors, and his consultations with Trajan in Book Ten of his *Epistulae* exhibit a determination to govern honestly.

## **Tacitus**

### **Linguistic Choices**

Like Suetonius, when Tacitus described communication via envoys or messengers bearing written letters he consistently used the noun *mandata*. Likewise, his usage of the

verb *mandare* shows the same range of contexts as the other authors. In the *Historiae* Tacitus displays an extraordinary preference for the noun *mandata*, which appears ten times, while the verb appears only twice. Both instances involve an emperor giving very specific instructions concerning singular, one-time tasks (*Hist.* 1.42; 4.51). The *mandata*, on the other hand, are more general in scope yet more complex in implementation, often involving multiple points or instructions. These include imperial *mandata* addressed to governors and other subordinates (e.g. *Hist.* 3.54; 4.48), as well as those of a more diplomatic, negotiation-based nature (e.g. *Hist.* 4.20; 4.84).

### **Diplomacy**

A significant feature the *Historiae* is how often Tacitus quoted or paraphrased diplomatic *mandata*. At *Hist.* 4.64 Tacitus reports the *mandata* of an embassy from the Tencteri, a German tribe, to the Roman colony at Cologne urging them to rebel against Roman rule, tear down their walls, kill any Romans in their territory, and become allies with the Tencteri. One of the delegates relates these demands and the arguments in favor of them in *oratio recta*, using first person plurals and addressing the colonists using second person plurals. The contents of the message and the tone of the appeals are similar those found in Caesar and Sallust. Tacitus introduced the quotation with, *ferocissimus e legatis in hunc modum protulit*. The purpose of the direct presentation seems to have been to emphasize the violence of the delivery and the tension of the scene, rather than reproducing the exact words or ideas expressed. The *in hunc modum* introduction suggests that Tacitus was summarizing what was likely a much longer exchange.

Moreover, this formula echoes the phrases that Caesar (*BC* 1.10: *quorum haec erat summa*) and Sallust (*BC* 32: *huiusce modi*) used to introduce *mandata* in their texts.

On three other occasions Tacitus paraphrased *mandata* using *oratio obliqua*. At *Hist.* 3.70 Vespasian's brother Sabinus sends a centurion to Vitellius with *mandata* and a complaint, ending with a call to battle. At 4.20 the Batavian cohorts send a messenger with their *mandata* to their commander Herennius Gallus demanding release from service, which they warn they will fight for if denied. At *Hist.* 4.32 Tacitus provided the main points of the *mandata* urging Julius Civilis to end hostilities and to cease justifying his actions using the pretext of supporting Vespasian. Tacitus included the information necessary to understand the events, following the pattern of the earlier authors: he identified the parties involved, presented their demands and justifications, and the consequences of granting or denying their requests. One cannot know in these cases how accurately Tacitus' renderings – or those of the other authors – reflect the actual messages, but he does not express doubts or reservations about what he reports, suggesting that he believed these were reasonable, if abbreviated, accounts of events that would satisfy his readers.

### Pliny

Examining Pliny's references to *mandata* in book ten of his *Epistulae* against the background of his usage in Books One to Nine yields some interesting patterns. In the first nine books the word *mandata* appears only twice, whereas the verb *mandare* or its participle appears twelve times. All of these instances typically involve either a personal friend requesting some private favor or a magistrate requesting a public service, usually

from Pliny himself. At 2.18 for example, Pliny is tasked with finding a suitable tutor for the young relatives of his own former mentor Junius Mauricus; and at 7.19 Pliny's friend Fannia is entrusted with the care of an ailing Vestal Virgin, in what was an apparently common arrangement between the cult priestesses and the *matronae* of the community. In *Epistulae* Book Ten, which preserves Pliny's correspondence with Trajan during his governorship of Bithynia-Pontus, the pattern is inverted. The verb appears only twice while the noun is used seven times, and six of these refer to the emperor's *mandata* in the official sense of Pliny's administrative instructions. The seventh involves a private individual acting as a legal advocate for another citizen, essentially speaking on his behalf in the same way that envoys were entrusted with communicating the opinions and wishes of those they represented.

### **Imperial *Mandata* in *Epistulae* Book Ten**

Pliny's correspondence with Trajan is an important source for information on imperial *mandata* because it remains one of the only sources for them. *Mandata* are rare in the epigraphic record because they were private instructions to individual officials informing them of the scope of their authority and did not necessarily contain specific directives of which the public needed to be informed. The existence of *mandata* was certainly public knowledge, as a reference in Lucian's *Pro Lapsu inter salutandam* (2<sup>nd</sup> century AD) to the book of instructions from the emperor shows, but their content need not be. In fact one passage in Tacitus (*Ann.* 2.43) describes Piso's instructions from Tiberius about Germanicus as 'secret' instructions, *occulta mandata*; although, this probably referred to a task separate from his official responsibilities. Antoninus Pius,

when proconsul of Asia (AD 135-6), published a chapter of his *mandata*<sup>2</sup> and presumably other governors occasionally did likewise if they saw a reason to, but it was not required.<sup>3</sup> Other types of imperial pronouncements were far more common in the epigraphic record by virtue of the fact that they dealt with specific matters of direct interest or advantage to the cities or individuals concerned, and it was these parties who took steps to commemorate the decisions.<sup>4</sup> Thus both the private and general nature of *mandata* made them unlikely to appear survive via inscriptions, which is why Pliny, as an actual addressee of imperial *mandata*, is such a valuable source of information.

Whereas imperial edicts, whether containing general rules or more immediate instructions, remained in force after the death of their author or until they were superseded, *mandata* held force only so long as both parties remained in play.<sup>5</sup> This parallels the function of *mandata* under private law. When an emperor died or a governor was replaced new *mandata* had to be issued.<sup>6</sup> This meant that the citizens of each province could be confident that their specific concerns were being reviewed and addressed regularly. Over time and with successive renewals of pre-existing regulations a standing body of instructions was built up, but *mandata* also allowed for the introduction

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<sup>2</sup> D. 48.3.6.1.

<sup>3</sup> Jolowicz and Nicholas, *Study of Roman Law*, 372.

<sup>4</sup> Millar, *Emperor in the Roman World*, 256.

<sup>5</sup> Ibid., 252-3.

<sup>6</sup> Jolowicz and Nicholas, *Study of Roman Law*, 370.

of new measures.<sup>7</sup> Despite the constant renewal and revision of *mandata* there might still be gaps with respect to particular courses of action, whether administrative or military. There would naturally be unforeseeable situations that required consultation with the emperor, but Sherwin-White suggests that the system actually encouraged and, following Vidman,<sup>8</sup> was perhaps meant to encourage periodic consultation with the central authority. If there were doubts over the interpretation of the *mandata*, or if a governor saw a legitimate reason to act contrary to his instructions, he would have to consult the emperor.<sup>9</sup> Several examples from Pliny illustrate this process.

In *Epistula* 10.56 Pliny seeks Trajan's advice on cases involving individuals who had been banished by previous governors and yet remained in the province. In his *mandata* Trajan had instructed Pliny not to restore anyone that had been banished by Pliny or anyone else. In one case the proconsul P. Servilius Calvus had banished certain individuals and then later restored them, indicating that, while Pliny was forbidden, earlier governors had had the authority to reverse such decisions. In the second case the banished individual had remained in the province on the grounds that all of the decisions of the governor Julius Bassus had been revoked and reopened by the Senate after his conviction for corruption. In his reply (10.57), Trajan writes that he will decide the first

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<sup>7</sup> Jolowicz and Nicholas, *Study of Roman Law*, 370.

<sup>8</sup> L. Vidman, "Die Mission Plinius' des Jüngerer in Bithynien," *Klio* 37 (1959): 217-225.

<sup>9</sup> A. N. Sherwin-White, *The Letters of Pliny: A Historical and Social Commentary* (Clarendon Press, 1966), 547.

matter after discussing with Calvus the reasons for reversing his sentence. On the second matter, Trajan orders that the individual be sent to Rome in chains because the man had failed to appeal his sentence within the two years allotted by the Senate and had instead evaded his sentence. Pliny's *mandata* had, in effect, instructed him to uphold the decisions of his predecessors in cases of banishment. Regarding Calvus' reversal, it is significant that Trajan did not immediately rule on the decision of the former magistrate one way or another. The final outcome is unknown, but presumably Calvus' decision would have stood if he had had a legitimate reason but, perhaps because of the history of corruption in the province, Pliny believed the matter deserved investigation, and quite rightly given Trajan's response. The second case is a remarkable demonstration of government in action at its various levels. Some party, for reasons unknown, brought an individual before Pliny in his capacity as the judicial authority in the province. Pliny recognized that he did not have the authority to rule on the decisions of a predecessor whom the Senate had tried and condemned. Trajan's response was to enforce the ruling of the Senate and to have the prisoner transferred to the custody of his Praetorian Guard, to await further judgment. Pliny might reasonably have reached the same conclusion as Trajan, to respect the Senate's decision and uphold the banishment, but Trajan went further, explicitly stating that it was not enough for this man to simply serve out a sentence that he had insolently (*contumacia*) evaded.

Another pair of letters presents a more moderate side of Trajan. The city of Amisus, with the approval of its Council and Assembly (*bule et ecclesia consentiente*) had granted a large sum to one of its citizens twenty years previously, but was now suing

the man, citing Trajan's present *mandata* which forbid grants of this type (*Ep.* 10.110). In his defense, Iulius Piso, argued that he had repaid this generosity over the years through many gifts to the community and pleaded that having to repay such a large sum now would ruin him. It is unclear precisely when this provision of the *mandata* came into effect, but Pliny saw just cause to countermand his instructions and so wrote to Trajan. In his response (10.111) Trajan agreed that the *mandata* should be put aside for something that occurred twenty years previously. His concern was that reconsidering or invalidating past grants would undermine the security of many individuals. Another interesting aspect of this case is that the city of Amisus appealed to the emperor's authority to invalidate one of the city's own actions in order to profit financially. The city embraced Roman authority for its own ends, while Iulius Piso appealed to the ability of its agents to alter their decisions; both sides fully accepted and worked within the Roman system.

Although later jurists did not classify *mandata* among the various types of imperial *constitutiones*, it seems they were often cited as though they were sources of law, especially as regards oft-repeated provisions. The jurists, writing later in the empire, often cited chapters of imperial *mandata* that had become standard, in much the same way as the praetorian edict evolved through successive repetitions.<sup>10</sup> Ulpian records that Caesar was the first to allow soldiers to make their wills without observing the proper legal forms; later Titus, Domitian, Nerva and Trajan extended this privilege as well, and

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<sup>10</sup> Jolowicz and Nicholas, *Study of Roman Law*, 370.

thereafter it became commonplace in the *mandata*.<sup>11</sup> But as Pliny's example from Amisus illustrates, an emperor could always amend or even contradict his own *mandata* through some other means, most commonly through *epistulae* to his governors in response to communications from them. This afforded both the governor and the emperor the necessary flexibility to deal with unique and unforeseen circumstances. Moreover it provided a mechanism to prevent people from exploiting legal blind spots or loopholes.

### **Imperial *Mandata* as Administrative Tools**

We know from Republican literary sources that the senate and people of Rome gave *mandata* to public officials, military commanders, and envoys that outlined their responsibilities and authority; there is no evidence that they had any preference for written over verbal instructions, or vice versa. It is clear from Pliny's *Epistulae* that, by the beginning of the 2<sup>nd</sup> century AD, provincial governors had been in receipt of written *mandata* from the emperor for some time. This raises two related questions: first of all, did the emperors issue formal, written *mandata* from the very beginning of the principate, or did this practice develop gradually; second, did the emperor send *mandata* only to the *legati Augusti pro praetore* who governed the imperial provinces, or did he also send them to the proconsuls that governed the public provinces?

In an inscription<sup>12</sup> from Pisidia dating to the reign of Tiberius, Sextus Sotidius Strabo Libuscidianus, the *legatus pro praetore* in Galatia, refers to his *mandata* in order

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<sup>11</sup> *Digest* 29.1.1: *exinde mandatis inseri coepit caput tale*.

<sup>12</sup> See Stephen Mitchell, "Requisitioned Transport in the Roman Empire: A New Inscription from Pisidia," *JRS* 66 (1976): 106-131 for text, translation and com-

to augment his own authority regarding matters of transport.<sup>13</sup> Mitchell believes these *mandata* originated with Augustus himself, since Sotidius attributes them to the *princeps optimus*, a phrase which more commonly refers to Augustus than Tiberius; other internal evidence from the inscription suggests Sotidius' governorship spanned Augustus' death and Tiberius' accession.<sup>14</sup> According to Cassius Dio, Augustus himself issued *mandata* (ἐντολαί in Greek) to procurators, propraetors (*legati Augusti*), and proconsuls when they left for their provinces so that they would have definite orders (53.15.4).<sup>15</sup> Millar and A. N. Sherwin-White do not accept Dio's inclusion of proconsuls in this list,<sup>16</sup> which would mean that Dio was mistaken or perhaps made a retrojection based on practices in his own era.<sup>17</sup> Millar believes that the governors of imperial provinces received *mandata*

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-mentary; P. Frisch, "Zum Edikt des Sex. Sotidius Strabo für Pisidien," *ZPE* 41 (1981): 100 provides a plausible restoration of the damaged portion of text that immediately precedes '*mandatis*' in line 7.

<sup>13</sup> Mitchell, "Requisitioned Transport," 116.

<sup>14</sup> Ibid., 113.

<sup>15</sup> For procurators there is confirmation in Tacitus (*Ann.* 4.15): Lucilius Capito, procurator of Asia under Tiberius was prosecuted for usurping the authority of a praetor and for exercising military force contrary to his *mandata*. There is also a Greek inscription from Syria (*IGLS* V 1998) preserving part of Domitian's ἐντολαί to a procurator; cf. Fergus Millar, "The Emperor, the Senate and the Provinces," *JRS* 56 (1966): 157. The Prefects of Egypt are also attested as receiving ἐντολαί from Augustus (Philo *In Flaccum* 74).

<sup>16</sup> Millar, "Emperor, Senate, Provinces," 157; A. N. Sherwin-White, *Letters of Pliny*, 509.

<sup>17</sup> G. P. Burton, "The Issuing of Mandata to Proconsuls and a Inscription from Cos," *ZPE* 21 (1976): 63.

from the emperor from the start, but that the proconsular governors of public provinces only received them from the reign of Hadrian onwards, since there is no evidence for the practice before that.<sup>18</sup> G.P. Burton counters that this apparent discrepancy can be attributed to a deficiency in the evidence from this period; our best textual sources, Pliny, Josephus, and Philo, deal primarily with imperial provinces, and thus make no mention of proconsuls.<sup>19</sup> Burton cites two inscriptions in support of Dio. In one, Q. Fabius Postuminus, the proconsul of Asia in 111/12, refers to his ἐντολαί in a letter to the Aezani.<sup>20</sup> Burton does acknowledge that the Greek word ἐντολαί does not always correspond to *mandata*, but the context in this particular inscription suggests this interpretation.<sup>21</sup> Another inscription preserves a letter – again from a proconsul of Asia – to the people of Cos, which also makes reference to ἐντολαί.<sup>22</sup> It is unclear whether the author of this letter is the elder or younger Cn. Domitius Corbulo, but either way the inscription gives evidence for a proconsul receiving *mandata* in the reign of Claudius.<sup>23</sup> Based on this, there is no reason to doubt Dio's claim in the absence of any contradictory evidence. Thus, it seems that Augustus was responsible for the practice of issuing official

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<sup>18</sup> Millar, "Emperor, Senate, Provinces," 157.

<sup>19</sup> G. P. Burton, "Inscription from Cos," 67.

<sup>20</sup> *IGR* 4.572.

<sup>21</sup> G. P. Burton, "Inscription from Cos," 64-5.

<sup>22</sup> James H. Oliver, "Greek Applications for Roman Trials," *American Journal of Philology* 100 (1979): 551ff.

<sup>23</sup> G. P. Burton, "Inscription from Cos," 65.

*mandata* to all of the provincial governors. This was not, however, a drastic innovation, but rather a move towards standardizing a practice that already existed, and localizing authority in the person of the emperor. The senate's authority was proportionally weakened as a result, but personalizing the Roman administrative system in this way facilitated trust among the empire's subjects, which was good for everybody.

With the emperor sending *mandata* to both types of provinces from the beginning, the only difference between the governors of imperial and public provinces was their length of tenure and method of appointment. Proconsuls were chosen by lot for a one-year term, while the emperor appointed propraetors for an unlimited period of time.<sup>24</sup> Provinces under direct imperial control tended to be the more recently established or less stable provinces in the empire, which would benefit from the consistent, continuous guidance of a single official over a longer period of time. Pliny's special appointment to Bithynia-Pontus supports this view. Until Pliny's appointment, the governors of Bithynia-Pontus had been proconsuls of praetorian rank; he was the first to bear the title of *legatus Augusti*.<sup>25</sup> One can only speculate on what prompted the change in status from a senatorial to an imperial province, but chronic mismanagement and civic corruption are strong possibilities. In Brunt's survey of the number of attested prosecutions of provincial governors for maladministration from the period between Augustus and Trajan, Bithynia

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<sup>24</sup> Millar, "Emperor, Senate, Provinces," 157.

<sup>25</sup> Wynne Williams, *Pliny: Correspondence with Trajan from Bithynia (Epistles X)* (Aris & Phillips Ltd., 1990), 5.

is first on the list.<sup>26</sup> Evidence from Pliny's *Epistulae* reveals that his *mandata* included specific directives to regulate municipal expenditures (10.43, 110) and civic building projects (10.23, 41, 70, 90, 98).<sup>27</sup> Pliny's senior status as an ex-consul and his experience in financial management would make him well-suited to review and correct the mismanagement of civic resources in the province. Better conditions in the province would help to restore confidence in Roman government.

### Conclusion

The examination of imperial correspondence is essential to formulating a model of how and to what extent the emperors played a role in the governance of the provinces and concomitantly what powers the governors held independent of the emperor. *Mandata* were especially important because, for many governors, they might be the only communication initiated by the emperor himself over their entire term in a province.<sup>28</sup> Any other action taken by the emperor involving the provinces, whether public or imperial, would be in response to issues brought forward by embassies or communicated by office-holders via letter. This suggests a rather high level of autonomy for provincial governors within the scope of their *mandata*. It also implies that after issuing his initial instructions, the emperor played a relatively passive role in governing the provinces, with the impetus for action coming largely from the provinces themselves. Potter emphasizes

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<sup>26</sup> P. A. Brunt, "Charges of Provincial Maladministration under the Early Principate," *Historia* 10 (1961): 227.

<sup>27</sup> A. N. Sherwin-White, *Letters of Pliny*, 548.

<sup>28</sup> Millar, *Emperor in the Roman World*, 317.

the human element affecting events in this arrangement, over any broad, long-term policies.<sup>29</sup> He believes that the personal decisions of the emperor and the governors, especially in frontier or highly militarized provinces, were a crucial factor in determining foreign interactions. This could be beneficial or disastrous depending on the personalities involved. Suetonius and Tacitus at times express anxiety over the potential for corruption in this system, where the social and political superiority of the emperor disturbed the equality that was traditionally a feature of *mandata*.

Pliny instead demonstrates the potential functionality, transparency, and responsiveness of the system. Whenever Pliny sees a reasonable justification for countermanding Trajan's *mandata* he promptly consults him, seeking renewed consensus to fit altered circumstances. By executing Trajan's *mandata* Pliny acts as his personal envoy, facilitating communication and trust between the central authority of the empire and its individual citizens. Rather than having them look towards a distant, impersonal body like the senate, the system of distributing *mandata* to provincial governors provides Roman citizens and subjects with names, faces, and documents. *Mandata* help to personalize the system because people of vastly different origins and cultures can easily understand their conventions and associated values. This shared consensus and trust contributed to the stability and longevity of the empire.

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<sup>29</sup> Potter, "Scope of Imperial *Mandata*," 49.

## CONCLUSION

There is a continuity of values and behaviors that is clearly identifiable throughout Latin literature ranging from the comedies of Plautus, to the histories of Sallust and Tacitus, to the letters of Cicero and Pliny, and beyond. When *mandare* and *mandata* appeared in the works of these authors they signified a bond of trust, an exchange of obligations, and consequences for the honor and status of the people involved. These concepts applied to agency whether the setting was private, public, diplomatic or administrative. Appealing to the language and social conventions of *mandata* gave the Romans a way of conceptualizing and personalizing their increasingly complex and diverse society, and their individual roles within it.

The *actio mandati* was established in the first half of the 2<sup>nd</sup> century BC to regulate contracts of agency between private individuals. A *mandatum* had to be consensual, with both parties expressing agreement on the terms, and gratuitous, with the mandatary receiving no payment for his services. The tasks performed ought to fall within the realm of morally and legally acceptable behavior. Success could bring the mandatary gratitude and honor; deceit or negligence could result in *infamia*. The plays of Plautus provide evidence for the rules of *mandata* as they functioned among the lower classes in the period before the *actio mandati* became law. In *Mercator*, Charinus made his friends' commissions his first priority upon his return from traveling. His friend Eutyclus, on the other hand, was less than diligent in his duties. His failure to fulfill Charinus' mandate led to a breakdown of their relationship and a damaged reputation for Eutyclus.

Cicero's correspondence provides many examples of *mandata* as personal favors ranging from the mundane to the politically significant. He treated all of his obligations with care and diligence because he believed that agreements made in good faith had consequences for personal honor. It is also clear from Cicero's writings that public offices could be conceived of as contracts between magistrates and the senate and people. Magistrates were entrusted with authority in the expectation that the state would come before self-interest and the obligations of private life. A Roman's private and public roles, however, were often inseparable, and this usually facilitated administration more than it hindered it. Provincial governors, for instance, could fulfill their staffing needs based on the personal recommendations of important connections. The authority and resources of their position allowed governors to repay outstanding favors and to develop new ties with people who might be of use back at Rome or at some date in the future. Officials were conscious that their behavior was conspicuous, and thus took care not to threaten their own reputations or that of the state. Cicero's refusal to accommodate all of Brutus' *mandata* may have cost him Brutus' gratitude, but contradicting his own published policies as governor would have cost Cicero more in the grand scheme.

The historians of the 1<sup>st</sup> century BC applied *mandata* and *mandare* to similar situations as those found in Cicero's works, but among these the use of *mandata* to refer to diplomatic communications is ubiquitous. The structure and tone of the messages exchanged between negotiating parties reflect the conventions of private favors that are not explicitly discussed in other contexts. The *mandata* relayed back and forth between Caesar and foreign leaders in *de Bello Gallico* are comparable to those he exchanges with

Pompey and his partisans in *de Bello Civili*. The *mandata* tend to follow a formula that includes appeals to a history of good relations and past benefactions, a list of proposals, and a foreshadowing of the potential outcomes of the negotiations. This pattern is consistent in the writings of Sallust, Livy and later imperial authors as well, making diplomatic *mandata* a genre within historical narratives. The power struggles of diplomatic and international relations reflect the dynamics of status and honor that are features of *amicitia*. Pompey claims that receiving a delegation implies authority and sending one fear (Caesar, *BC* 1.32); in other words, weakness means having to ask for something, while strength means having the power to refuse. This is not dissimilar to Saller's observation on interpersonal relations that honor derived from the ability to give people what they want or need.<sup>1</sup>

After the end of the republic, the emperor was the person best able to provide what people needed and wanted. Aside from using *mandata* in contexts consistent with those of their predecessors, the authors of the imperial era frequently discussed *mandata* in the technical sense of the emperor's administrative instructions to provincial governors. The early books of Pliny's published correspondence include examples of him dutifully performing *mandata* for his former mentors (e.g. 1.14), while book ten focuses on Pliny's efforts as governor of Bithynia and Pontus to meet the guidelines of the emperor Trajan's *mandata*. While officials had always received some direction from the senate, Augustus ensured that the governors who represented imperial authority and

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<sup>1</sup> Saller, *Personal Patronage*, 126.

interests in the provinces would always have clear guidelines for administration. These *mandata* allowed emperors to exercise their personal influence over affairs in the provinces, while minimizing the amount of time and effort required to do so. The emperor served as patron to many and encouraged the aristocracy to sustain patronage networks of their own.<sup>2</sup> Governors could use the authority of their imperial *mandata* and the social mechanisms of *mandata* in general to cultivate relationships with people that would aid them in administration; and as these interactions moved downward through the social strata they enabled large numbers of people to feel a personal connection to the individuals in higher government.

However much we credit Roman military strength and discipline for the size and longevity of the empire, *mandata* are evidence that there were other things at work that were potentially more effective. It was easier to frame disputes as quarrels between friends, using the conventions of *mandata*, than to levy an army every time. Delegating authority to governors and issuing *mandata* with each major change of personnel in each province made the system adaptable. An obvious extension of this research would be to investigate the extent to which non-Romans understood and accepted the conventions and values associated with *mandata*. Cliff Ando has argued that provincials' trust in official policies and documents contributed to what he calls 'consensual validity' and the longevity of the empire;<sup>3</sup> *mandata* would seem to fit very well within his scheme. John

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<sup>2</sup> Garnsey and Saller, *Roman Empire*, 150.

<sup>3</sup> Cliff Ando, *Imperial Ideology and Provincial Loyalty in the Roman Empire* (University of California Press, 2000).

Ma's work on diplomacy in Hellenistic Asia Minor suggests that people in the Greek world applied the language of friendship to relations with their rulers.<sup>4</sup> His study of inscriptions has revealed a fairly standardized vocabulary of benefactions and gratitude, and this language of euergetism helped both ruler and ruled get what they want. There are obvious parallels with *mandata* in Roman society, and it would be worth investigating to see whether or not other cultures shared similar views, and how this affected their relations with the Romans.

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<sup>4</sup> John Ma, *Antiochos III and the Cities of Western Asia Minor* (Oxford University Press, 1999).

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