

## HEROIDES 16.303–4

Menelaus, about to go travelling, enjoins Helen to look after their guest Paris:

†esset et† 'Idaei mando tibi' dixit iturus  
'curam pro nobis hospitibus, uxor, agas.'

303 esset et P<sub>5</sub>: esset ut G: ivit et  $\varsigma$ : ipse abiit  $\varsigma$ : ipse et 'ut . . .' Heyworth: 'res et ut . . .' Madvig

I cite Professor Kenney, who notes in his commentary *ad loc.* 'no convincing explanation or correction of the first two words of the verse has been offered'.<sup>1</sup> The solution to this crux is to be found, I suggest, in the couplet which immediately follows (305–6)

neglegis absentis, testor, mandata mariti:  
cura tibi non est hospitibus ulla tui.

The several verbal responsions of this couplet to the preceding one are clear, and as *mando* produces *mandata*, so *testor* derives, I think, from *testis*. Read *me teste* 'Idaei . . .'; 'with me as witness . . .'.<sup>2</sup> This reading adds greatly to the humour of the situation, where the hen is charged, in his presence, with caring for the fox. For *testis* as a witness to the audible (rather than the visible) cf. (e.g.) *fors me sermoni testem dedit* (*Am.* 1.8.21).<sup>3</sup>

Finally, although I have not offered a paleographic emendation, it does no harm to note that *esset et* is, with the loss of *m* and the gain of *s*, an anagram of *me teste*.

University of Illinois at Chicago

ALLAN KERSHAW

<sup>1</sup> E. J. Kenney, *Ovid: Heroides XVI—XXI* (Cambridge, 1996). It is noteworthy, however, that Heyworth's *ipse et* 'ut is accepted by G. Rosati (Milan, 1989).

<sup>2</sup> The responson *teste . . . testor* is, of course, purely verbal; as *CQ*'s anonymous referee notes, 'the invocation implied in 305 is to heaven above, the powers in general . . .'

<sup>3</sup> A statistic which I find interesting: in *Heroides* 16–21 there are nine instances of *testis*, but in the earlier poems of the collection only one.

#### THE *CRIMEN MAIESTATIS* UNDER CALIGULA: THE EVIDENCE OF DIO CASSIUS

In Dio we first encounter Caligula in connection with the *crimen maiestatis* in the course of 59.1–5. This forms an introduction to Caligula and, at the same time, looks forward to some of the changes which occurred in his character and behaviour as the reign progressed. At 4.3 we are told, *τά τε τῆς ἀσεβείας ἐγκλήματα παύσας πλείστους ὄσους ἐπ' αὐτοῖς ἀπώλεσε*.

As it stands, in isolation, this statement may seem a trifle enigmatic. The first part, at least, receives clarification when Dio begins his narrative proper. At 59.6.2–3 he tells us that Caligula released men who had been jailed under Tiberius: *τά τε ἐγκλήματα τῆς ἀσεβείας, οἷσπερ καὶ τὰ μάλιστα πονοιούμενους σφᾶς ἑώρα κατέλυσε*.

He also burned (or pretended to burn—see below) the papers upon which the charges rested. The evidence of Dio on this matter is supported by that of Suetonius, *Gaius* 15.4.<sup>1</sup>

<sup>1</sup> *Criminum, si quae residua ex priore tempore manebant, omnium gratiam fecit.*

What needs to be emphasized at this point is that, contrary to what some have asserted,<sup>2</sup> there is no question here of Caligula revoking a *lex* or abolishing *maiestas* as a crime. Dio speaks only of τὰ ἐγκλήματα or a specific set of charges levelled at certain men, not of a νόμος. Our author is not talking about *maiestas/lasebeia* in general.<sup>3</sup> Nor is there in question here the decriminalizing of any set of acts hitherto regarded as constituting *maiestas*.<sup>4</sup> In our view P. A. Brunt rightly rejects the thesis of Bauman *passim* that a number of emperors including Gaius 'undertook not to allow any indictments under the Julian law of *maiestas*'.<sup>5</sup> We do not accept, however, his further contention (p. 471) that *asebeia* 'has a more limited range [of meaning] than *maiestas*'. His defining of *asebeia* in Dio appears to us too neat and not fully supported by Dio's text. Bauman has in our view correctly shown that *asebeia* is not a watertight term to be applied solely to types of *maiestas* which arose under the Empire.<sup>6</sup> Furthermore, Brunt's theory does not suit the facts. Having argued that Gaius cancelled all *asebeia* charges in A.D. 37, he is, however, forced to admit (p. 471) that in 38, even before he allegedly restored the *asebeia* charges, he punished individuals for breaches under that head. Moreover, the later history of the charges abolished by Caligula in 37 can be traced. In 39 they were resurrected. In the course of a rehabilitation of Tiberius' reputation (Dio 59.16.1–8), Caligula not only produced the papers he had supposedly burned but restored the ἐγκλήματα he had once abolished<sup>7</sup> and had these inscribed on a bronze monument.<sup>8</sup> These charges did not, in fact, disappear from history until Claudius finally burned the papers (Dio 60.4.5). It

<sup>2</sup> See e.g. R. A. Bauman, *Impietas in Principem* (Munich, 1974), pp. 205, 208; A. A. Barrett, *Caligula: The Corruption of Power* (London, 1989), pp. 64, 93.

<sup>3</sup> Note once more what Suetonius says (n. 1) and contrast with the wider immunity given by Claudius (Dio 60.3.6): τό τε ἐγκλημα τῆς ἀσεβείας ὁμοίως οὐκ ἐν τοῖς γράμμασι μόνοις ἀλλὰ καὶ ἐν ταῖς πράξεσιν ἔπαινε, καὶ οὐδένα διὰ τοιοῦτό τι οὐτ' ἐπὶ τοῖς προτέροις οὐτ' ἐπὶ τοῖς ἔπειτα ἐκόλασε. Contrary to what Bauman, p. 205, seems to imply, there is no question here of the abolition of a *lex*—as the Loeb translator saw, Caligula simply did away with a set of charges brought under that law.

<sup>4</sup> We find no merit in the argument that Caligula here is revoking Augustus' supposed (see Cic. *ad Fam.* 3.11.2 with A. Keaveney, 'Studies in the *Dominatio Sullae*', *Klio* 65 [1983], 201–2) first extension of the definition of *maiestas* to include libel (Tac. *Ann.* 1.72 with H. Furneaux, *The Annals of Tacitus* [Oxford, 1896], 2 vols, vol. I, pp. 274–5 or F. R. D. Goodyear, *The Annals of Tacitus* [Cambridge, 1972], vol. II, pp. 141–53; cf. J. E. Allison and J. D. Cloud, 'The Lex Julia Maiestatis', *Latomus* 21 [1962], 711–31, at 718 and Bauman, p. 3), referring the reader to our nn. 1 and 3 above, and adding only that the *libelli* in *Ann.* 1.72 (see below) are of the type we find in Pliny *Ep.* 7.27.14 (with Sherwin-White *ad loc.*) rather than that in Suet. *Div. Aug.* 55 or Dio 56.27.1.

<sup>5</sup> 'Did emperors ever suspend the law of "Maiestas"', in *Sodalitas: Scritti in onore di Antonio Guarino*, Bibl. di Labeo VIII (Naples, 1984), pp. 469–80, at pp. 469–70.

<sup>6</sup> See Bauman, p. 5, and Tacitus cited in n. 4 above.

<sup>7</sup> See also Suet. *Gaius* 30.2. The Loeb translation of τὰ τῆς ἀσεβείας ἐγκλήματα (Dio 59.16.8) as 'the charge of *maiestas*' is misleading. Bauman, p. 208 n. 107, is uneasy with the plural, admits it is not generic, and tries to explain it as 'no doubt reflecting a *maiestatis crimina* in (Dio's) source'. However, if Dio had a generic recindment in mind surely he would have used the singular (τὸ ἐγκλημα). There is nothing in the ancient evidence to support J. P. V. D. Balsdon's assertion, *The Emperor Gaius* (Oxford, 1934), pp. 150–1, that Gaius revised the law of *maiestas* now. The Romans, living as they did in a pre-technological society, were, of course, completely familiar with the practice of public proclamation, followed by permanent engraved record; cf. F. Hinard, *Les Proscriptions de la Rome républicaine* (Rome, 1985), pp. 18–28, 32–35. Caligula's action is, therefore, nothing more than a slightly eccentric variant on well established custom, as are the rather strange proclamations attributed to Claudius in Suet. *Div. Claud.* 16.

<sup>8</sup> Cf. Dio 59.16: Γάιος μὲν ταῦτά τ' εἰπὼν καὶ τὰ τῆς ἀσεβείας ἐγκλήματα ἐπαναγαγὼν, ἔς τε στήλην αὐτὰ χαλκὴν εὐθύς ἐγγραφῆναι ἐκέλευσε. . . It is grammatically preferable to refer the anaphoric αὐτὰ here to ἐγκλήματα rather than to the more remote ταῦτα. (This is the

would therefore follow, it seems to us, that when Dio 59.4.3 mentions the destruction of many men on charges of *maiestas* which had previously been rescinded he is thinking of those destroyed as a result of this revival.

We believe, however, that our argument can be taken a little further and that it may be demonstrated that Caligula was actually invoking the law of *maiestas* during the period when some scholars thought it was in abeyance.

Dio and Suetonius supply us with details of a number of men who were put to death by the emperor.<sup>9</sup> But when we come to investigate the grounds for execution we encounter a difficulty in the shape of Caligula himself. Whatever verdict we enter on his mental state<sup>10</sup> there is no doubt that he was both whimsical and capricious,<sup>11</sup> and there is no guarantee he would necessarily bring against his victim a formal legally definable charge. We certainly know he could make a complete mockery of the law on occasion. We learn from Dio 59.8.3 how two men, Publius Afranius Potitus and Atanius Secundus, who had vowed to give their lives if the emperor should recover from an illness, were compelled to commit suicide to avoid perjuring themselves.<sup>12</sup> It will, we believe, be readily admitted that such a person need not always have observed legal niceties.

Having thus admitted the need for caution, we would argue nevertheless that some of Gaius' executions in the period subsequent to his initial bout of illness and prior to his revival of certain specific treason charges in A.D. 39 were for *maiestas*. We may categorize them as possible, probable, and certain.<sup>13</sup>

interpretation of Bauman, p. 208, but on p. 209 n. 112 he seems to go beyond the evidence.) Thus, we believe that the inscribed charges are those mentioned in 59.4.3 and 59.6.2–3. (Admittedly it is clear from Dio 59.16.8 and 59.16.1–2 that the senators were in fear not merely of charges based on behaviour in Tiberius' reign but also on conduct since his death. But their fear in the latter case, i.e. of new charges, was natural once the old charges had been reactivated and inscribed.)

<sup>9</sup> Allison and Cloud, pp. 723–4 (cf. also pp. 729–30) hold that the law of *maiestas* then operative was that of Julius, which laid down as a penalty the *aquae atque ignis interdictio*. They thus claim this was a formal abolition of the death penalty. In our opinion this is mistaken and we would adhere to the view that the *interdictio*, since it involves the *caput*, is itself a capital penalty. See J. L. Strachan-Davidson, *Problems of the Roman Criminal Law* (Oxford, 1912), 2 vols, vol. 2, pp. 16–74 (esp. pp. 23–8); Keaveney (1983), pp. 204–206; Hinard, pp. 37 n. 86, 78–80, 325. Allison and Cloud's theory also leaves them with the difficulty, which they acknowledge (pp. 724–30), that here, as elsewhere (see Furneaux, vol. 1, pp. 141–3), the emperors applied the death penalty under the law. Their proposed solution that 'the legally prescribed penalties [are no] more than a guiding line' (p. 726) which could be exceeded carries, in our view, less than total conviction (cf. the lucid discussion of Goodyear, vol. 2, pp. 143–5), especially as it fails to recognize that the *interdictio* is a capital punishment. The legal effect of the *interdictio* is the same as that of *sacratio*. A man declared *sacer* could be killed on sight, although in practice this rarely happened under the Republic (Strachan-Davidson, vol. 2, pp. 31–41). The instances where it did happen, namely in the proscriptions of Sulla and the Triumvirs, show very clearly how the *interdictio* could be taken to its logical conclusion (Strachan-Davidson, vol. 2, p. 56; Hinard, pp. 35–7). It is our contention, therefore, that the emperors did not act illegally. In some instances they suffered the *sacer* to live in exile (cf. Strachan-Davidson, vol. 2, pp. 55–8), but in others they applied the full rigour of the law and had him executed.

<sup>10</sup> The evidence is too ambiguous to give a definitive judgement as may be seen, for example, from the suggestions of A. T. Sandison, 'The madness of Caligula', *Medical History* 2 (1958), 202–9; D. T. Benediktson, 'Caligula's madness: madness or interictal temporal lobe epilepsy', *CW* 82 (1989), 370–5; see Barrett, op. cit., pp. 73, 271 n. 4.

<sup>11</sup> Cf. Dio 59.4.1. We would add that Gaius' engraving of charges on a *stèle* is further manifestation of his capriciousness (see n. 7).

<sup>12</sup> For a parallel under the Republic see A. Keaveney, 'Civis Romanus sum', *Crit. Stor.* 12 (1984), 355 and Strachan-Davidson, vol. 1, p. 121.

<sup>13</sup> We readily admit to being far less certain about the correct categorization of some of these cases than Bauman *passim* appears to be. In what follows we have kept before us the

Under the first heading we would place the case of Tiberius Gemellus. He was forced to commit suicide in winter of A.D. 37–8 because he was alleged to have prayed for the emperor's death.<sup>14</sup> It is quite possible that we have here a case of *maiestas* tried in private by Caligula himself.<sup>15</sup>

In our second category we would place the *equus* who in A.D. 38 was obliged to fight in the arena and, on being victorious there, was handed over to his accusers by Caligula and put to death. The charge against him was that he had insulted Agrippina.<sup>16</sup> Such an act can, of course, constitute *maiestas*.<sup>17</sup> A little further in the narrative Dio (59.10.7) adds that Caligula accused many others unnamed of wrongs done to his parents or brothers, or friends of their household.<sup>18</sup> Here, again, it is probable that *maiestas* is the charge. Furthermore, it is of interest to note that Caligula's mode of procedure now anticipates that adopted by him in A.D. 39. Documents allegedly destroyed were produced to support the charges.<sup>19</sup> Into this second category, too, may fall some of those who perished in the orgy of killing which began early in 39 and preceded the rehabilitation of Tiberius and the resurrection of the charges brought under his reign.<sup>20</sup> Among those who suffered early in the year were men who had been imprisoned under Tiberius and were then released by Caligula only now to find themselves being executed for the crimes for which they had been forgiven. The probability is that some among them had been guilty of *maiestas*.

So to our third category and the one definite case of a man who was put to death on a charge of *maiestas*. Dio tells us (59.11.6) that in A.D. 38, during a period of mourning for Caligula's sister Drusilla, a man who sold hot water was charged with *maiestas* and duly put to death. Contrary to what might at first be expected, Caligula was here acting in strict accord with the law. A *iustitium* was in force and drinking was forbidden during that period. Hot water was sold not for washing but for mixing with

vagueness and flexibility of the concept of *maiestas*. See Th. Mommsen, *Römisches Strafrecht* (Leipzig, 1899), pp. 537–94; *RE* Band XIV, 1 col. 542–559 (Kübler); or, more briefly, Barrett, pp. 64–65.

<sup>14</sup> Dio 59.8.1–3, who is supported by Philo *Leg.* 23–31. The need for prudence is underlined by the rather different tale told by Suetonius *Gaius* 23. 3. It should be noted that Dio also says that the charge deployed against Tiberius was also used by Caligula against many more unnamed victims. Allison and Cloud, pp. 719–20, point out that, since at least the time of Sulla, *maiestas* had embraced insults of any kind to persons of importance.

<sup>15</sup> But obviously not if we elect to follow Suetonius' version. Following Dio we divine 'in private' from his words (59.8.2) καὶ οὐδὲ ἐπέστειλέ τι περὶ αὐτοῦ τῇ βουλῇ. The precedent for this goes back to A.D. 20. See Tac. *Ann.* 3.10–12, Furneaux ad loc. Cf. also Dio 59.18.1.

<sup>16</sup> Dio 59.10.4. This case is mentioned by Dio with a number of others where the accused also wound up in the arena (59.10.1–5), but there is no reason to suppose that these other victims were charged with *maiestas*.

<sup>17</sup> As Bauman, p. 106, admits (see our n. 13). He then accepts without question that the charge against the *equus* was *maiestas*, but as this is fatal to his own thesis he is forced into the unconvincing position of having to argue that Dio has dated the case a year too early and that Dio is referring to when the crime was allegedly committed (A.D. 38) and not to when it was supposed (A.D. 39) to have been punished (cf. his n. 211). In fact, as Bauman is forced to admit, the crime is virtually undateable. See further, n. 19.

<sup>18</sup> In the narrative this comes after the enforced suicide of Macro and Ennia (59.10.6) on a charge of adultery, see Bauman, p. 176.

<sup>19</sup> Dio 59.10.8. Cf. Dio 59.4.3, which also shows that these victims must be differentiated from those of A.D. 39. The fact that Dio suggests the charges were trumped up does not, of course, mean they were not brought. As these men were put to death for something they had done under Tiberius, it becomes obvious that our *equus* (in n. 17) could have committed his crime then or perhaps later.

<sup>20</sup> Dio 59.13.1–8. It seems clear from Dio 59.16.1 that these events preceded the rehabilitation of Tiberius.

wine, and hence the *iustitium* was being broken.<sup>21</sup> The penalty paid may, in our view, be excessive, but it was in accordance with statute and that statute was one governing *maiestas*.<sup>22</sup>

We may now briefly recapitulate our conclusions. At the beginning of his reign Caligula conspicuously forgave some people who had been charged with *maiestas* in the time of Tiberius. In the years following, however, he himself accused others of the crime and finally, in 39, revived the charges against those he had earlier absolved. At no time did he abolish the laws of *maiestas*.

Why did Caligula reactivate the specific charges in A.D. 39? Presumably his spies were alerting him to the menacing discontent among the senators (the Lepidus/Lentulus Gaetulicus affair(s) followed later that year). Now under threat, he could identify with Tiberius and saw what seemed to him the gains accruing from a ruthless pursuit of senators on the model of his predecessor.<sup>23</sup>

In recent times Caligula has received a good deal of attention and re-evaluation.<sup>24</sup> It may very well be, however, that in the light of what we have had to say, the chapter of his life dealing with *maiestas* may also need to be rewritten.<sup>25</sup>

Darwin College, University of Kent at Canterbury  
University College, Galway

ARTHUR KEAVENEY  
JOHN A. MADDEN

<sup>21</sup> See Balsdon, p. 43, and the Loeb edn of Dio n. 2 on 57.14.10.

<sup>22</sup> This incontrovertible case has naturally caused difficulties for those who wish to believe that Gaius had abolished the *lex maiestatis*. Thus Barrett asserts (p. 86) that some lesser charge is more likely here but offers no evidence or argument. Bauman's treatment (pp. 105–6) is most unsatisfactory. He believes Caligula abolished the *lex maiestatis* entirely (pp. 23, 205) but still sees this incident as an instance of *impietas* (i.e. *maiestas*) and makes no attempt to resolve the contradiction. A. Ferrill, *Caligula Emperor of Rome* (London, 1991), pp. 98, 112–113, is also inconsistent. He notes the destruction of documents relating to specific cases at the start of the reign but then goes on to talk of a revival of the treason law when the documents were resurrected in A.D. 39.

<sup>23</sup> Cf. Bauman, p. 210; M. Grant, *The Twelve Caesars* (London, 1975), pp. 118–19.

<sup>24</sup> Notably in the biographies of Barrett and Ferrill.

<sup>25</sup> We should like to thank an anonymous referee for some helpful suggestions.

## PROBLEMS OF TEXT AND INTERPRETATION IN STATIUS, *THEBAID* I–VI

The text is taken from the edition of D. E. Hill, *Mnemosyne* Supplement 79 (Leiden, 1983). The following works are referred to by author's surname only: H. W. Garrod, *P. Papini Stati Thebais et Achilleis* (Oxford, 1906); L. Håkanson, *Statius Thebaid* (Lund, 1973); A. Klotz, *P. Papini Stati Thebais* (Leipzig 1908; revised edn by T. C. Klinnert, 1973); R. Kühner, C. Stegmann, and A. Thierfelder, *Ausführliche Grammatik der lateinischen Sprache* (Leverkusen, 1955; 2 vols.); R. Lesueur, *Stace Thébaïde* (Paris, 1990, 1991, 1994; 3 vols.); J. H. Mozley, *Statius* (Loeb edition, London, 1928; 2 vols.); E. C. Woodcock, *A New Latin Syntax* (London, 1959).

Th. 1.529–32

tunc rex longaeuus Acasten  
(natarum haec altrix eadem et fidissima custos  
lecta sacrum iustae Veneri occultare pudorem)  
imperat acciri tacitaeque innummurat aure.

532 tacitaeque . . . auri Klotz: taciteque . . . auri Deipser: tacitoque . . . ore Koestlin