

XVI.—Cicero, *Ad Familiares* 3.11.2 and the *Lex Cornelia Maiestatis*

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Appius Claudius Pulcher, returned from his governorship of Cilicia, was indicted early in 50 B.C. by Publius Cornelius Dolabella and, apparently, others, for *maiestas* and *ambitus*.¹ On being acquitted of the former charge, with the latter still pending,² he wrote, 5 April, to Cicero in Cilicia the news of the successful issue for himself of the first case. The first half of *Ad Familiares* 3.11 is Cicero's reply to that letter.

After very fulsome congratulations we read:³

'De ambitu vero quid interest,' inquires, 'an de maiestate?' Ad rem nihil; alterum enim non attigisti, alteram auxisti. †Verum tamen est maiestas, etsi Sulla voluit, ne in quemvis impune declamari liceret; ambitus vero ita apertam vim habet, ut aut accusetur improbe aut defendatur. Quid enim? facta necne facta largitio, ignorari potest? tuorum autem honorum cursus cui suspectus umquam fuit?

The crux is given in the reading of M, codex Mediceus 49.9 s. IX; but R, codex Parisinus 17812 s. XII, has *et sic Silla voluit*.

Various emendations have been proposed. Mendelssohn suggested *veteratorium*, and Hirschfeld *vafrum*, for the opening *verum*. Many editors insert *ea* after *verum tamen*. Lambinus wrote *verum tamen ea est maiestas, ut Sulla voluit, ut*. Lehmann inserted *ambigua* after *liceret*. Tyrrell and Purser, in their first edition, emended to *etsi Sulla noluit ut*, but, in the second, abandoned that, and hesitantly adopted Lehmann's *ambigua*. Fröhlich, writing on the *Leges Corneliae*,⁴ even quotes the passage as: *Verumtamen ea est maiestatis vis et sic involuta ut in quemvis impune declamari liceat*, and with no hint that this contains any emendation at all.

Furneaux, annotating Tacitus, *Annals* 1.72: Primus Augustus cognitionem de famosis libellis specie legis eius [*sc. maiestatis*]

¹ Cic. *Fam.* 8.6.1; 3.10.1; 3.11.2 f.; 3.12.1. The basis of the charges is a question not here considered or concerned.

² Cf. *infra*, 198.

³ *Ciceronis Epistolae*, vol. 1, ed. L. C. Purser, Oxford 1901 (Oxford Classical Texts).

⁴ *RE* 4.1562.

tractavit, writes: "Yet the 'Lex Cornelia,' even if allowed to slumber, appears definitely to have brought the public utterance of libels under this offence. 'Est maiestas, et sic Sulla voluit ne in quemvis impune declamari liceret.'" To the same effect also Nipperdey, in his note on the same passage.

Tacitus says, however, that prior to Augustus "facta arguebantur, dicta impune erant." And there was no reason why Sulla's law of *maiestas* should comprehend "dicta" for there was civil action *de iniuria* available under the praetorian edict,⁵ to recover damages for any wrong offered to one's person or dignity by either action or word; and by the side of that Sulla had instituted a quasi-criminal action under his *Lex Cornelia de iniuriis*⁶ covering assault and battery and forcible entry. Here was the place for inclusion of slander and vituperation, if Sulla wished to make these *iniuriae*, also, criminal; they could only be utterly incongruous in the law of treason.

Sulla, in legislating on *maiestas*, had in view the provincial governor; to that point his own situation and problems;⁷ to that points the only real evidence we have on his law of *maiestas*, viz. Cicero, *In Pisonem* 50. It may be assumed that betrayal of Roman troops, trafficking with enemies of Rome, and the like, treason in any time and any language, were included in the *Lex Cornelia*.

Finally, *declamare* is not the vocabulary of libel and slander. The *Thesaurus* defines it as *clamare vel vehementer dicere, increpare, lamentare, gloriari*, and of course as a technical term in rhetoric.

It can be asserted with confidence, therefore, that the *Lex Cornelia maiestatis* did not comprehend libel, slander and vituperation.⁸

Tyrrell and Purser annotate our passage:⁹

The sense of the passage appears to be this: Cicero says he wonders at the wicked conduct of the prosecutors of Appius in that they did not accuse him of a specific charge, such as *ambitus* was, wherein truth could be *definitely* arrived at, and accuser or accused be proved a scoundrel; but they accused him of *maiestas*, a charge so vague that a case could be made under it against anyone, no matter how innocent. Almost

⁵ W. W. Buckland, *Textbook of Roman Law*, Cambridge 1921, 584 f.

⁶ *Op. cit.* 585; *Dig.* 3.3.42.1; 47.10.5; *Paul. Sent.* 5.4.8.

⁷ *CAH* 9.293 ff.

⁸ I shall shortly endeavor elsewhere to show that Augustus also, in spite of Tacitus, did not prosecute libel and slander as treason.

⁹ *The Correspondence of Cicero*,² Dublin and London 1914, 3.236.

immediately after his acquittal for *maiestas* Appius was accused of *ambitus*, but acquitted on that charge also: cp. [*Fam.* 3.12.1] (written about the beginning of August). But, though there may have been some probability of such a charge, it had not been made in April when Appius wrote. For the indefinite and wide nature of the idea of *maiestas minuta* cp. Cic. *De Invent.* ii.53, *maiestatem minuere est de dignitate aut amplitudine aut potestate populi aut eorum quibus populus potestatem dedit aliquid derogare.*

But Dolabella and the others *had* indicted Appius for both *maiestas* and *ambitus*. Cicero's "'De ambitu vero quid interest,' inquires, 'an de maiestate?'" certainly implies that Appius had mentioned both charges in his letter of 5 April, not that "there may have been some probability of such a charge." And the trouble was not that the charge of *maiestas* was vague; rather, criminal cases were not always decided on evidence, any more in antiquity than now, but often on prejudices and the defendant's character and past career. Cicero might well be remembering his own unsuccessful defense of his consular colleague, Antonius, on a charge undoubtedly of *maiestas* nine years before.¹⁰ (And cf. *infra ad fin.*)

It is now suggested that the text originally read:

Verum tamen est maiesta <ti>s, et sic Sulla voluit, *ut* in quemvis impune declamari liceret.

The *sic* has the support of R. *Maiestatis* gives the same effect as does editors' insertion of *ea*, and is more easily explained; in immediate juxtaposition to the copula the nominative case would seem to the copyist clear and obvious, as the genitive would not. *Ut* would have been altered to *ne* under the misapprehension that the clause depended upon *voluit* and a feeling that the legislator would not *intend* anyone to be assailed with impunity.¹¹

The reading here proposed is closer to that of the manuscripts than even the simplest of previous emendations, and makes the whole passage amenable to perfectly satisfactory interpretation.

Following his congratulatory sentences Cicero sets down an imagined objection from Appius: 'De ambitu vero quid interest,' inquires, 'an de maiestate?' Now this is very nicely susceptible of

¹⁰ Cf. Drumann-Groebe, *Geschichte Roms*, Berlin 1899, 1.395 f., and a fuller account in Heitland, *The Roman Republic*, Cambridge 1923, 3.132.

¹¹ It was just such a feeling which led Tyrrell and Purser, in their first edition, to emend to *noluit ut*.

a *double entendre*: (1) "But what's the difference whether I'm indicted (and convicted) for *ambitus* or *maiestas*?" (2) "But what's the good of being acquitted of *maiestas*, only then to be convicted of *ambitus*?" And Cicero proceeds to answer the question both ways. (1) "As to fact, no difference at all; for you never touched the money and the *maiestas* you aggrandized" — playing on the word *maiestas*, the criminal charge and the political concept. Then, perfectly seriously, and hence the strong adversative, *verum tamen*, (2) "But the *maiestas* charge was the one on which you really might have been convicted, for on that charge the prosecutor is quite uninhibited and able to arouse all sorts of prejudices; whereas bribery is a clear-cut matter — you did or you didn't, and of course you didn't. So, having been acquitted in the case where the hazards were great, you're safe; the other case is a foregone conclusion."

Cicero's confident prediction was fulfilled by the event.¹²

Finally, a word again about Sulla's law. If the reading proposed above is correct, it would seem to be indicated that Sulla had exempted from prosecution for *calumnia* anyone who brought an indictment of *maiestas* under his *Lex Cornelia*. This appears, while very extreme, not by any means incredible, given Sulla's anxious intent to protect his constitution from assault by any great provincial governor.

¹² Cic. *Fam.* 3.12.1.