

POPULAR JUSTICE IN A LETTER OF CICERO TO QUINTUS

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Cicero ad Quintum fratrem II xi (Watt, Sjögren), x (Purser);
(Tyrrell & Purser, *Correspondence II*, (2nd ed.), p. 125 ff.)¹⁾

1. Gaudeo tibi iucundas esse meas litteras, nec tamen habuissem scribendi nunc quidem ullum argumentum nisi tuas accepissem. Nam prid. Id. cum Appius senatum infrequentem coegisset, tantum fuit frigus ut pipulo convicio (MSS populi convicio) coactus sit nos dimittere.

5. ... Reliqua singulorum dierum scribemus ad te si modo tabellarios tu praebebis. Quamquam eius modi frigus impen-debat ut summum periculum esset ne Appio suae aedes urerentur.

These two passages are clearly linked by their ideas and phraseology. Both are difficult to interpret, and the problems of the first have led editors to alter the text. The purpose of this paper is to place the passages in their wider context, that of popular justice and popular demonstration, in order to show their implications, and to urge the retention of the manuscript text.

The letter is concerned with February 54 BC and in particular the hearing of foreign legations by the senate to which the month was primarily devoted as a result of a law of Gabinius (Q. F. II xii 3). The consul Appius Claudius was before 55 working closely with Caesar and was elected under the auspices of Pompeius or Crassus: his support of the coalition probably continued. Cicero, the letter tells us, had been obstructive over the king of Commagene, who was honoured in Caesar's consulship, and Appius as a result was making overtures that this should cease. Cicero was not intending to press matters too far in case Appius called in the aid of his political associates, described in an interesting phrase to which I shall return later. At the time of writing the last meeting of the senate had been adjourned without transacting anything.

1) Subsequent references to letters to Quintus as in Watt.

The problems of interpretation are three:

- a) The meaning of 'frigus'.
- b) The nature of the 'convicium', or 'pipulus', if this is read.
- c) The meaning of 'ne Appio suae aedes urerentur'.

a) It is difficult to sustain the argument of Tyrrell that 'frigus' has its literal meaning (see the discussion in 'Correspondence' quoted above for this and other interpretations considered). With the emended text it is possible that the first passage in itself means that it was so cold in the senate house that there were catcalls directed at the consul from the small huddle of senators, and in consequence he dismissed them. We do not however have to speculate on the existence of central heating there, since the second passage then becomes impossible. Although 'urerentur' can mean 'become frost-bitten', can this be predicated of a house? And indeed why, in describing the effects of the weather, does Cicero mention a house and Appius' house in particular? Moreover with the manuscript text of the first passage, this explanation collapses, since it is not the senators themselves who complain of physical discomfort, and the condition of those outside is no reason for the senate to be dismissed.

The word 'frigus' is used metaphorically in Horace Satires II 1. 63: "maiorum ne quis amicus frigore te feriat", describing the danger of hostility from the well-connected. There is a similarity to English phrases, 'cold reception' and 'cold shoulder', but the verb 'feriat' suggests a more active disapproval and not mere disinterest. Quintilian, the younger Seneca and the younger Pliny also use 'frigus' in this sense²). Cicero and Caelius employ verbs associated with coldness, 'frigeo', 'refrigesco', 'conglacio', on occasions where 'receive hostility', 'become (be) unpopular' gives good sense³). Reid (quoted by Tyrrell p. 127) accepts a metaphorical interpretation of 'frigus' here, but there is still the important question whether it means 'active disapproval' or 'passive disregard'. I believe that the former sense is strongly suggested by the Horace passage and that it is only by employing it that we can properly elucidate this problem.

2) Quint. V 7. 31; VI 1. 37; Pliny Ep. IV 9. 11; Sen. Ep. 122. 11.

3) Cic. Att. II 1. 6 (Flavius' agrarian bill), Q.F. III 2. 3 (Scaurus' candidature), Att. IV 18 (that of Memmius), Fam. VIII 6. 3 & 5 (Curio's tribunate); cp. Thes. L. L. VI 1. 1339.

b) Tyrrell following Boot emended 'populi convicio' on the historical ground that a popular disturbance had no place in the senate-house; and this made possible his literal interpretation of 'frigus'. But it is well attested that the sessions of the senate were normally public in so far as the doors were left open and people could look in ('cur valvae Concordiae non patent...?', Cic. Phil. II 44. 112)⁴). In particular there is an obvious parallel to the happenings in this letter to which Tyrrell is reluctant to give any weight. In *ad Quintum fratrem* II 1. 3 Cicero describes how during a filibuster of Clodius, intended to impede discussion of the enrolment of jurors to try cases of 'vis': "eius operae repente a Graecostasi et gradibus clamorem satis magnum sustulerunt, ...eo metu iniecto repente magna querimonia discessimus." Here we have evidence of a stand from which spectators could watch proceedings (the Graecostasis was used by the foreign legations in February; cf. Varro de lingua Latina V 155), and moreover of a popular demonstration which forced the senate to adjourn because of the threat of violence. Appius, Tyrrell maintains, would not have dismissed the senate in face of a popular outburst, but this had been necessary before, and a Claudius was even less likely to pay attention to hoots among the 'pedarii', the suggested alternative. If we retain 'populi convicio', we can combine respect for the text and historical probability. With 'populi' vindicated, 'pipulo' (a bird cheep or whistle, hence a catcall)⁵) is not required, nor is Housman's dismissal of 'convicio' as a gloss on 'pipulo'⁶) relevant, though in itself reasonable. In fact with the manuscript text 'convicio' is far from otiose. It provides the clue to the answer of our third problem.

c) Our interpretation of the first passage is now that when Appius had convoked a meeting of the senate which was poorly attended, there was such a hostile atmosphere that the abuse of the crowd outside forced him to dismiss it. The second must now mean that (in Cicero's opinion) such a hostile feeling was in the air that there was extreme danger that Appius might have his house burnt about him. This was suggested by Reid to

4) Cf. Cic. Phil. II 4. 8 and V 7. 18, Cat. IV 2. 3. Senate debates in camera received special mention – Livy XXII 59–60, XLII 14, Val. Max. II 2. 1, Dionysius XII 2, Hist. Aug. XX 12 (on 'senatus consultum tacitum'). See Mommsen Staatsr. III 2. 931, Willems Senat 163–4, RE Senatus. Supp. VI 106.

5) Festus 253 M, F. Pauli 212 M, Plaut. Aul. 446.

6) CR 1902, 443.

Tyrrell, but the full understanding of Cicero's remark is only possible, if it is realised that this is a reference to a form of popular justice traditional in Italy. The subject was brilliantly explored by Usener⁷⁾, who showed that the procedure known as 'occentatio'⁸⁾, the chanting of abuse outside an unpopular person's door by a chorus of neighbours, might become sterner still and involve burning down his door and in effect 'smoking him out'⁹⁾. In Cicero's own day Verres received such treatment at Lampsacus and later at Syracuse¹⁰⁾. 'Convicium', Festus tells us, originally meant 'the shouting together of neighbours, being either derived from the gathering of 'vici' or 'convocium'. We also learn from him that it was the later term for 'occentatio'¹¹⁾. Cicero then has compared the angry demonstration outside the senate to 'convicium' proper or 'occentatio', and suggested, in a witty and logical paradox, that there was a danger that this might have been pressed to its extreme consequences.

This reference to popular justice is all the more likely as there is already one reference to this in the letter. When Cicero says in paragraph 3 about Appius: "sed non faciam ut illum offendam 'ne imploret fidem Iovis Hospitalis, Graios omnis convocet', per quos mecum in gratiam rediit", the unknown tragedian he quotes (whether translating a Greek phrase or not) is using the standard Roman vocabulary by which a man unjustly assaulted summoned help from passers by. This was called 'quiritatio', and those who came were expected to afford both moral and physical support, if required¹²⁾. This reference is light-hearted, but the fact that those on whom Appius is expected to call must be Caesar and Pompey and their supporters, adds a sinister overtone. Similarly his talk of the danger to Appius is jovial, yet on occasion, as Usener pointed out, Clodius revived the methods of traditional popular justice. The gathering which assembled by night around Cicero's house after his return from exile performed a 'flagitatio' (de Domo 6. 14-15), i. e.

7) Rhein. Mus. 1900, 1 ff. = Kleine Schriften IV 356 ff.

8) See Cic. Rep. IV 10. 12 = XII tab. VIII 1, Festus 181 M.

9) Usener adduces in particular Plautus Persa 569, Mercator 408 ff.

10) II Verr. I 27. 70 and V 36. 94 ff.; cf. Livy Per. 86 for the fate of C. Fabius Hadrianus who was almost burnt alive in his headquarters.

11) 41 M. 181 M.

12) See on 'fidem implorare' W. Schulze, Sitzsb. Preuss. Ak. Wiss. 1918 = Kleine Schriften 166 ff.

demanding with menaces in the form of 'occentatio'¹³). Moreover Clodius had attacked Milo's house with fire in 57 BC¹⁴).

What reason could there be for a demonstration, especially a violent one, against the consul and the senate on this occasion? In the first place it could have been organised with the cooperation of a Roman gang by some foreign potentate who did not wish a legation to be heard. This is not so unlikely after the example of the murder of Dion and the assault on the Alexandrian ambassadors instigated by Ptolemy Auletes¹⁵). Secondly we learn from Cicero's subsequent letter to Quintus (II xii. 2) that one of the items of business on the Ides of February, the day after this disturbance had prevented any hearing, was the complaint of the Tyrians about Gabinius. An attempt might well have been made to intimidate with a mob those accusing Gabinius, the protégé of the coalition and enemy of the Syrian 'publicani', and the magistrate who was giving them a hearing. In fact Appius himself was unlikely to have come to harm on the 12th February but some of the foreign representatives, especially when they were waiting outside, might have suffered. Again because the senate was 'infrequens' the 'adsectatores' of the senators would have been few and the senators and their entourages might have been terrorised by an angry mob after the house adjourned, if business had been transacted. Appius' move was wise, and the meeting the next day was well attended: "Eodem igitur die Tyriis est datus senatus frequens; frequentes contra Syriaci publicani."

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13) Cf. Clodius' behaviour as chorus leader when organising abuse of Pompeius (Plut. Pomp. 48). For 'flagitatio' see Usener and recently Fraenkel JRS 1961 49f.

14) Cic. Att. IV 3. 3.

15) Dio XXXIX 13. 2, Cic. Cael. 10. 23.