

**Staging Morality:**  
**Studies in the *Lex Iulia de Adulteriis* of 18 BCE**

by

Mary Alana Deminion  
B.A., University of Victoria, 2007  
B.A., University of Ottawa, 2001

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## Supervisory Committee

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## Abstract

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The *lex Iulia de adulteriis* of 18 BCE, which for the first time made adultery a criminal offence and created a standing court, was touted by the Augustan regime as a return to the moral customs of the Republican past. However, the new reform in fact represented a significant shift away from the traditional authority of the Roman *paterfamilias* to punish transgressions privately at his discretion and towards the legal power of the emperor and Senate to define and regulate morality on a public scale. Using a variety of primary source evidence, I explore the provisions of the adultery law and place the resulting criminal trials within the context of public staging of the Roman aristocracy. In this way, the adultery law forms part of a larger trend of elite moral regulation becoming public spectacle.

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*To my mother,  
who heard of Scribonia's self-imposed exile in support of her daughter and said,  
"I would do the same."*

*To Smokey (R.I.P.), Spooky and Guinness,  
who purr sweetly next to a warm computer.*

The State has no business in the bedrooms of the nation.

- Pierre Elliott Trudeau

## **Introduction**

The civil wars that marked the latter part of the 1<sup>st</sup> century BC resulted in the depletion of the Roman ruling classes in terms of both their wealth and their numbers. While the structure of Roman society was damaged by the political events that led to the collapse of the old Republic, there was also perceived to be an accompanying disintegration of the Roman moral fabric. Ancient Roman moralists and even some modern historians have accepted as a matter of course that this period was marred by a lack of respect for traditional Roman values and virtues. Much of the moral outrage has centred around an assumption that women were beginning to experience greater freedoms and that this in turn translated into increased sexual licence, a decrease in the number of legitimate marriages or at least in their duration, and a sharp drop in the fertility rate among the Roman upper classes. Augustus responded to this perceived threat to Roman moral and social order by creating a number of laws that were directed at renewing public stability and, perhaps especially, reviving the traditions and values thought to be characteristic of the old Republican past. Augustan social legislation was ambitious in its attempts to target specific social ills. The goals of these laws were to promote marriage and the production of legitimate children, to punish lapses in morality among the elite, to regulate the transmission of wealth, and thus social status, through inheritance, to place stricter controls on grants of Roman citizenship, particularly the practice of manumitting slaves, and to demarcate more clearly the social orders. At the same time that Augustus launched his social legislation, a new crime was created: adultery.

For the first time adultery was made a criminal offence by law, rather than a private, domestic matter, and a new standing court, the *quaestio perpetua de adulteriis*, was established at Rome to try adultery cases publicly. The law in question is the *lex Iulia de adulteriis*<sup>1</sup> (the Julian law on adulteries) passed in 18 BCE (the same year the *lex Iulia de maritandis ordinibus* – the Julian law to promote marriage in the senatorial and equestrian orders). The text of the law does not survive, our sources of knowledge about its prescriptions and sanctions can only be inferred from literary allusions to it and excerpts from later legal sources, especially Justinian's *Digest of Roman Law*.<sup>2</sup>

The law was targeted specifically at adulteries committed by and with married women. A charge of adultery could not, for example, be levelled against a married man who availed himself of the sexual services of a prostitute, courtesan, or slave. However, an unmarried man who had sexual relations with another man's wife would be liable to a charge of adultery along with the married woman. The primary responsibility of bringing a charge of adultery rested with the accused woman's husband or father. After the discovery of the adultery, husband and father had sixty days during which they had exclusive right to lay a charge. If the husband failed to divorce and charge his adulterous wife, not only could the charge be filed by a third party, but the husband himself would

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<sup>1</sup> The law is referred to in legal texts by a variety of names: the *lex Iulia de adulteriis*, the *lex Iulia de adulteriis coercendis*, the *lex Iulia de adulteriis et de stupro*, the *lex Iulia de adulteriis et de pudicitia*.

<sup>2</sup> <sup>2</sup> The legal details are discussed by Mommsen, 1899; Corbett, 1930; Raditsa, 1980; Richlin, 1981; Gardner, 1986. Treggiari, 1991 discusses the provisions of the law; Riccobono, 1945, attempts to disentangle the provisions of the original legislation from later extensions and interpretations of it.

be vulnerable to a charge of pandering (*lenocinium*).<sup>3</sup> The charge of adultery could be brought only against a divorced woman, or if not divorced, there had to be a successful charge of pandering against the husband before the wife could be charged with adultery. The lover could be charged while the woman was still married, however, as the trials of wife and lover were conducted separately.

Some historians, both ancient and modern, have typically assumed that Augustus' legislation against adultery was drafted as "a very necessary check upon the growing independence and recklessness of women" (P.E. Corbett, *The Roman Law of Marriage*, 1930). More recent historians (Rawson, 1986; Pomeroy, 1976) have been more sympathetic to Roman women, but have not tended to question seriously whether the depiction of a large number of upper class as sexually liberated or licentious (depending on one's view) is, in fact, fair or accurate. My approach to this topic is not to view the Augustan law on adultery simply as a straightforward solution to an allegedly pervasive social ill. Indeed, if this were the only aim of the legislation, it can be said to have failed spectacularly. Though many prominent Romans were tried, convicted and punished under the new law, ancient historians such as Tacitus report that it did not succeed in promoting marriage and children. On the adultery law, Tacitus darkly remarked that households were now undermined by *delatores* ("denouncers")<sup>4</sup> and that "just as society had previously suffered from outrages, so it did now from laws (*Annals* III. 25.1, Woodman, transl.). Later, Tertullian would write that the laws of the Augustan moral programme as

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<sup>3</sup> This was no minor offence. The penalties were the same as those for adultery. Also, contrary to normal Roman practice, a slave could be tortured to give evidence against his or her master in a case of pandering, so Gardner, 1986.

<sup>4</sup> Third-party accusers who stood to gain financially and politically by bringing charges against individuals, especially wealthy and prominent ones, to the courts.

a whole, including the adultery law, were empty and ineffectual (*vanissimae leges*, *Apologia* 4).

Despite the supposed inefficacy of the adultery law, the law itself and the *quaestio* were remarkably long-lived. Jurists in the Severan age continued to write monographs about the *lex Iulia de adulteriis* and there is evidence from Cassius Dio that the *quaestio de adulteriis* was still operating in full force with more than 3000 cases pending at the time he was consul, more than two hundred years after the law was introduced. If the law was not serving some purpose therefore, it is difficult to understand its longevity.

Though scholars have argued that the adultery law is “logically linked” with the marriage law of 18 BCE (Treggiari, 1991, p. 277), it is the intention of this thesis to examine the Augustan law against adultery not merely as an adjunct to the marriage law, for although the apparent purpose of the legislation as a whole was to encourage marriage and childbearing, the adultery law in fact had little to do with the promotion of marriage. If elite bachelors were reluctant to marry, it seems unlikely that the added responsibility of having to control a wife’s sexual conduct or face the embarrassment of charging her in a public trial or risk a possible charge of pandering himself would provide much inducement. Also, if, as has been suggested in some studies of Roman demographics<sup>5</sup>, there was a shortage of eligible elite women<sup>6</sup>, the severe punishment inflicted on women

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<sup>5</sup> See S. Treggiari (1991) *Roman Marriage: Iusti Coniuges from the time of Cicero to the time of Ulpian*, Oxford; P. A. Brunt (1987) *Italian Manpower, 225 B.C. – A.D. 14*, Oxford; T. A. J. McGinn (2004) “Missing Females? Augustus’ Encouragement of Marriage Between Free born Males and Freedwomen” *Historia: Zeitschrift für Alte Geschichte* 53 (2): 200-8.

<sup>6</sup> Cassius Dio 54.16.2: “And because there were far more upper-class males than females, [Augustus] gave permission to marry freedwomen to those who wished to do so, except senators, having laid down that their progeny would be legitimate.”

convicted of adultery, which included an irrevocable loss of status and ineligibility for remarriage, would have made matters worse, not better.

This thesis proposes to examine the Augustan law on adultery not as an attempt to effect change in Roman demographics as was the apparent goal of the other forms of social legislation, nor was it a return to traditional Roman *mores* as Augustus himself claimed, but rather the criminalization of adultery was part of a larger trend under the Roman Principate to “stage” Roman elites by making their moral regulation a matter of public display and spectacle.

Recent work by Leanne Bablitz (*Actors and Audience in the Roman Courtroom*) has identified the Roman courtroom as one of a number of public “stages” which contained “strong elements of performance and spectacle” and where “Romans of elite class or those wishing to attain some measure of fame could promote and advertise themselves” (2007, p. 1). The *quaestio perpetua de adulteriis* and the court of the Roman Senate can be examined within this framework as environments in which these elements of staging and promotion were certainly present. But who was being “staged” and who, or what, was being advertised and promoted in an adultery trial?

In order to answer these questions, it is useful to examine the *lex Iulia de adulteriis* and its *quaestio* within the context of Augustan moral discourse which dominated the politics of the era. Roman discussions of immoral behaviour are overwhelmingly concerned with the behaviour of the aristocracy. Upper-class Roman figures frequently attacked their political rivals by accusing them of all manner of moral improprieties, adultery prominent among them. The relationship between Roman moral discourse and politics has been explored by Catharine Edwards (*The Politics of*

*Immorality in Ancient Rome*) who has argued persuasively that the rhetoric articulates Roman anxieties about gender, social status, and political power. By criminalizing adultery, I argue, Augustus represents himself as treating the symptoms of this disease and restoring the Roman state to full health much as he had claimed to have “restored” the Roman Republic by establishing his Principate.

This thesis concerns itself with a law introduced during the historical period of the Augustan Principate. During the period of the Roman Republic, the aristocracy dominated society economically, politically, and socially. With the advent of the Principate, Rome witnessed significant changes in its sociopolitical order as power increasingly became concentrated in the hands of one man, the emperor. This meant that there was an ongoing redistribution of power in all of its forms and also an accompanying shift in ideological activity as, because there was no clear precedent for Principate, the figure of the emperor was “being invented on the fly” (Roller, 2001, p. 6). Matthew B. Roller’s work in *Constructing Autocracy* (2001) focused on the relationship between this social change and conceptual shift as it was expressed in the writings of Roman aristocrats. Roller emphasizes that moral understanding was “perhaps the most important mode of understanding in Roman culture” and finds that moral discourse was perceived by aristocrats as “malfunctioning, or functioning in ways disadvantageous to the aristocracy at large, in the sociopolitical order of the Principate” (p.10). Roller does not focus specifically on discourse surrounding adultery or the law, but both are nevertheless relevant to discussion of how the emperor’s authority was constructed. The *lex Iulia de adulteriis* also involves shifts in political and legal power, as well as in moral discourse, towards the authority of the emperor, arguably to the detriment of the aristocracy whose

morality is now to be staged openly and judged in the *quaestiones* and the court of the emperor and Senate.

The first chapter of this thesis will provide an overview of the *lex Iulia de adulteriis*, including its provisions and penalties. The law will be located within the context of the decidedly Roman preoccupation with sexual immorality among the elite which dominated the political rhetoric of ancient Rome. This chapter will demonstrate how Augustus made use of large-scale public spectacle, specifically the *Ludi Saeculares* or Secular Games, in the promotion of his moral programme and thus successfully introduced the formerly private, domestic issue of adultery into the public sphere.

Chapter two will focus on the *quaestio perpetua de adulteriis*, the permanent standing jury-court created by the *lex Iulia de adulteriis* to try adultery cases. I will attempt to provide a clearer picture of what is meant by describing Roman trials as ‘public’ by using the available epigraphical and literary evidence to show how a Roman court functioned and where it was located. Because so little evidence survives for the *quaestio de adulteriis* specifically, I will make use of what we do know of the judicial procedure used in other types of *quaestiones*. It is my contention that although the criminalization of adultery was itself a departure from established practice, the adultery court would have functioned in much the same way as courts for other crimes. This chapter will also demonstrate how members of the Roman aristocracy were ‘staged’ in the environment of the Roman courtroom by examining the cases of several prominent Romans whom the ancient sources record as being tried for adultery during the reign of Augustus and in the years following his death. As most of these cases were tried in the Roman senate, rather than in the *quaestio*, the last portion of this chapter will focus on the

rise of the senate as a courtroom in the Principate and what, if any, impact this may have had on the survival of the *quaestio de adulteriis*.

The third and final chapter represents a case study of sorts. One of the earliest and most scandalous cases of adultery recorded in the ancient sources following the introduction of the *lex Iulia de adulteriis* concerns Augustus's own daughter, Julia. The so-called "scandal of 2 BCE", which saw Julia accused, convicted and relegated by a letter of denunciation sent to be read before the Roman senate by her father the emperor, has been analyzed by a number of Roman scholars, most notably Sir Ronald Syme. Much of the scholarship surrounding Julia's alleged adultery has focused on her position relative to the imperial succession and has thus proposed some form of conspiracy theory to account for her downfall. This thesis will not attempt to offer yet another account of the political or personal motives underlying this scandal, nor will any judgement be passed on Julia's guilt or innocence in relation to the charge of adultery. Rather, I propose to use a critical reading of the ancient sources in order to examine how Augustus deliberately constructed the reported details of Julia's alleged adultery in order to make her 'crime' as public as possible.

## Chapter One:

### *Lex Iulia de adulteriis*

#### **Adultery in the Late Republic: Publius Clodius and the Bona Scandal**

In 62 BCE the prominent Roman politician Publius Clodius<sup>7</sup> disguised himself as a woman and infiltrated the sacred, women-only rites of Bona Dea being held in the house of the *Pontifex Maximus*, Julius Caesar, under the presidency of his mother, Aurelia and his wife, Pompeia. According to his adversaries, his goal was to seduce the wife of Julius Caesar in his very home. The ensuing scandal forced the Roman Senate to take action against this violation of both the sanctity of Caesar's household and of the religious rites of the female cult. The Senate decreed that the matter be referred to the Vestals and the Pontifices, who ruled that Clodius' act was *nefas*,<sup>8</sup> a threat therefore not only to Caesar's house but to the entire universal order determined by the gods. As a result of this ruling, the Senate ordered that a special *quaestio* (court) be established in order to try Clodius.

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<sup>7</sup> Publius Clodius and the rites of Bona Dea: Cic. *Ad fam.* 20.15; *Ad Att.* 12.3; 13.3; 18.2-3); *Pro Planc.* 86; Vell. Pat. 2.45.1; Appian *Roman History* 2.14; Sen. *Ep.* 97.2-8; Suet. *Jul.* 6.2, 74.2; Plut. *Cic.* 28-9; *Jul.* 6, 9-10; Clodius as archetypal adulterer, Juv. 2.27.

<sup>8</sup> Cicero seems to describe Clodius' attempt to have illicit sex with Caesar's wife in the house of the *Pontifex Maximus* during the Bona Dea rites as *incestum* (*Pis.* 95). This term can of course refer to incest (which Clodius was accused of committing with his married sister,) but it also carries with it a sense of religious pollution that was thought to contaminate the community and even threaten its safety, as was thought to occur if a Vestal Virgin was unchaste (Harries, 2007). Bauman (1992) accepts *incestum* as an analogy for Clodius' alleged crime, but rejects it as the formal charge brought against him (*Cf.* Scheid, 1981; Moreau, 1982).

Despite the very public and well-documented events of the Bona Dea affair, Caesar's position in relation to the scandal was unwavering. He refused to pursue charges or even testify against Clodius, who was also acquitted by the jurors of the *quaestio*, albeit narrowly.<sup>9</sup> Plutarch suggests that the jurors of the *quaestio* may have been swayed by the fact that Clodius had popular support and acquitted him for fear of rousing public anger. Caesar is also said to have refrained from taking action against Clodius because he wished to please the common people. He did, however, swiftly divorce Pompeia. Caesar denied that he had divorced his wife for adultery, but is reported to have famously stated that 'Caesar's wife should be above suspicion and beyond reproach'.<sup>10</sup>

The events surrounding the Bona Dea scandal of 62 BCE reveal a number of issues that were to gain greater prominence under the Principate of Augustus. The incident involves an alleged adultery (or at least an attempted one) and although adultery itself is not yet a criminal offence at this time, the very public staging of the case, the use of a specially established *quaestio*, the emphasis on female chastity in appearance as well as practice, and the apparent belief that the sexual behaviour of the aristocracy has ramifications for the social, political and even religious order of the community all illustrate the depth of Roman anxieties surrounding elite morality and political power. As Catherine Edwards observes, "[a] man dressed as a woman, the profanation of religious rights, adultery with the wife of one of the leading men in Rome and the adulterer already notorious for his pernicious political dealings - this incident, related or alluded to by

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<sup>9</sup> 31 votes to 25. Cicero has it that twenty-five risked their necks, while thirty-one were moved more by hunger than reputation (*Att.* 1.16.5).

<sup>10</sup> Cicero *Att.* 1.13; Plutarch *Caes.* 9-10; Cassius Dio *Roman History* 37.45.2. Moreau, 1982, denies that Caesar said this.

numerous Roman authors, summed up the disorder of the final years of the Republic” (1993, p. 34).

Ancient historians have traditionally depicted the period that witnessed the decline and fall of the Roman Republic as one marred by sexual, as well as political corruption.<sup>11</sup> Indeed, for Roman moralists, sexual immorality is inextricably linked to political disorder. There is, of course, a long-standing tradition of attacking one’s political enemies by making accusations of a sexual nature.<sup>12</sup> Cicero, of course, was a master of this form of political invective.<sup>13</sup> The events of the Bona Dea scandal would provide Cicero with a wealth of material to use against his political rival, Clodius. At stake, according to Cicero, is the entire Roman Republic. Cicero writes that if the Republic is to fall, let it at least be destroyed by a (real) man.<sup>14</sup> Clodius’ transvestitism, his duplicity in attempting to sneak into another man’s home to commit adultery with his wife, combined with other accusations that Clodius committed *incestum* with his own (married) sister<sup>15</sup> all served to cast him as an unmanly and corrupt politician who is a danger to the health of the Roman State. Even Clodius’ populist appeal is sexualized. Seneca claims that Clodius was able to arrange his acquittal in the Bona Dea trial by

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<sup>11</sup> On the Bona Dea incident alone see Vell. Pat. 2.45.1; Appian *Roman History* 2.14; Suet. *Jul.* 6.2, 74.2; Plut. *Cic.* 28-9; *Jul.* 6, 9-10.

<sup>12</sup> See Richlin, 1983; Edwards, 1993; Bauman, 1992 for further discussion of some of the following primary source examples.

<sup>13</sup> E.g. Cic. *In Cat.* 2.23; *Pro Flacco* 34; *Pro Sest.* 20; *Pro Plac.* 30; *In Pis.* 70; *Pro Cael.* 20, 29, 35; *Phil.* 2.99.

<sup>14</sup> *De Haruspicum Responso* 20.42. See Eleanor Winsor Leach, 2001, “Gendering Claudius,” *Classical World* 94 (4): 335-359 for discussion.

<sup>15</sup> Plutarch *Caes.* 10. See also Tatum, 1999.

offering as bribes to jurors the sexual favours of many elite matrons and youths who were at his disposal.<sup>16</sup>

There is, of course, nothing out of the ordinary in the content of the invective against Clodius. Many Roman politicians targeted their rivals with accusations of sexual immorality, especially adultery, with the wives of other elite citizens. Cicero himself was accused of adultery.<sup>17</sup> Catiline was characterized as having numerous affairs with married women and using his influence over them to his political advantage (Sallust *Cat.* 15). Plutarch reports that the triumvir Pompey is alleged by his enemies to have had many adulterous affairs (*Pompey* 2.4-5). Cicero's *Philippics* accuse Mark Antony of a plethora of sexual vices and he in turn is known to have accused the then-Octavian, later known as Augustus, of adultery (Suetonius *Aug.* 69), who responded in kind.<sup>18</sup>

If the accusations against Clodius were not atypical, the response that followed his infiltration of the Bona Dea rites almost certainly was. Rumour of the scandal soon spread around the city and among the elites of Rome there was a desire to see Clodius punished for his offense not only to those “whom he slandered, but also the commonwealth and the gods” (Plutarch *Caes.* 10). He was indicted by one of the tribunes, and members of the aristocracy and the Senate were eager to bring forth “evidence” of his essentially corrupt nature, including *incestum* with his sister. Nevertheless, Clodius is said to have used his popular support to save him from

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<sup>16</sup> *Ep.* 97.2-9. Cf. Cicero *Ad Att.* 16.5 and Valerius Maximus 9.1.7. See Edwards, 1993, for discussion of the rhetoric of effeminacy and sexual corruption in Roman political discourse in the case of Clodius and others.

<sup>17</sup> Dio 46. 18. Clodius would retaliate against Cicero in 61 BCE by accusing him of incest with his daughter (Pseudo-Sallust *In Cic.* 2; Bauman, 1992, footnote 35, chapter 6).

<sup>18</sup> Through the issuing of edicts, Antony and Octavian accused each other of a number of “un-Roman” vices including adultery, bribery and luxury. See Kenneth Scott, 1933, for “The Political Propaganda of 44-30 BC”.

conviction.<sup>19</sup> We have in this case an early example of Roman elites attempting to play out a political power struggle and engage in moral regulation on the very public stage of the *quaestio*.

In the political discourse surrounding the incident, the alleged adultery in this case is not merely a private matter, involving as it does an outrage against the house of Caesar and thus the seat of religious rites sacred to the city of Rome. The health and well-being of Rome is therefore inextricably linked not only to the sanctity of the religious rites, but to the integrity of that house. The private moral conduct of Rome's prominent citizens, including elite women, clearly becomes a public concern. However, in the case of the Bona Dea scandal both the religious authorities of the Vestals and *Pontifices* and the Senate display a willingness to regulate elite behaviour through public courts, but sacrilege, not adultery, is apparently the crime investigated. Caesar himself refuses the role of cuckolded husband; he takes no action against Clodius, and though he divorces Pompeia, he denies that adultery is the reason. Despite all of this, in ancient accounts of the Bona Dea incident adultery emerges as one of the most salient aspects of the scandal. Thus, not only do Roman writers use the Bona Dea incident to "sum up" the political disorder of the decline of the Roman Republic, adultery, a manifestation of moral disorder, is presented as a threat to the very health of Rome. Adultery among the elite is therefore a "telling symptom of disease in the body politic" (Edwards, 1993, p. 34) and a matter for public concern.

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<sup>19</sup> According to Plutarch. Both Seneca and Cicero claim that bribery of one sort or another secured his acquittal.

### Adultery in the Early Principate: Legislating Morality

If the Republic was afflicted, Rome's first emperor purported to hold the cure. The answer to restoring the *res publica* to political, as well as moral, health was, according to Augustus, a return to the *mores* of the distant past, to the examples set by Rome's illustrious ancestors. Though modern historians speak of the collapse of the Roman Republic and the rise of the Principate, Augustus himself presents his regime as a peaceful restoration of the Republic following bloody civil wars and as a revival of all that made Rome great before it was nearly consumed by treacherous and ignoble politics, and moral turpitude. Despite the sweeping moral legislation he introduced, in his *Res gestae* Augustus stresses that he had the support of the senate and the Roman people, and that refused all powers that were inconsistent with Republican precedents, including the *cura legum morumque* (supervision of laws and morals). He states:

*senatu populoque Romano consentientibus ut curator legum et morum summa potestate solus crearer, nullum magistratum contra morem maiorum delatum recepi. Quae tum per me geri senatus voluit, per tribuniciam potestatem perfeci*

“the senate and people of Rome agreed that I should be appointed supervisor of laws and morals with supreme power and without colleague, but I did not accept any office contrary to ancestral tradition. The measures which the senate then wanted me to take I carried out through my tribunician power” (6.1-2).

The “measures” he describes are the laws on marriage and adultery. These laws are again revisited later in the text when Augustus makes the claim:

*Legibus novis me auctore latis multa exempla maiorum exolescentia iam ex nostro saeculo reduxi et ipse multarum rerum exempla imitanda posteris tradidi.*

“By new laws carried with me as sponsor, I revived many ancestral models which were falling into disuse in our age, and myself handed on many model practices for posterity to imitate”<sup>20</sup> (8.5).

The typically Roman obsession with looking backward to the glorified past and the *exempla maiorum* (“models of the ancestors”), and the fear of anything *novus* (“new” or “novel”) being strange and dangerous shapes Augustus’ portrayal in the *Res gestae* of the moral laws he introduced.<sup>21</sup> He acknowledges that his laws are *novus*, but emphasizes that they serve to revive ancestral customs. For Augustus, not to claim to be observing ancestral custom would have been “unthinkable” (Ridley, 2003, p. 233).

### ***Lex Iulia de adulteriis***

Augustus’ legislation on adultery, the *lex Iulia de adulteriis*, represents a departure from established tradition even as it purports to revive ancestral morals and

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<sup>20</sup> B.W.J.G. Wilson, translator, *The Age of Augustus*, 2003.

<sup>21</sup> See Ronald Ridley, 2003, *The Emperor’s Retrospect: Augustus’ Res Gestae in Epigraphy, Historiography and Commentary*, *Studia Hellenica* 39, for a detailed contextualization of the work.

values. For the first time adultery was made a criminal offence, rather than a private, domestic transgression which the Republican *paterfamilias* had full authority to punish at his discretion. While Republican fathers had had the right even to kill their daughters, this right was subjected to strict limitations under the *lex Iulia de adulteriis*. The law did not allow a father the right to kill except in a select set of circumstances that seem unlikely to arise, something that may in fact have been Augustus' intention. In order for the homicide to be legally justifiable, a woman had to have been caught by her father *in flagrante delicto* in his own or his son's house, and the father was obligated to kill both his daughter and her lover together, not one without the other. This requirement to kill both guilty parties seems to have been a deliberate deterrent to killing either. Husbands were explicitly barred by the law from killing adulterous wives and were instead obligated to obtain a divorce and bring a charge of adultery. Instead of having the traditional right to punish adulteries privately, if severely, husbands and fathers under the *lex Iulia de adulteriis* had to content themselves with their allotted sixty-day priority period to bring an adultery charge before it was open season for *delatores*.

### **Penalties**

If convicted, adulterers were punished with relegation to separate islands and suffered substantial financial penalties. A woman convicted of adultery lost half her dowry and a third of her property, the lover half of his property. A *delator* stood to gain financially from a successful adultery prosecution -- he received a share of the confiscated property, the rest went to the treasury. Other penalties included *infamia* and

an inability to act as a witness in any court. Women convicted of adultery were prohibited from marrying freeborn Romans and were classified as *probrosae* along with stage performers, prostitutes, procuresses, and women condemned by any criminal court. According to literary sources,<sup>22</sup> these “fallen women” could no longer wear the *stola* of a respectable Roman matron and instead were forced to clothe themselves in the toga, worn by Roman men and female prostitutes.<sup>23</sup> There is no extant portion of the adultery law that includes the assumption of the toga and resignation of the *stola* as being among the penalties for adultery. However, the regime of Augustus did elsewhere demonstrate a preoccupation with costume as a public display of civic identity and social standing. The *lex Julia theatralis* not only dictated where designated groups (senators, *equites*, soldiers, women, freedmen) might sit, thus creating a very visible “map” of Roman society,<sup>24</sup> but also specified what they might wear in the theatre. Official portraiture of women of the imperial house, notably the representations found on the *Ara Pacis*, displays them dressed modestly in the traditional *stola*, while men wear the *toga* and children the *toga*

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<sup>22</sup> Martial 2.39, 10.52 and Juvenal 2.68 clearly link the toga to the adulteress. Horace, *Sermones* 1.2.63, Cicero, *Philippics* 2.44, Martial 6.64.4, and Tibullus 3.16.3-5 associate the toga with prostitutes or women of dubious status. See discussion in Gardner, 1986. The evidence for the toga as the “uniform” of the prostitute is far from clear, however. See McGuinn, 1998, and Olson, 2006, for this.

<sup>23</sup> Acro writes: “*Matrona* who have been repudiated by their husbands on account of adultery lay aside the *stola* and wear the toga on account of disgrace; the toga of a prostitute is apt. For thus they are accustomed to stand forth in dark togas only, so as to be distinguished from matrons; and for that reason those women who were convicted of adultery wear this garment (*Scholia Horatiana* to *Sermones* 1.2.63; see McGinn, 1998). Gardner, 1986, suggests that women convicted of adultery may in fact have had little choice but to become prostitutes as they were permanently denied the protections afforded ‘respectable’ Roman women.

<sup>24</sup> Milnor, 2005.

*praetexta*.<sup>25</sup> The *stola* served to indicate clearly that a woman was married in a *iustum matrimonium* (legal marriage between citizens) and therefore was of respectable social and sexual status.<sup>26</sup> As Milnor succinctly observes: “The *stola* was thus not simply a woman’s garment, but a *good* woman’s garment.”<sup>27</sup> To deny a convicted woman the privilege of wearing the clothing of respectable, upper-class Roman womanhood would be, in effect, to deny her membership to her social class and stigmatize her publicly. A conviction for adultery would therefore clearly result in a significant loss of status for an elite Roman woman. The punishments for adultery thus reveal the extent to which the Julian laws were preoccupied with maintaining, even strengthening a system of distinct social stratification.

The classification of elite women convicted of adultery as *probrosae* and thus relegating them to the same infamous status as stage performers and prostitutes is significant. By having evidence of their private indiscretions played out in an open court accused women were ‘staged’ publicly in much the same (disreputable) way as an actress.<sup>28</sup> However, despite the apparent loss of status involved in certain behaviours or occupations, there was a certain glamour attached to being a stage-player or a gladiator among some members of the senatorial or equestrian order. Despite a legal ban on the aristocracy engaging in these activities or professions,<sup>29</sup> it seems to have become

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<sup>25</sup> See Paul Zanker, 1988, *The Power of Images in the Age of Augustus*, University of Michigan.

<sup>26</sup> See Olson, 2006, for an examination of the role of clothing in the *matrona*/whore dichotomy.

<sup>27</sup> Milnor, 2005, p. 113.

<sup>28</sup> For *Actors and Audience in the Roman Courtroom*, see Bablitz, 2007.

<sup>29</sup> *Senatusconsultum from Larinum* (Levick, 1983). The surviving tablet treats restrictions against members of the upper class engaging in public performance. Suetonius suggests that this SC may also have dealt with the sexual misconduct of Roman matrons.

something of a trend. Some women may even have attempted to register legally as prostitutes in order to avoid the severe penalties associated with a conviction for adultery, as is recorded in the unsuccessful case of Vistilia.<sup>30</sup> The emperor Tiberius later forbade female relatives of senators and knights from registering as prostitutes. Offenders were punished with exile and forbidden to ply the trade in future.

### **Spectacle, Law and Moral Representation under Augustus**

Augustus declared that his legislation had revived *mos maiorum* and had set illustrious standards for posterity. The Julian Law on adultery is presented in the sources as having been proposed by Augustus himself, though there is some suggestion that the *princeps* may have been responding to pressure exercised on him by the Senate. Cassius Dio, after describing Augustus' marriage law, the *lex Iulia de maritandis ordinibus*, says that the Senate put pressure on Augustus to make marriage more attractive to men by publicly disciplining women for their "disorderly conduct".<sup>31</sup> Dio claims that the Senate mocked Augustus by making ironic allusions to his own supposed dalliances with many women.<sup>32</sup> At first, Augustus responded that the most necessary restrictions had already been laid down and that anything else that might be needed could not be regulated by

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<sup>30</sup> Gardner, 1986.

<sup>31</sup> Dio 54.16.

<sup>32</sup> Some of these stories likely originated with Antony, but they are by no means to be completely discounted. Suetonius wrote of Augustus: "Not even his friends dispute that he often committed adultery, although they excuse him as motivated not by lust but by calculation, so that he could the more easily acquire information about his rivals' plans from the women of their households. (*Aug.* 69)

decree. When the Senate continued to press the issue, Augustus responded by saying: “You yourself ought to admonish and command your wives as you wish; that is what I do.” The Senate demanded details as to how exactly Augustus exercised control over Livia, but Augustus was able to give only vague statements about female dress and adornments, women going out in public, and their modesty in behaviour. Dio hints at the hypocrisy of Augustus’ speech by claiming that the emperor was not in the least bothered by the fact that his actions did not lend any credence to his words.

Dio provides another example of the inconsistency shown by Augustus towards the matter of adultery and shows too how the emperor may have been responding to external pressures by creating the adultery law. While he was censor,<sup>33</sup> an unidentified person brought a young man to Augustus who had married a woman with whom he had previously committed adultery and made numerous allegations and accusations against the man. Augustus was said to have been at a loss as to what to do, as he dared not overlook the affair, but also did not wish to issue a formal rebuke. At length, and with difficulty, Augustus finally said: “Our factious quarrels have borne many terrible fruits; let us, then, forget them and give our attention to the future, that nothing of the sort may occur again.”<sup>34</sup> Though no information is given as to the identities of the accuser and accused, and we can only speculate on how they may have been related to each other politically or socially, it is clear from this story that even before the adultery law was issued, there was an expectation among some that adultery should be addressed in a more formal capacity. It would appear from Dio’s account that although Augustus was at first

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<sup>33</sup> In the Republic, a censor was responsible for demoting from the census any man whose moral character was suspect. See Milnor, 2005, and de Bouvrie, 1984 for the office of censor as precedent for the Augustan moral legislation.

<sup>34</sup> Dio 54.16.6.

reticent to bring cases of adultery within the sphere of his own judgement and authority, once the legal machinery was in place, the emperor was very willing to make adultery a public matter.

If Dio's account is correct,<sup>35</sup> the *lex Iulia de adulteriis* was not introduced at the same time as the *lex Iulia de maritandis ordinibus* and was a later addition prompted by the demands of some within the Senate. Though we therefore cannot say with certainty that the adultery legislation was introduced with the marriage law of 18 BCE, the two tend to be linked in both ancient works and modern scholarship as belonging to the same trend of moral and social reform following Rome's civil wars. It seems clear that Augustus' use of moral legislation, while interfering in matters typically thought private, was a response to the prevailing discourse which held that Roman decline could be blamed on moral laxity among the elite.

Though the commentators of the time may have been fond of deploring the vices and excesses thought to have contributed to the political crises that culminated in the Civil Wars, it is not apparent that they thought laws were necessarily the answer. Horace makes *licentia*<sup>36</sup> responsible for all of Rome's problems, including civil war, and it is clear that adultery and feminine chastity (or lack thereof) are not far from his mind. In *Ode* 3.24, Horace begins by promoting the typically Roman binary opposition between rustic tribes and corrupt Roman civilization. He praises the non-materialism of nomadic

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<sup>35</sup> Propertius 2.7 provides a tantalizing hint that Augustus may have embarked upon an unsuccessful attempt at a legal programme of moral reform as early as 28 BCE. This does not appear in any of the historical sources, and may have been "suppressed". See Gordon Williams, 1962, "Poetry in the Moral Climate of Augustan Rome", *Journal of Roman Studies* 52, pp. 28-46.

<sup>36</sup> Meaning anything from "lack of self-control" to "lawlessness", see Quinn's commentary on *O.* 3.24.

tribes who do not have “dowried wives ruling husbands and trusting in adulterers” (*nec dotata regit virum/coniunx nec nitido fidit adultero*, 19-20). In place of a dowry, these women have to offer the virtue of their parents and a chastity that guarantees the marriage contract and precludes other men. For them, straying outside the marriage is a sin and if they do the penalty is death (*dos est magna parentium/virtus et metuens alterius viri/certo foedere castitas/et peccare nefas, aut pretium est mori*). Having established the roots of Rome’s ills in private excesses, Horace moves towards the need for leadership in a national context, but expresses doubt that laws devoid of morality could have any effect (*quid leges sine moribus/vanae proficiunt*).

By the time Horace wrote Book Four of his *Odes*, however, it is clear that there had been a significant change. Where his early *Odes* expressed skepticism about “empty laws” standing in for moral self-regulation among the Roman elite, his later work presents a much more optimistic impression of the state of affairs at Rome. In *Ode* 4.5, Horace clearly alludes to Augustus’ moral and religious reforms and suggests strongly that the standards of behaviour enacted by law had become the *mos* of a morally reformed and revived society.<sup>37</sup> Horace further casts Augustus as a benefactor of the Roman people in *Ode* 4.15, choosing to celebrate the emperor’s role as the bringer of lasting universal peace and the champion of the rule of law rather than his military successes as conqueror.

The perceived legitimacy of Augustus’ rule rests on his successful evocation of Republican precedents. He claims to have restored Rome by reaffirming and strengthening respect for the *mos maiorum*, the ancestral traditions, and to have thus

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<sup>37</sup> *O.* 4.5.20, see Quinn on the use of *mos*.

ushered in an era of peace, stability and prosperity, a new golden age for Rome. Both the literary sources and visual displays of the time reflect a desire to witness the creation of a new age out of the ashes of the old. Nowhere is this desire more clearly evinced than in the celebration of the *Ludi Saeculares*, the Festival of the Century, of 17 BCE.

The *Ludi Saeculares* were an established Republican tradition of ritual purification and rebirth celebrated once in the lifetime of the longest-lived citizen of Rome.<sup>38</sup> A fragmentary inscription records two decrees of the Senate concerning both the celebration the games and the recording of the event on bronze and marble columns for future remembrance.<sup>39</sup> That the games were to be celebrated less than a year after the introduction of the Augustan social legislation is far from coincidental. The inscription dealing with the games not only stresses that the festival must be viewed by as many as possible out of religious duty and because “no one will attend such a spectacle again,”<sup>40</sup> it also specifies that “those who are liable under the Law on Classes Permitted to Marry [*lex Iulia de maritandis ordinibus*] shall be permitted to view with impunity the games.” The timing of the games would seem clearly to connect the beginning of Rome’s new age of fertility and stability and its return to traditional values with the introduction of Augustus’s social legislation. The Roman people, namely the elites who were the focus of the marriage and adultery laws, are being urged to engage actively with the Augustan moral programme by, on the one hand, obeying the new laws and, on the other, by observing and even participating in the spectacle celebrating the new age.

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<sup>38</sup> A one hundred-and-ten-year cycle, according to the *Sibylline Oracle* preserved in Zosimus 2.6.

<sup>39</sup> *CIL* 6.32323, lines 50-63.

<sup>40</sup> Transl. Lewis and Reinhold, in Chisholm and Ferguson (eds.), 1981.

The celebration of the *Ludi Saeculares* consisted of three days and nights of sacrifices and public theatrical performances. Rather than sacrifice to the underworld gods, Dis Pater and Proserpina, as had been the practice during Republican celebrations of the games,<sup>41</sup> Augustus instead elected to sacrifice to the *Moirae* (the Fates), the *Ilythiae*, Greek goddesses of childbirth, and *Terra Mater* (Mother Earth), as well as Juno, Diana and his own patron god, Apollo. The honoured deities clearly were intended to assure the safety, stability and peace of Augustan Rome and to symbolize the values of marriage and fertility the regime was eager to promote. The *quindecimviri* issued a proclamation that the period of mourning should be reduced for widows of freeborn citizens so that everyone might partake in the public rejoicing called for by the occasion. Nor were women relegated exclusively to the role of spectator in the festival. One hundred and ten married wives of free men participated in a *sellisternium*, a kind of banquet for the gods with seats dedicated to Juno and Diana, while Augustus spoke a prayer asking Juno to look favourably on Rome and her citizens.

Horace, apparently in his capacity as ‘poet laureate’, composed a hymn for the *Ludi Saeculares* which was sung on the Capitol by twenty-seven boys and the same number of girls. The spectacle of aristocratic youths of identifiable parentage<sup>42</sup> singing a hymn that was officially commissioned and publicly performed undoubtedly served to illustrate the purpose of the games as presented by the Augustan regime. A reading of the text of the preserved *Carmen Saeculare* reveals the close connection between the *Ludi Saeculares* and the new laws:

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<sup>41</sup> As in the 249 and 140s BCE games, cf. Livy, *Periochae* 49.6; Varro in Censorinus 17; see also Beard *et al.*, 1998.

<sup>42</sup> The boys and girls are specified as “having both parents living”, *CIL* 6.32323.

*diva, producas subolem patrumque  
 prosperes decreta super iugandis  
 feminis prolisque novae feraci  
 lege marita,*

*certus undenos deciens per annos  
 orbis ut cantus referatque ludos  
 ter die claro totiensque grata  
 nocte frequentes.*

Goddess, make strong our youth and bless the Senate's  
 Decrees rewarding parenthood and marriage,  
 That from the new laws Rome may reap a lavish  
 Harvest of boys and girls

So that the destined cycle of eleven  
 Decades may bring again great throngs to witness  
 The games and singing: three bright days and three long  
 Nights of the people's joy.<sup>43</sup>

The words of the *Carmen Saeculare* clearly reveal the Augustan age's preoccupation with its own place in history. The *Ludi Saeculares*, in their spectacular public display of Roman matrons and youths, promise nothing less than the rebirth of Rome and the revival of traditional morality under the new political order. Even as the *Ludi* are presented as a revival of Republican custom, it is evident that they have been redeployed as a vehicle for a specific, Augustan programme. Formerly private matters relating to marriage and childbearing are legislated and the laws are presented as themselves being productive of offspring. Using the *Ludi Saeculares* as a stage for promoting the laws of

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<sup>43</sup> Lines 17-24, transl. J. Michie, in Chisholm and Ferguson (eds.), 1981.

the Augustan moral reform,<sup>44</sup> complete with public performances by matrons and children, also serves to underscore the degree to which the regime was concerned with making the morality of the Roman elite a matter for public spectacle and scrutiny.

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<sup>44</sup> See J. C. Scott, 1990, *Domination and the Arts of Resistance: Hidden Transcripts*, Yale University Press, pp. 45-69, for a cross-cultural approach to enforcing public performances as an expression of power.

## Chapter 2:

### The *Quaestio Perpetua* and Adultery Trials in the Roman Senate

The Roman courtroom was a public ‘stage’ which contained both actors and audience and possessed strong elements of performance and spectacle (Bablitz, 2007). Though neglected by some studies of ancient spectacle,<sup>45</sup> the Roman courtroom, like the more obvious examples of theatre or the arena, was a public gathering place in which elite individuals or those seeking fame could promote themselves in front of an audience composed of the Roman people. Not only did the public nature of the courtroom serve social, political and legal functions, it was also a source of “cheap thrills and entertainment” (Bablitz, 2007, p. 120). This is especially likely to have been the case in adultery trials, particularly those involving prominent citizens, given that the sexually scandalous nature of the accusation is likely to have produced no less sensationalism in ancient Rome than it does today.

#### *Iudicium Populi*

In order to establish how the Roman courtroom operated as a public stage, it is useful to examine the history of the Roman judicial process. Early in Rome’s legal history the community was small enough for the Roman people to act directly on their own behalf to protect themselves from harm (Harries, 2007). If an individual’s wrongdoing was perceived to be damaging to society as a whole, he could be punished

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<sup>45</sup> e.g. *The Art of Ancient Spectacle*, 1999, Bettina Bergmann and Christine Kondoleon, eds.

under a public procedure called the *iudicium populi*, ‘the judgement of the people’. The most important feature of the process was that the debates on the facts of the case were open to everyone and thus public presence at trials is one of the most salient and long-established characteristics of Roman justice. The final verdict was not rendered by all of the people gathered, however. A formally constituted assembly of the people was charged with delivering the verdict and thus represented ‘the judgement of the people’.

This process of the *iudicium populi* continued in the Late Republic when it was particularly focused on cases of *perduellio*, ‘treason’, but there may have been incidents where the *iudicium populi* heard cases involving *stuprum*, unlawful sexual activity, if the public good was seen to have been threatened. If this was in fact within the admittedly wide scope of the *iudicium populi*, it appears to have been a very rare occurrence. One C. Scantinius Capitolinus is said to have been prosecuted for *stuprum* by the curule aedile, M. Claudius Marcellus, in the 220s BCE (Val. Max. 6.1.7). In the early first century BCE, Cn. Sergius Silus was convicted for trying to corrupt a married woman with a bribe, a charge that implies an attempt at adultery (Val. Max. 6.1.8). The source for both cases is Valerius Maximus, who was active during the reign of Tiberius. Valerius’ anthology of historical anecdotes is part of the Roman *exempla* tradition, whereby stories of figures from the (sometimes legendary) Roman past are presented to illustrate a moral lesson while historical accuracy may be sacrificed for rhetorical effect. The two cases cited by Valerius may represent an attempt to establish a historical precedent in the *iudicium populi* for the new imperial practice of making adultery a public crime.

### The Rise of the *Quaestio Perpetua*

In 149 BCE, a new type of court was established at Rome by the *lex Calpurnia de repetundis* (Cic. *Brutus* 106). This first *quaestio perpetua*, or permanent jury-court, was created by the tribune L. Calpurnius Piso in order to regulate provincial governors and curb corruption. The new standing court was to replace the need for a special commission to address complaints made by subject-peoples (both provincial and non-Italian) that Roman officials were exploiting them. It also presented an innovation in the process of Roman justice which would eventually replace the *iudicium populi* while still preserving some of its key features, in particular the public nature of trials. The standing *quaestiones* in fact came to be known as *publica iudicia*. The process of the *lex Calpurnia* used a variation on the *legis actio sacramento* procedure (*Lex Rep.* 73-5), under which Roman citizens swore an oath in front of the praetor, who then appointed a single *iudex*, ‘judge’, to decide the case, instead of an assembly of the people. Later reforms to the *legis actio* procedure, however, changed the number of *iudices* from one to 50 and had the effect of forcing the accused “to endure the shame of a public appearance” (Harries, 2007, p. 62).

In 123-122 BCE, Gaius Gracchus introduced a new *repetundae* law focused on reforming procedure. The Gracchan law, identified with an inscription of a *lex Repetundarum*<sup>46</sup> on a bronze tablet known as the *Tabula Bembina* (RS I, 65-112), was designed to make *repetundae* cases tried by *quaestio* as well-documented and openly

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<sup>46</sup> See A. W. Lintott, 1992, *Judicial Reform and Land Reform in the Roman Republic*, Cambridge, for the text, translation and analysis of the inscription.

public as possible.<sup>47</sup> The *legis actio* procedure was replaced by a new form of prosecution, the *nominis delatio*, ‘denunciation’. Unlike the earlier *repetundae* law, one did not need to be a Roman citizen to bring a charge. Non-citizens, including all allies, Latins, foreign peoples, former enemies who had surrendered, in fact anyone within the “discretion, jurisdiction, power, and friendship of the Roman people” (lines 1-4), could bring an action. The right to prosecute was given first to victims and next to men acting for an allied king, community, or a fellow citizen of that community (lines 3-4). There were definite incentives to launch an action. Successful prosecutions not only resulted in financial awards, but those responsible for the denunciation (*nominis delatio*) could be given full Roman citizenship and freedom from military service (lines 76-7) and from public obligations in their home community (lines 77-9). The praetor would establish the investigation (*praetoris quaestio esto*), and the *iudices*, who were now drawn from an album of 450, would be responsible for conducting the trial, passing judgement, and fixing the penalty in the event of a conviction. The clause referring to who was eligible to be among the *iudices* is lost, but the courts were possibly handed over to the *Eques Romanus*, ‘Roman knights’.<sup>48</sup> The surviving text does set out who was excluded from the album of *iudices* and it is clear that the law was concerned with preventing the fixing of verdicts by corrupt magistrates through the agency of their relations or friends. Excluded from the *iudices* were a number of minor magistrates, all past and present members of the senate and their relations, those under age thirty and over sixty, residents who were

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<sup>47</sup> For the impact of the Gracchan reforms on both Roman judicial processes and Roman politics, see E. S. Gruen, 1968.

<sup>48</sup> The meaning of *eques* in the late Republic is a matter of considerable scholarly debate. See Wiseman, 1970, “The Definition of *Eques Romanus*”, *Historia* 19: 67-83, for a review of the evidence.

overseas or too far from Rome to be called to serve in a trial, and individuals who had themselves been convicted of a public charge. Prosecutors bound themselves by a series of oaths, first that their charge was true, and secondly that they had named all members of the album and had excluded anyone with whom they had a familial, friendly or professional relationship. The prosecutor would choose 100 *iudices* from the album of 450 and the accused would then select 50 of these who would serve as the final panel of *iudices* for the trial (lines 12-19). The praetor then published the names of the *iudices* in black writing on a white board and was obliged to read out the names to a *contio*, ‘public meeting’, a feature inherited directly from the procedure of the *iudicium populi*. He was to oversee the conduct of all *iudices* and mete out penalties, in the form of fines or exclusion from participation in the proceedings, for misbehaviour or repeated failure to reach a verdict (lines 39-46). If a dispute arose over the eligibility of a particular *iudex*, the praetor was obliged to make a public investigation and report his findings to a *contio*.

All of the procedures of the *lex Repetundarum* were designed to make sure that the proceedings of the *quaestio* were judiciously recorded and fully public. Litigants and *iudices* were obliged to swear an oath before the Rostra, facing the Roman Forum. Their names were read in a *contio*, recorded in the public records, and written up on a board. All votes for either acquittal or conviction were cast openly with results declared publicly (lines 49-54). Each *iudex* received a boxwood ballot with a black ‘A’ for *Absolvo*, ‘I acquit’, on one side and a black ‘C’ for *Condemno*, ‘I convict’, on the other and was to cancel the unwanted letter and place his ballot in the urn on the platform “visibly according to this statute and with his arm uncovered, the letter covered by his

fingers, openly” (line 52). After the vote, the ballots were counted publicly with each ballot shown directly to the audience in the court. A majority of votes was needed to secure a conviction and the verdict, once determined, was final (lines 54-5). The punishment imposed on those convicted was focused on providing restitution (*repetundae* literally means ‘restitution’) to victims and so took the form of financial penalties. Nevertheless, the conviction of men of senatorial rank in a public courtroom by a jury drawn from outside the elite was an affront to elite privilege and the unwanted exposure had the power to ruin political careers. The literary sources construct Gracchus’ reforms using violent imagery as a sword hanging over the senate or a knife thrust into the senate’s side (Cic. *Leg.* 3.20; Diod. 34/5.27; 37.9). Though no capital penalty was prescribed for guilty senators, a comparison can be made between the spectacle of gladiatorial contests that were also held in the forum (Plut. *C. Gr.* 12.5-7) and the spectacle of the trial. As Lintott observes: “trials in the *quaestio de repetundis* were to be another public spectacle, whose climax would be political, rather than physical, death” (1992, p. 25-6).

Passing laws, or reforms to laws, dealing with the regulation of elites was appealing to Roman politicians as it was a display of concern for integrity among the ruling class. Many of these reforms were particularly concentrated on the composition of the album of *iudices*, an issue which became something of a legal “sideshow” (Harries, 2007, p. 64) played out before the Roman people. Political battles over the selection of the *iudices* and the composition of judging panels were waged as various political figures attempted to alter the criteria to serve their own ends (Richardson, 1987). After the Gracchan reforms removed the senatorial elite from albums of *iudices* in apparent

recognition of the danger inherent in allowing elites to regulate their own peers, Consul Q. Servilius Caepio reinstated senatorial juries in 106 BCE (Tac., *Ann.* 12.60). The *popularis* ('populist') Servilius Glaucia reversed this a few years later, and continued the aims of the Gracchan reforms to bring the procedure of the *quaestio* more closely in line with the *iudicium populi* by allowing 'anyone who wished' (*qui volet*) to bring about an action. In 81-80, Sulla not only increased the number of senators but restored their eligibility to be *iudices* in his reformation of the *quaestiones*. Mark Antony, as consul in 44 BCE, launched his own judicial reform, including a new panel of *iudices* (Ramsey, 2005). According to Cicero at least, his ambition was to stack the courts with his own supporters (*Phil.* I.19-20; 5.12-16; 8.27; 13.3 and 37). Unsurprisingly, Augustus would have the final say: he repealed Antony's reforms and passed the *lex Iulia* on the *publica iudicia* (public courts) in 17 BCE,<sup>49</sup> around the same time as the *lex Iulia de adulteriis*, which set their composition under the Principate.

### **New *Quaestiones***

*Quaestiones perpetuae* continued to function in the late Republican period with an ever-widening range of offences being introduced. As a *quaestio perpetua* was constituted by a single law for the purpose of punishing a single type of offence, this meant that new *quaestiones* were being created all the time by Rome's leaders. The *lex maiestatis* of 103 created a permanent court that had the power to prescribe a capital penalty. In the 80s Sulla's laws on homicide and the forgery of wills required their own

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<sup>49</sup> So Bauman, 1980, "The *Leges Iudiciorum Publicorum* and their Interpretation in the Republic, Principate and Early Empire", *ANRW* 2 (13), p. 103-233.

*quaestiones*, as did Pompey's law on *parricidium* (parricide) and Caesar's laws on *repetundae*, *maiestas*, and violence.

The *quaestiones perpetuae* continued to function and expand under the Principate. Augustus added to the already growing list of *quaestiones* by creating standing courts for the theft of public and temple property and for manipulation of the grain supply. With the introduction of the *lex Iulia de adulteriis*, however, Augustus undertook a radical departure from the previous tradition by establishing a public court for offences against sexual morality, something that had previously not been the concern of the *quaestiones*.

### **The Augustan *Quaestio perpetua de adulteriis***

Attempts to draw a clear picture of how the *quaestio perpetua de adulteriis* functioned are frustrated by the sheer paucity of ancient sources on the topic. In fact we know very little about any of the *quaestiones perpetuae* that operated in Rome. From a reference in Suetonius (Suet. *Aug.* 29.1), Bablitz (2007) has attempted to reconstruct the location of the *quaestiones* and has concluded that they were housed originally in the *Forum Romanum* and later moved to the Forum of Augustus in 2 BCE, which may have been created specifically for the purpose of housing the ever-expanding *quaestiones*. If cases before the *quaestio de adulteriis* were indeed heard in the *Forum Romanum* or the Forum of Augustus, it is clear that they would receive maximum public and political exposure. Each *quaestio* included a panel of *iudices* that may have numbered as many as 45 under the supervision of a presiding *praetor*. If we assume that at least some of the procedure established by the early *quaestio perpetua* dealing with *repetundae* was

employed also for *quaestiones* dealing with other offences, it becomes clear that by making adultery a matter for the *quaestio* the intent was to place the offense squarely within the same category as crimes against the public good and to force those accused of adultery to stand trial publicly and have their names and reputations publicized and exposed in the centre of Rome.

An individual who wanted to lay a charge of adultery was required to lodge a document or formal statement (*libellus*) under his name with the magistrate in charge of the court. The jurist Paulus describes the exact procedure (D. 48.2.3.1):

*Libellorum inscriptionis conceptio talis est. "consul et dies. apud illum praetorem vel proconsulem Lucius Titius professus est se Maeviam lege Iulia de adulteriis ream deferre, quod dicat eam cum Gaio Seio in civitate illa, domo illius, mense illo, consulibus illis adulterium commisisse." utique enim est locus designandus est, in quo adulterium commissum est, et persona, cum qua admissum dicitur, et mensis: hoc enim lege Iulia publicorum cavetur et generaliter praecipitur omnibus, qui reum aliquem deferunt... quod si libelli inscriptionum legitime ordinati non fuerint, rei nomen aboletur et ex integro repetendi reum potestas fiet.*

The arrangement of the form of *libelli* is as follows: "Consul and date. L. Titius announces in the presence of some praetor or proconsul that he is bringing Maevia as defendant under the *lex Iulia de adulteriis*, stating that she has committed adultery with C. Seius in the *civitas* of 'A', at the house of 'B', in the month of 'C', in the consulship of 'D' and 'E'." For there must certainly be set out the place in which the adultery was

committed, the person with whom it is said to have taken place, and the month; for this is laid down by the *lex Iulia* on criminal proceedings and is a general requirement for those who bring a charge against another.... But if the documents are not set out in legal form (*legitime*), the *nomen* of the one charged is deleted, and there shall be power to renew the charge all over again. (E. A. Meyer, 2004, transl.)

The passage states that the procedure followed for adultery accusations is guided by the *lex Iulia* that Augustus introduced for the public courts. The influence of the earlier *lex Repetundarum* reforms which introduced the *nominis delatio* procedure is clear. The accusation is registered with a praetor (or proconsul in the provinces) under the name of the denouncer and everything about the charge is to be officially documented or the accusation will not be allowed to proceed and the denouncer must begin again.

For Tacitus at least, Augustus' decision to make private morality a matter for the criminal law served only to breed a class of *delatores*, 'denouncers' or 'common informers' (Tac. *Ann.* 3.25 and 28). Indeed, almost anyone could bring about a charge of adultery. The *lex Iulia de adulteriis* was like most other criminal statutes in that it allowed anyone *quavis ex populo* to make an accusation. Some restrictions and limitations were in place, however. Husbands and fathers had priority in launching a charge of adultery. For sixty days following the alleged offense, only the husband or father could make an accusation of adultery against a woman and her alleged lover [*Digest* 48.5.15 (14).2 (Scaevola, *Rules*, Book 4)]. Before pursuing a charge, however, a husband was required first to divorce his wife and this divorce had to be witnessed by seven Roman citizens, unlike other Roman divorces in which no witness was required. Once the sixty-

day period had elapsed, if no action had been taken by a woman's husband or father, an outsider could bring about not only adultery charges against the wife and alleged lover, but a charge of *lenocinium*, 'pandering', against the husband [*D.* 48.5.2.2 (Ulpian, *Disputations*, Book 8)]. If the charges were unsuccessful, however, any accuser who was not the husband or father left himself open to a charge of *calumnia*, 'false accusation' [*Collatio* 4.4.1 (Paulus, *On Adulterers*)]. As with other criminal cases, individuals who were outside the law, those labeled '*infames*', including actors, prostitutes, and criminals, were barred from making accusations or testifying in court. Others excluded from bringing an action were women, slaves, freedmen with a patrimony less than HS 30,000 or without a son, *peregrini* (non-citizen subjects of the Roman empire), *pupilli* without the permission of their guardian (if their own interests were not directly concerned), men under 25 years of age, and sons-in-power without the permission of their *paterfamilias* (McGinn, 1998; Mommsen, 1899).

### **Adultery Cases in the Age of Augustus**

It is perhaps surprising that after the introduction of the adultery law and the establishment of the *quaestio perpetua* there are so few recorded cases of adultery accusations in our surviving sources for the period of Augustus' reign. In fact, the historical record for the *quaestio perpetua de adulteriis* is almost entirely lacking. Cassius Dio relates one story that has been preserved for his history because the emperor himself makes an appearance. The occasion is an adultery trial, circa 12 BCE, in which Sextus Appuleius, a nephew of Augustus who was consul with him in 29 BCE and is

possibly depicted on the *Ara Pacis* as *Flamen Iulialis*,<sup>50</sup> and Maecenas, friend and political advisor of the emperor and patron of the arts, are acting as witnesses on behalf of an accused man, who remains unnamed. Dio stresses that Appuleius and Maecenas had not behaved “wantonly” themselves, but were being subjected to abuse by the prosecutor. Augustus enters the courtroom and takes his place in the praetor’s chair where he issues an order forbidding further insults “either to his relatives or to his friends” (54.30.4-5. E. Cary, Loeb transl.). After making this pronouncement, he leaves the courtroom without having taken any “harsh measures”. For this action, Dio reports, “the senators honoured him with statues, paid for by private subscription, and also by giving bachelors and spinsters the right to behold spectacles and to attend banquets along with other people on his birthday; for neither of these things had been permitted previously.”

Dio is of course referring to the *lex Iulia de maritandis ordinibus*, legislation passed by Augustus and the senate that imposed social and financial penalties upon individuals who failed to marry and produce offspring. The exclusion of the unmarried from public spectacles and banquets yet again underscores the moral views of the Augustan regime. It is interesting to note from this selection, however, that the issue of spectacles and public accolades seems to follow very naturally from a description of a courtroom scene. Augustus is lauded by members of the senatorial elite for his performance in the context of an adultery trial in which he has prevented the public abuse of the reputations of two elite figures. Though Dio gives no details of the form the abuse

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<sup>50</sup> It is either this S. Appuleius or his father who bears the same name. See J. Pollini, 1986, “Ahenobarbi, Appuleii and Some Others on the *Ara Pacis*”, *American Journal of Archaeology*, Vol. 90, No. 4, pp. 453-60.

took, we might imagine that the prosecutor followed the established Republican precedent of attacking one's opposition by calling into question their moral character and integrity. Given that this was an adultery trial, it is likely that anyone giving evidence on behalf of the accused was open to accusations that he too had been guilty of adultery or other questionable sexual practices. If this was the case, such invective would not only be potentially injurious to an individual's reputation, but in the case of prominent figures strongly connected to Augustus it could be damaging to the image of moral superiority the Princeps sought to cultivate for himself, his family, and his regime. For his public display of concern for safeguarding the reputation of his associates, and in the case of Appuleius his own kin, he is suitably honoured with statues and spectacles. Of such great import are those spectacles held in honour of the emperor's birthday, even the unmarried are encouraged to attend despite restrictions imposed upon them by the regime of the man they are now to celebrate.

Though we do not know the outcome of this adultery trial, it is difficult to imagine that the prosecutor could have had much hope of obtaining a conviction after the disruption caused by the emperor's appearance. It is clear that the accused, whoever he was, had very powerful friends. Though Augustus did not intervene to pass judgement on the guilt or innocence of the accused, his defense of those acting as witnesses for the accused man sent a clear message to not only the prosecutor, but to the praetor, the *iudices* and any spectators present that the emperor was invested in the judicial process of adultery trials and was able to intervene and take his place on the praetor's bench at any time if he disagreed with the direction of the proceedings. Augustus here again reveals an apparent concern with the public staging of those connected to him and his regime and a

willingness to use a high-handed approach to silence opposition. Dio says that he did not take “any harsh measures”, but in fact did not need to, such was his *auctoritas* (Syme, 1939). If the prosecutor thought that he enjoyed the same kind of rhetorical freedom to attack opposing advocates that was available to orators during Cicero’s time in the late Republic it was now apparent that this was not the case. Little wonder that “political oratory starved and dwindled in the law courts and Senate” and that it was “virtually excluded” from the assemblies of the People “whose function was now to ratify the decisions of the Princeps in legislation” (Syme, 1939, p. 483). While the purpose of a *quaestio* was to make trials as public as possible and the adultery legislation sought to make adultery a public crime, both *lex* and *quaestio* were located firmly in the service of the Augustan regime. For this reason, Augustus could feel little compunction about interrupting the proceedings of a public trial, which was guided by an established set of public procedures honed over a period of over a century in the late Republic, in order to set a limit on the kind of evidence the *iudices* and audience could hear. Though adultery prosecutions might be consistent with the aims of Augustus, allowing a prosecutor to question publicly the moral character of a member of the Imperial family and a close confidant and political advisor was not.

Though an appearance by the emperor in the middle of an adultery trial most certainly represents a distinct departure from what must have happened in a typical *quaestio* trial, it would become increasingly common that cases involving the elite were tried before the emperor. Perhaps some of the reason that evidence for adultery trials in the *quaestio perpetua* is lacking has to do with the rise of entirely new criminal courts during the Imperial period, specifically the court of the Senate and that of the emperor

himself. Though discussion of the senate as a courtroom goes beyond the expressed scope of her work, Leanne Bablitz's excellent study of Roman courts found that, when the recorded cases were counted and analyzed, the ancient sources reported far more cases of individuals being tried by the emperor than by a *quaestio*.<sup>51</sup> Bablitz warns against reading the available data as a representational sample of Roman court cases. Not only is the available evidence incomplete and scarce, there are likely to be inherent biases in what the ancient authors choose to record. According to Bablitz, "[t]he recorded cases are the exceptional, the unusual, and the ones that held special meaning for the author that included them" (2007, p. 73). There is a definite and predictable bias in the sources towards recording cases that involve Rome's wealthy and prominent citizens, as we have seen above with our unique surviving example of an Augustan *quaestio de adulteriis* which has been preserved because it involves the emperor himself. Besides the obvious fact that history is concerned with recording the deeds of the powerful, there may be other reasons that the sources record more cases involving the wealthy than the poor. Bablitz accepts that in this, at least, the sources may be reflecting the reality. The poor, having little or no property over which to disagree and no time to battle through the legal system, would not be largely represented in the Roman courts or the sources.

It is clear from the penalties imposed on those convicted of adultery that the law was concerned particularly with the moral regulation of the elite. The penalties are designed to ruin both the financial and public standing of those convicted. This would only be a threat to those who had something to lose to begin with. The loss of one-third

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<sup>51</sup> Of the cases where a specific court could be identified "with some certainty", 18 cases were heard by the emperor and only 5 were heard in a *quaestio*. These cases included a range of charges, not only adultery cases, but adultery was one of the most frequent charges against both male and female litigants. See Bablitz, 2007, p. 73.

of their property, the ineligibility to receive inheritances, and the mark of *infamia* are all punishments meant to decrease the social status of members of the elite. Indeed, some categories of women were deemed too lowly to be taken seriously as *adulterae*: prostitutes, concubines, and barmaids were exempt from the law. Conversely, an elite Roman woman convicted of adultery forfeited her social standing entirely and irrevocably. She henceforth belonged to the category of *probrosae*, along with prostitutes, procuresses and stage-performers. Under the *lex Iulia de maritandis ordinibus*, *probrosae* were not eligible for marriage with freeborn Roman citizens. There was of course a preoccupation in the adultery law with social class in that an adulterous affair between an elite woman and a man of low status was seen as particularly abhorrent to Roman morals and values. A husband had the right to kill with impunity a man of low social status who was caught *in flagrante delicto* with his wife, but had no right to kill his wife nor her lover if he was of higher social status. He did, however, have a legal obligation to prosecute them in court. It is clear that the goal of the *lex Iulia de adulteriis* was to bring alleged adulterers to trial and, in effect, to expose them to as much public scrutiny as possible. Issues that were formerly domestic concerns were now to be played out in public courts. No longer were adulterous women to be dealt with privately by their fathers or husbands within the sphere of the household. Just as the *lex Iulia de maritandis ordinibus* made marriage and reproduction matters of state interest and control, the *lex Iulia de adulteriis* treated private morality within marriage as being “too important to be left in the hands of individual citizens” (Milnor, 2005, p.152).

### Augustus and a False Adultery Accusation: A Fable

The notion that matters relating to the family were not best left to the judgement of the individual is well illustrated by a fable written by Gaius Julius Phaedrus (c. 15 BC – 50 BCE). Though Phaedrus is best known for his books of verse fables in Latin modeled on the collections of Aesop, he also wrote instructive stories which he says were based on his own observations and experiences (*memoria mea*, 3.10.8). Phaedrus may have been ideally placed to observe key political events at Rome. Bibliographical information about Phaedrus indicates that he was a former slave and tutor in the imperial household who was manumitted by Augustus himself and lived through the subsequent reigns of Tiberius, Caligula, and Claudius.<sup>52</sup> Though on the surface his writings could be dismissed as harmless traditional stories, they were apparently politically threatening enough that he made an enemy of Sejanus, prefect of the Praetorian guard under Tiberius, for some supposed satirical allusions in his fables, perhaps to the adultery of Sejanus with Livilla, the wife of Tiberius' son, Drusus.<sup>53</sup>

Phaedrus prefaces his account of a false adultery accusation, a family tragedy and the subsequent trial, Fable 3.10, by stating that the events actually happened within his own living memory. The story that follows reveals a discourse preoccupied with

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<sup>52</sup> All of this is disputed. See J. Henderson, 2001, *Telling Tales on Caesar: Roman Stories from Phaedrus*, Oxford; E. Champlin, 2005, "Phaedrus the Fabulous", *The Journal of Roman Studies*, Vol. 95, p. 97-123.

<sup>53</sup> Some commentators on the *Fables of Phaedrus* propose that Phaedrus' story of the frogs protesting the marriage of the sun in fact alludes to the adultery and intended marriage of Sejanus and Livilla. According to this reading, the frogs are the Roman people, the sun is Sejanus and Jupiter is Tiberius. See Brotier and Desbillons, *Phaedri Augusti liberti libri V*, 1878, Henry Thomas Riley, 1887, *The Fables of Phaedrus*, and Robinson Ellis, 1894, *The Fables of Phaedrus*.

intrusions into the harmony of a respectable upper-class Augustan *domus* by an ambitious and duplicitous member of the lower class, here a freedman, and the dangers of an individual acting in anger and taking into his own hands matters best left to the judgement of the courts and especially, the emperor.

Phaedrus sets the scene by telling us that there was a certain man who loved his wife and was on the verge of presenting his son with the *toga virilis* (the garment of Roman manhood) when his freedman took him aside and told him a string of lies about the moral character of his wife and son in the hope that the man would make the freedman his heir. Finally, knowing that above all his other lies, this would strike the man hardest, the freedman claimed that an adulterer was regularly visiting his house and “that its reputation was being polluted by the basest lechery.” The man believed the freedman’s story, despite the exemplary chastity of his wife, and orchestrated a ruse to catch his wife and her adulterer in the act. Thinking he had found the adulterer in his house in the dead of night, the man responded with blind rage and in the darkness plunged his sword into the victim only to find that he has killed his own son. In grief, he immediately turned the sword on himself leaving his innocent wife as sole heir to his fortune.

Phaedrus next tells us that suspicion fell on the woman and that she was hauled off to Rome to the Centumviral Court, the court of the *centumviri*, a body of 105 officers who were to assist the *praetor* in judging cases, particularly those involving wills and inheritance. It is not explicit what charges were brought against her, only that she “became the victim of malicious suspicion by reason of the fact that she inherited her husband’s property”. The woman’s supporters defend her in court and the judges are so puzzled by the complexities of the case that they appeal to Augustus for help.

Phaedrus represents Augustus as being able to do quickly what the judges of the lower court could do not at all: he “disposed of the obscurities surrounding the slanders and laid bare their true source.” Through unknown means, Augustus identifies the freedman as the source of the disaster and urges that sympathy be shown to the innocent woman who is bereaved of her son and husband. He also rebukes the rash behaviour of the man, stating that “[i]f the father and head of the family had thoroughly investigated the charges laid against her and meticulously examined the slanders, he would not have destroyed his whole family line root and branch by this terrible crime.” Phaedrus concludes with a lesson about taking nothing for granted on first impulse.

In addition to the explicit moral of the story, the account also represents other, strongly pro-Augustan, morals. Though Phaedrus himself was apparently a freedman, he shows loyalty to the enforced system of social stratification of his time by representing an ambitious freedman as a threat to the sanctity of an elite family. The discourse shows a distinctly Augustan pre-occupation with preserving the social order and the danger inherent in allowing the lower classes too much access to wealth and the hope of social mobility. The danger of *delatores* who might make false accusations against the wealthy and powerful for financial or political gain, is also acknowledged and this may seem to be a criticism of the criminalization of adultery by “pointing to the incubation it provided for the proliferation of calumny, gold-digging, and mischief-making” (Henderson, 2001, p.40). Despite this, it would be incorrect to represent the fable as belonging to an anti-Augustan or anti-adultery law discourse. In fact, it is much the opposite. The issue of *delatores* is introduced peripherally and only so that it can be successfully resolved in a

manner that validates the power of the emperor to act as judge in adultery cases and even to set himself above the traditional courts and the authority of the *paterfamilias*.

The false informer in this case is not created by the existence of the adultery law. The freedman hopes to gain financially by supplanting the wife and son as the man's heir, not by receiving a reward for bringing a charge of adultery in the courts as would a true *delator*. The man plans to catch his wife and the supposed adulterer in the act not so that he can gather evidence to make an accusation against them in an adultery court as the law requires, but rather so that he can take the law into his own hands and murder the adulterer, something that the law in fact forbids.<sup>54</sup> The tragedy that results, far from serving as an illustration of how the criminalization of adultery allows the proliferation of a number of evils, actually serves as cautionary example of what can happen if matters of such importance are dealt with privately by individuals instead of publicly by the law.

That an innocent woman is brought before the Centumviral Court because of lies and slanders and that the judges of that court are unable to reach a decision might also be seen as a failure of the system, but it is not. Rather, the discourse seeks to identify and delineate the limits of the court's power in favour of that of the emperor. A true failure would have been represented by the false conviction of a chaste and innocent woman. Instead, the judges of the court recognize the limits of their power to judge a case of such complexity and duly defer to the wise authority of Augustus. The emperor, referred to by his post-deification title of Divus Augustus in the text, is represented as having almost prescient knowledge of the truth of the case and the guilt or innocence of the parties involved. His judgement is naturally the right one and exceeds the capability both of the

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<sup>54</sup> Unless the adulterer was *infamus*, but of course the man here tragically does not bother to find out the identity, much less the social status, of the person he kills.

courts and of the “father and head of the family” to judge truth from lies and innocence from guilt even where the members of the man’s own household are concerned. The Augustan moral of the story is that individuals cannot be trusted to pass judgement on matters of importance within their own families and those who did so risked destroying the family line “root and branch.” The emperor was thus justified in setting himself above the traditional rights of the Roman head of household by instituting the *lex Iulia de adulteriis* and thus making himself “the ultimate *paterfamilias*” with the whole state as his household (Edwards, 1995, p.60).

### **Senate Trials**

Scarcity of sources is once again a problem in attempting to reconstruct the senatorial court in the age of Augustus. The lack of documentation of judicial activity in the senate during this period may indicate that it was a transitional phase before the scope of senatorial jurisdiction widened (Talbert, 1984). The senate appears to have played a role in sentencing two men, the praetor Q. Gallius in 43 BCE, and the consul Salvidienus Rufus in 40 BCE, who were accused of conspiring against Augustus (then Octavian) (Appian, *Bel. Civ.* 3.95; Suet. *Aug.* 66). In the case of Rufus, Dio (48.33.3) says that Octavian made the accusation himself in the senate. Though the Senate is not known to have heard trials at this stage, it was the site where Augustus made announcements of the punishments he imposed on members of his family, whether or not he sought the ratification of the senate. Augustus denounced his daughter Julia for her alleged adulteries in a letter read by his *quaestor* to the Senate, but there is no evidence that she

was subject to a trial here (or indeed anywhere) and the senate played no role in her punishment or that of her alleged adulterers. When Augustus exiled her youngest son in 7 CE, however, he did ask the senate to ratify his sentence (*Tac. Ann.* 1.6; *Suet. Aug.* 65).

Perhaps the earliest evidence that the senate was a functioning court is provided by two lines of Ovid's *Tristia* (2.131-132) in which the poet, having been banished for *duo crimina, carmen et error* ("two crimes, a poem and a mistake", *Tristia* 2.207) in 8 CE, possibly associated with the Younger Julia's adultery scandal, complains to Augustus: *nec mea decreto damnasti facta senatus / nec mea selecto iudice iussa fuga est* ("You neither condemned my deeds by decree of the senate, nor was my exile ordered by a *iudex selectus* [by the judges of a *quaestio*]"). That the Senate is here spoken of in the same context as the *quaestio* seems to lend support for the idea that the senatorial court was operating in some capacity at this time (Jones, 1972; Talbert, 1984). Also under the year 8 CE, Dio (55.34.2) makes a passing remark that late in his life Augustus "allowed the senate to try most cases without him."

Cases were brought to the Senate when they involved individuals of high rank, issues that were particularly serious or scandalous, or "when an affair had attracted a special degree of public attention" (Talbert, 1984, p. 467). We do not have recorded cases of adultery trials taking place in the Senate during the reign of Augustus, but there are some examples from the Julio-Claudian period which are of note. Many of these cases had political overtones and adultery was often not the only charge against the accused.

Though they were tried after his death, many of the cases reveal some connection with Augustus and imperial family. In 17 CE, Appuleia Varilla, the grand-daughter of Augustus' half-sister, Octavia the elder, and the daughter of Sextus Appuleius, mentioned

above as a witness with Maecenas in the adultery case Augustus interrupted, was indicted for *maiestas*, treason, for speaking insultingly about the deified Augustus, Livia, and the emperor Tiberius in private conversations (Tac. *Ann.* 2.50). Appuleia was denounced by a *delator* for *maiestas* and adultery was alleged to be among her misdeeds. Tiberius freed Appuleia from the treason charge, but the adultery charge was allowed to proceed under the *lex Iulia de adulteriis*, though the emperor recommended that on the “example of their ancestors”, that is, the practice of allowing the *paterfamilias* to punish members of his household, she should be handed over to her relatives who opted to remove her beyond the two-hundredth milestone of the city.

Suetonius (*DA* 5.1), in his account of the birthplace of Augustus, relates an incident “contained in the proceedings of the Senate” (*senatus actis continetur*) of one Gaius Laetorius, a young man of a patrician family, who had been convicted of adultery and was pleading with the senators for a lighter sentence. Laetorius not only cited his youth and nobility as grounds for leniency, but made the claim that because he owned and occupied the house that was the birthplace of the now deified Augustus, the deity was “in a peculiar manner his” and he was therefore entitled to be shown favour. The Senate then passed an act for the consecration of that part of the house in which Augustus had been born, but how this may have impacted Laetorius’ sentence is not made explicit. Certainly he could not have made a bolder attempt to gain special consideration for himself than to lay claim to the deified Augustus, the originator of the adultery law under which he had been tried, as his personal deity.

Perhaps the boldest claim to favour based on illustrious connections belongs to Aemilia Lepida. Lepida, great-granddaughter of both L. Sulla and Pompey and member

of the prestigious Aemilii, was tried in 20 CE for a range of charges including not only adultery, but *falsum* (fraudulent claims as to a child's paternity), attempted murder of her husband by poisoning, and *maiestas* for astrological consultation involving the imperial family (Tac. *Ann.* 3.22.1-3.23.2; Suet. *Tib.* 49). Despite the fact that more than twenty years had passed since the alleged offences of *falsum*, adultery and poisoning had taken place, the prosecution of Lepida went forward, Suetonius says, because Tiberius wished to gratify P. Quirinius, an enormously rich and childless man of consular rank who had divorced Lepida and apparently still bore a grudge. Tacitus, too, strongly suggests that Tiberius' motives and his manipulations of the charges and the evidence were suspect, but nevertheless pronounces Lepida guilty and infamous. Once the charges of attempted murder and *maiestas* were removed from the indictment by Tiberius, who appears to have launched his own separate (and eventually damning), private inquiry into the poisoning charge and quashed the *maiestas* charge after the trial began, the charges of *falsum* and adultery remained.

Tacitus' account of the Lepida case reveals the extent to which the scandal surrounding the trial of this elite woman involved public performance and spectacle. While the inquiry into Lepida's alleged crimes was proceeding, days of public games, probably the Great (or Roman) Games, intervened (Woodman, 2004, n. 52). Lepida seized upon this opportunity to plead her case publicly by entering the theatre of Pompey accompanied by other elite women and in a display of weeping lamentation "invoked her ancestors and Pompeius himself, whose monument that was and whose attendant images were visible" (*Lepida ludorum diebus qui cognitionem intervenerant theatrum cum claris feminis ingressa, lamentatione flebili maiores suos ciens ipsumque Pompeium, cuius ea*

*monimenta et adstantes imagines visebantur*, Tac. *Ann.* 3.23.1). Lepida's performance provoked the sympathy of her audience who responded with tears and savage insults shouted at Lepida's former husband, Quirinius "to whose old age, childlessness, and family obscurity the woman once marked out as wife of L. Caesar and Divine Augustus' daughter-in-law was being surrendered" (*cuius senectae atque orbitari et obscurissimae domui destinata quondam uxor L. Caesari ac divo Augusto nurus dederetur*).

Despite Lepida's claim to clemency based upon the prestige of her background and the fact that she could boast having almost become the daughter-in-law to Augustus through marriage to his natural grandson and adopted heir, Lucius, she was nevertheless convicted based on testimony given by her slaves while under torture.<sup>55</sup> It is difficult to tell whether Lepida was convicted of *falsum* alone (Rogers, 1952) or both *falsum* and *adultery* (Townend, 1962 and Shotter, 1966). There was apparently some disagreement in the senate as to her punishment. Though many were in favour of a milder penalty, the vote went in favour of the proposal to ban her from water and fire. Her former husband, the senator Scaurus, argued successfully that her property should not be confiscated, thus making her penalty of banishment less severe than that which was prescribed by the *lex Iulia de adulteriis*.

### **Survival of the *Quaestio Perpetua de Adulteriis***

Though the ancient sources offer little information, there is some evidence that the *quaestio perpetua de adulteriis* was not completely superseded by senatorial trials.

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<sup>55</sup> The torture of slaves for the purposes of gathering evidence in adultery trials was permitted under the *lex Iulia de adulteriis*.

Tacitus makes a brief reference to what was apparently an adultery trial held in the *quaestio* during the reign of Tiberius when he writes in the *Annals* (3.38.2): “*Caesar Antistium Veterem a primoribus Macedoniae, absolutum adulterii increpitis iudicibus ad dicendam maiestatis causam retraxit*” (“Caesar, berating the judges, dragged back Antistius Vetus, one of the chiefs of Macedonia and acquitted of adultery, to stand trial for treason,” Woodman, 2004, transl.).<sup>56</sup> The term *quaestio* does not appear explicitly in this passage but the reference to *iudices* definitely points in that direction.<sup>57</sup> As we have seen above, *quaestio* trials were heard by a panel of *iudices*.

Some scholars have argued in favour of the survival of the *quaestio* into the Severan age.<sup>58</sup> Bauman goes so far as to claim that the *quaestio* for *adulterium* “had the longest life and heaviest workload of any jury-court in the Principate.”<sup>59</sup> There is a reference in Dio (76.16) to 3,000 adultery cases that were pending at the time he was consul in around 205 BCE. It is not explicitly clear, however, that these cases were necessarily going to be tried in a *quaestio*.<sup>60</sup>

More evidence for the survival of the *quaestio de adulteriis* is provided by a fragment from the *De adulteriis* of the Severan jurist Iulius Paulus (*D.* 48.2.3; cited above

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<sup>56</sup> We have a very brief reference in Tacitus 3.38.2 to one Antistius Vetus in 21 CE who is said to have been acquitted of a charge of adultery. Since no mention is made of it being a trial by senate, we might assume, as has Treggiari, 1991, that he was tried by *quaestio*.

<sup>57</sup> Garnsey, 1967 argues that this is a rare reference to the *quaestio*. Treggiari, 1991, also assumes this is a *quaestio* trial.

<sup>58</sup> See Kunkel, 1963, “*Quaestio*” *RE* 24.1, 719-86. For the view that all *quaestiones* were defunct by the Severan age, see Garnsey, 1967, ‘Adultery trials and the survival of the *Quaestiones* in the Severan age’ *Journal of Roman Studies* 57, pp. 56-60.

<sup>59</sup> Bauman, 1968, “Some remarks on the structure and survival of the *Quaestio de Adulteriis*”, *Antichthon* 2: 68-93. He also repeats this claim in *Crime and Punishment in Ancient Rome*, 1996, p. 32

<sup>60</sup> For other possibilities, see Garnsey, 1967.

in its entirety) that deals with the procedure followed in adultery cases. The passage indicates that adultery cases were administered by the praetor in Rome and by proconsuls in the provinces (*apud illum praetorem vel proconsulem*). As the *quaestiones* were administered by a praetor, this would point to the continued activity of the *quaestio de adulteriis* in the Severan age. Another striking feature of the material contained in the *Digest* is the sheer amount of attention the *lex Iulia de adulteriis* receives. Bauman conducted a statistical analysis of the amount of space allocated in the *Digest* to each of the special *leges* and concluded that the *lex Iulia de adulteriis* represented fully forty percent of the total material (R. A. Bauman, 1968, Table I, p.72). The adultery law was also the only criminal *lex* to have special monographs devoted to it.<sup>61</sup> All of this strongly indicates that the adultery law was still very important to jurists writing as late as the final stages of classical jurisprudence and would certainly appear to point to the continued relevance of the adultery law in the Roman empire long after the age of Augustus had ended.

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<sup>61</sup> Papinian, Paulus, and Ulpian; all Severan.

## Chapter 3:

### The Trouble with Julia

Augustus' only biological child, his daughter, Julia, was born in the last weeks of 39 BCE to his second wife, Scribonia, on the very day the then-Octavian would divorce her. According to Suetonius (*SA* 69), Scribonia was divorced because she was too free in expressing her displeasure at the excessive influence of a rival. The affair between the still-married and pregnant Livia and Octavian was fodder for gossip and further scandal ensued as the two began co-habiting openly while both were still married to their respective spouses.<sup>62</sup> Even in a Rome still wracked by the devastating effects of civil war on its social structure, the relationship between Livia and Octavian was a flagrant violation of traditional Roman values. Nevertheless, after consulting the college of pontifices, Octavian contracted a marriage with Livia on the 28<sup>th</sup> of January, 38 BCE. The marriage feast was presided over by none other than Livia's first husband, Tiberius Claudius Nero. After Livia gave birth to a son, Nero Claudius Drusus, the child was duly turned over, along with his older brother, the future emperor Tiberius, to the household of his father.<sup>63</sup> This arrangement would last no longer than three months, however, as Ti. Nero would die and leave Octavian guardian of his sons with Livia.<sup>64</sup>

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<sup>62</sup> See Barrett, 2003, pp. 23-6 and Appendix 7, for the confused chronology surrounding the events of Livia and Octavian's co-habitation, betrothal, marriage, and Drusus' birth in the sources. Barrett argues that Octavian took Livia into his home on their betrothal, while they were divorcing their respective spouses, and did not wait until they were married.

<sup>63</sup> So Dio (48.44.4), perhaps quoting from a memorandum of Octavian: 'Caesar returned the child borne by his wife Livia to his father Nero.'

<sup>64</sup> Ibid.

Had the *lex Iulia de adulteriis* existed at the time of their affair, Octavian and Livia both would have been charged with adultery and no marriage would ever have taken place. In all likelihood, Livia's husband, who so willingly gave his blessing to the union with Octavian, would also have been charged with pandering for acting in complicity with their adultery. In fact, Suetonius refers to Octavian's friends acting as his panders in aiding his adulteries with numerous women. Suetonius explicitly likens the enterprise to the slave trade, with matrons of families and virgins who had reached maturity being "stripped naked and inspected" by Octavian's friends just like "Toranius the slave-monger putting them up for sale" (*SA* 68).

In 36 BCE,<sup>65</sup> during a serious famine at Rome, Octavian and Livia decided to stage an elaborate 'Banquet of the Twelve Gods'. The guests were disguised as gods and goddesses, with Octavian himself dressed as Apollo, the deity he had adopted as his own patron god that same year, according to Dio (49.15.1).<sup>66</sup> Suetonius (*SA* 70) preserves an anonymous, but apparently well-known lampoon (*notissimi versus*):

*cum primum istorum conduxit mensa choragum,  
sexque deos vidit Mallia sexque deas,  
impia dum Phoebi Caesar mendacia ludit,  
Dum nova divorum cenat adulteria:  
omnia se a terries tunc numina declinarunt,  
fugit et auratos Juppiter ipse thronos.*

As soon as that party had hired a costume designer,  
Mallia saw six gods and six goddesses,  
Caesar impiously plays the false role of Apollo,  
and now dines amongst the novel adulteries of the gods:

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<sup>65</sup> The date is not clear in Suetonius, but it has been deduced from other evidence. Dio (49.15.1) says that it was in this year that Octavian won the honour of holding an annual banquet in the temple of Capitoline Jupiter for his defeat of Lepidus. For more on the dating and for an explanation of the political context of the banquet, see Bauman, 1992, *Women and Politics in Ancient Rome*, London.

<sup>66</sup> See also Bauman, 1989, *Lawyers and Politics in the Early Roman Empire*, Munich.

All the deities then turned away from the earth,  
and Jupiter himself fled from his golden throne.

The scandal was not limited to the fact that the banquet was held during a famine, though this alone would have been ample ground for outrage. Rather, some of the focus was on the moral example set by Octavian himself. The public outcry was swift. The people complained that the gods had eaten all the grain and that Octavian was indeed Apollo, but Apollo the Tormenter. To the Roman people the spectacle of elites dressing themselves as gods and dining in luxury and licentiousness while Rome starved was beyond tasteless. In fact, as the lampoon makes clear, the banquet was viewed as impious and immoral. The reference to a *choragus*, in Greek theatre, the person charged with the costumes and props of the chorus, locates the banquet within the realm of spectacle and a decidedly indulgent and non-Roman one at that. Octavian's role-playing as a false Apollo is objectionable on two levels. It is impious because he has cast himself in the role of a god, but it is also unbecoming of his status because he has in effect made himself an actor. In the Roman mind, being an actor was incompatible with *honestas*, 'honour', and *dignitas* 'social standing'.<sup>67</sup> Given the Roman social attitude towards actors, this also invites notions of sexual immorality. Indeed, the very next line tells of 'novel adulteries of the gods'. Lavish banquets involving men and women were seen as fertile ground for adultery and debauchery.<sup>68</sup> On the occasion of another banquet, Antony charged Octavian with having brazenly led the wife of an ex-consul out of the dining-room before his very eyes and into a bedroom, bringing her back to the table later with her hair in disarray and

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<sup>67</sup> See Catharine Edwards, 1993, "Playing Romans: Representations of actors and the theatre" in *The Politics of Immorality in Ancient Rome*, Cambridge.

<sup>68</sup> This is a familiar *topos* in literature. Ovid *Amores* 1.4 is but one example of an adultery set at a banquet.

her ears reddened (*SA* 69.1). It is thus no wonder that the lampoon enjoyed widespread success amongst those who were angered by the banquet. In a few lines the supposed vices of the ruling class are neatly encapsulated and Octavian is pilloried. Octavian's political enemy, Antony made certain that all who participated in the event would have their names known publicly by circulating a letter containing the banquet's guest list.

Despite the scandalous beginnings of their union, Octavian and Livia managed to transform their public *personae* with unsurpassed skill and to establish themselves as models of harmonious Roman marriage. Perhaps chastened by the public backlash against the 'Banquet of the Twelve Gods', Octavian would devote himself to setting an example of austere Roman values. He would go on to counteract the early accusations of impiety and sexual immorality through a renewed emphasis on religious observance and, of course, his sweeping moral legislation.

### **Julia's Childhood**

We have no sources on Julia's early life. Some scholars assume that she was brought up from infancy in the household of her father and stepmother.<sup>69</sup> Certainly, under Roman tradition, Octavian would have had the Roman father's right first of acknowledging the newborn as his own and of taking the child with him after a divorce. Fantham suggests that the infant Julia may have been allowed to remain with her mother. According to her view, the birth of a daughter to a wife he was divorcing may have been looked on with indifference by Octavian, who must have imagined he would soon

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<sup>69</sup> E.g. Lightman and Lightman, 2000.

produce a son and heir with Livia. The only evidence offered in support of the idea that Julia may have spent her formative years outside of her father's household is highly tenuous and speculative. Fantham cites a list of Roman teachers of *grammatike* in Suetonius from which we learn that Scribonia purchased a learned Greek slave, whom she later freed and named Scribonius Aphrodisius (Suet. *On Grammarians* 19). The most likely reason for purchasing such a slave was to use him as a tutor for one of her children.<sup>70</sup> Fantham proposes that as her former husband, Cornelius Scipio, would have determined his son's education,<sup>71</sup> the tutor might have been for Julia. That Julia had some education is clear. She was later described as having a love of literature and being very well-read, but this has been attributed to the influence of Livia's household (Macrobius, *Saturnalia* 2.5.1-10). Whatever the guardianship arrangements of Julia's youth, Scribonia's bond with Julia was apparently strong enough for the mother to stand by her daughter, in the worst of circumstances, for the duration of the Julia's life.

### **Julia and the Roman State**

Augustus is supposed to have remarked to his friends that he had two wayward daughters to put up with: the Roman *res publica* and Julia.<sup>72</sup> This comment, recorded in Macrobius, is perhaps intended to be humorous, but nevertheless is revealing of the discourse surrounding Julia and her moral conduct. In a sense, Augustus' handling of his

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<sup>70</sup> See commentary by Kaster, 1995. Kaster, though, assumes the tutor was for her son, Publius Cornelius (consul in 16 BCE), not for Julia.

<sup>71</sup> Assuming, of course, that he was still alive at this time. His suffect consulship is attested for 35 BCE, but after this we cannot be sure.

<sup>72</sup> *Inter amicos dixit duas habere se filias delicatas, quas necesse haberet ferre, rem publicam et Iuliam.* Macrobius, *Saturnalia*, 2.5.

daughter is being linked with and placed on a level equal to the management of the affairs of state. This notion is further supported by a comment in Tacitus. He observes that “though the fortunes of Divine Augustus prospered in matters of state, at home they were unfavourable owing to the immorality of the daughter and granddaughter.”<sup>73</sup> Despite the “unfavourable” fortunes of Augustus in his domestic life, ancient historians depict Augustus as a very involved father and grandfather. Suetonius says that in bringing up his daughter Julia and his granddaughters Julia the Younger and Agrippina he accustomed them to domestic employments, including spinning and weaving (*SA* 64).<sup>74</sup> It was part of Augustus’ own self-image of domesticity and avoidance of luxury that he wore common clothing for the house made by his daughter and granddaughters (*SA* 73). He also insisted that they speak and act everything before the family, in order that it might be written down in a diary, and forbade them to speak to strangers. In his capacity as *paterfamilias*, Augustus is said to have rigidly controlled whom his female family members might associate with and even rebuked Lucius Vinicius, whom Suetonius calls “a handsome young man of a good family” in a letter for showing immodesty of behaviour by paying a visit to Julia in the Roman resort town of Baiae (*SA* 64).

In all aspects of the strict upbringing Augustus prescribed for his daughter and granddaughters there is an awareness of the Imperial family’s role as moral *exempla*. The girls were trained in acceptable feminine pastimes, such as spinning, and they are kept

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<sup>73</sup> *Ann.* 3.24.2, Woodman, 2004, transl.

<sup>74</sup> Spinning was seen as part of a suitable education for girls in the ancient Greek and Roman world and was equated with traditional domestic values of women’s chastity and industriousness. This notion was so entrenched that wool-working even appears on funerary inscriptions as a short-hand for conveying that the deceased was a ‘good’ woman, see, for e.g., *CIL* VI.15346 or *CIL* VI.37965. On domesticity as Augustan symbol, see Milnor, 2005, *Gender, Domesticity, and the Age of Augustus*, Oxford.

away from the corrupting influences of strangers. By making his daughter and granddaughter act and speak before the family and by writing down their statements and conduct, he was grooming them to be aware that, as members of the house of Augustus, they should expect to have all conduct observed and should not behave in any manner that they would not want remembered by history. His rebuke of Vinicius for visiting Julia, at a place synonymous with luxury no less, shows not only a concern with the modesty of his daughter, but also vigilance against potential scandal.

### **Julia as Foil for Augustus**

A number of anecdotes featuring Julia can be found in the *Saturnalia* of Macrobius. The *Saturnalia* was compiled in the mid-400s CE and is arranged as a dialogue between pagan scholars at the celebration of the festival of Saturn. The scholars discuss a variety of topics, including the witticisms of famous figures. Some modern scholars have approached the collection as “one of our few sources of direct evidence” on the character of Julia, as if “she is here speaking for herself”.<sup>75</sup> In fact, Julia is not represented simply as speaking for herself in the *Saturnalia*. Though the sayings recorded in the *Saturnalia* are indeed attributed to Julia, they are related by a male narrator who is removed from the time period of Julia’s life by more than four-hundred years. Avienus, the narrator in this section of the work, has just finished relating a number of jokes attributed to Augustus when he asks his audience if they would like to hear about Julia.

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<sup>75</sup> R. A. Bauman, 1992, *Women and Politics in Ancient Rome*, London, p. 110. J.P.V.D. Balsdon, 1962, *Roman Women: Their History and Habits*, London also accepts the collection without comment.

He is encouraged to proceed and prefaces his anecdotes by saying a “few words about her character” which he sketches as follows: “She abused the indulgence of fortune no less than that of her father. Of course her love of literature and considerable culture, a thing easy to come by in that household, and also her kindness and gentleness and utter freedom from vindictiveness had won her immense popularity, and people who knew about her faults were amazed that she combined them with qualities so much their opposite” (2.5.1-10).<sup>76</sup> The examples of wit that follow this seemingly balanced view of Julia’s supposed merits and faults serve to cast an extravagant and bawdy Julia as a foil for austere and dignified Augustus.

Before giving examples of Augustus’ jokes, the same narrator had remarked judiciously that “Augustus Caesar certainly had a well developed sense of humour, but was always careful to preserve the dignity of his office and proper standards of decency, and would never allow any lapse into mere vulgarity” (2.4.1). This preoccupation with “proper standards of decency” is apparent in purported exchanges between Julia and her father concerning Julia’s appearance and lifestyle which make up the majority of the narrative about Julia in the *Saturnalia*. The narrator tells us that these exchanges were frequent, for Augustus advised Julia “with a mixture of parental affection and serious admonition” (2.5.3) that she needed to exercise modesty in the extravagance of her dress and her conspicuous choice of companions. The mood of these anecdotes is light, but the content is very revealing. Augustus is ever represented as the concerned and wise *paterfamilias* trying to exert a restraining influence over his daughter.

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<sup>76</sup> M.R. Lefkowitz and M.B. Fant, transl., 2005, *Women’s Life in Greece and Rome: A Sourcebook in Translation*, Baltimore.

One day, we are told (2.5.5), Julia appeared before Augustus in risqué attire and though he was offended, he said nothing. The next day Julia had changed her style completely and her father remarked that this costume was much more appropriate for a daughter of Augustus. Julia replies, “Today, I dressed to be looked at by my father, yesterday to be looked at by my husband.”<sup>77</sup> The difference between the *princeps* and the princess is further highlighted in another report of Julia’s wit (2.5.8). After listening to a sensible friend who has lectured her on why she should emulate her father’s example and frugal habits, Julia retorts that Augustus forgets that he is Caesar, but she remembers that she is Caesar’s daughter. Julia’s supposed definition of what it means to be Caesar’s daughter is set in direct opposition to what Augustus would have her understand her role to be according to the strict upbringing Suetonius says was imposed upon her by Augustus. Julia’s understanding of her lot, according to this discourse, is closer to what Velleius wrote of her, that she was “as ever indifferent to her father’s position” and that she “set out on a way of life which explored to the utmost all the extremes of extravagance and lechery that a degraded woman could initiate or experience, equating the magnitude of her good fortune only with the extent of the licence it afforded to her vices” (2.100.3).<sup>78</sup>

Julia is not only compared unfavourably to Augustus, but to Livia as well. At a gladiatorial show, the people assembled could not help but notice the difference in demeanour between herself and Livia. The two *principes feminae* (‘leading ladies’) appear on public display at the spectacle and the narrator points out that the difference

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<sup>77</sup> *Hodie enim me patris oculis ornavi, heri viri* (2.5.5). R.A. Bauman, 1992, has chosen to translate this as “by a man” rather than “by my husband”.

<sup>78</sup> B.W.J.G. Wilson, transl. in M.G.L. Cooley, ed., 2003, *The Age of Augustus*, London.

between the two drew the attention of the public (*Adverterant in se populum in spectaculo gladiatorum Livia et Iulia comitatus dissimilitudine*) and that this story is well-known (*Notum et illud*) (2.5.6). Livia was surrounded by an entourage of serious elders, while Julia, by marked contrast, was seen with a group of men who were not only young but also extravagant (*haec iuventutis et quidem luxuriosae grege circumsidebatur*). Augustus sent a letter to his daughter directing her attention to the difference between the two. Julia replied wittily that the men would grow old with her (2.5.6).

There is obvious concern on the part of Augustus with the public image presented by the members of the imperial family. The message here is that Livia presents herself in a manner becoming to her station while Julia does not and that it would be advisable for Julia to follow her step-mother's example. The incident described in the narrative, if it is accurate, must have occurred while Julia was still young, or it is not likely that the young men, especially if unmarried, could have been seated around her (*circumsidebatur*) at a public event. Seating during public spectacles was very much of concern to Augustus, who passed the *lex Iulia Theatralis* sometime before his moral legislation of 18 BCE. The law regulated seating in the theatre according to social status and evidently included gender segregation as well. The marriage law of 18 BCE barred unmarried men over the age of twenty-five and unmarried women over the age of twenty from attending all public shows (*spectacula*). Thus, one's appearance at a public spectacle had a moral force behind it and the Roman elite, who were seated in the front rows, were very much on display before the Roman people.

The narrator is careful to establish that Augustus was long deluded about Julia's nature, perhaps in order to absolve Augustus of any culpability for failing to control his

daughter's luxurious lifestyle and adulteries which form the basis of the entire narrative about Julia. It is a delicate balancing act, for Julia's alleged vices are presented as having been carried out in full view for a long period of time. Some explanation must be offered for why Augustus did not rein her in sooner. He is said to have persuaded himself that she was light-hearted and outgoing, but above reproach like her ancestor Claudia Quinta, who, when her chastity was questioned, successfully called upon a ship to move as proof of her moral integrity. Rather than having Julia call upon ships, however, Augustus had only to look at the numerous grandchildren Julia provided as heirs for him and their apparent resemblance to her husband, Agrippa (2.5.3). This resemblance also serves to set up a joke attributed to Julia but which is firmly located in the established discourse of Julia as the prototypical adulteress. People who knew that she "distributed her favours widely" (2.5.9) expressed surprise that her sons nevertheless resembled Agrippa, to which Julia is said to have replied that she did not take on passengers unless the ship was full.

### **Julia's Marriages**

As was the case for virtually every aristocratic Roman woman, Julia's life was dominated by the need to arrange politically beneficial marriages and create or cement alliances between powerful families. In 37 BCE, Maecenas and Marcus Agrippa formed an agreement with Antony which was sealed by the betrothal of Julia to Antony's son, Marcus Antonius Antyllus. The prospective groom was then ten years old, Julia but two. Of course, following the outbreak of the Civil War and Octavian's defeat of Antony at

Actium, this marriage would never come to fruition as the potential groom was executed after the fall of Alexandria. At age fourteen, Julia was married to her cousin, Marcus Claudius Marcellus, with Agrippa presiding over the ceremony while Augustus was taken ill fighting in Spain. The marriage, like the groom, was short-lived and produced no heirs for Augustus.

When Julia was eighteen years old in 21 BCE she married Agrippa, who at age forty-three was as old as her father. With the death of Marcellus, Augustus lost his chosen successor and his own serious illness in Spain likely served to remind him that a new successor was needed before he departed on campaign in the East. Maecenas is said to have joked to Agrippa that he had made Augustus so powerful that he must either become his son-in-law or be eliminated by assassination (*Aug.* 64).

A year after marrying Agrippa, Julia gave birth to a son, Gaius, followed by a daughter<sup>79</sup> approximately a year later, then another son, Lucius in 17 BCE, around the time that Augustus was introducing his *lex Iulia de adulteriis*. Also at this time, Augustus formerly adopted the newborn Lucius and three year old Gaius as his own children and heirs. According to Suetonius, Augustus took charge of his grandsons' education himself, sharing his knowledge with them and instructing them in reading, swimming, and even the imitation his own handwriting. He dined with them and travelled with them beside him in his chariot (*Aug.* 64). Julia would give birth to two more children after the adoption of Lucius and Gaius: a second daughter and a third son, born after the death of Marcus Agrippa, called Agrippa Posthumus.

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<sup>79</sup> Authorities differ on whether Vipsania Julia or Agrippina was the eldest girl.

Very soon after the birth of Agrippa Postumus, Augustus arranged to have Julia marry her stepbrother by Livia, Tiberius. Though Julia had already been married twice and had more than earned the honoured status and privileges set down by her father's laws for a mother of three (*ius trium liberorum*), she was not exempt from remarriage. Though Augustus must have thought that Tiberius, already a proven commander, was the right choice for the purposes of succession, the marriage was ill-fated almost from the beginning. In order to make the alliance, Tiberius was forced to divorce his much loved wife, Vipsania Agrippina, Agrippa's eldest daughter, who had borne him his son, Drusus and was pregnant again. Suetonius states that Tiberius was reluctant to marry Julia because he believed that she had had designs on him as a potential lover while she was still married to Agrippa and that the general opinion of the time was that Julia was a woman of poor moral character (*Tib.* 7.2.). Julia, for her part is said to have disdained Tiberius as an unequal match (*Tac. Ann.* 1.53.2). Despite the forced nature of the union between Julia and Tiberius, it appears that some attempt was made to accommodate it, at least at first. When Tiberius left Rome to take up provincial command in Illyria, Julia accompanied him. However, a series of tragedies would put a strain on their marriage and Tiberius' ability to cope with public life. First, the son that Julia bore Tiberius died in infancy. Nevertheless, Julia joined Tiberius' mother Livia in giving a banquet for the elite ladies of Rome to celebrate Tiberius' triumphant return to the city and so presented the appearance of wifely devotion. In 9 BCE, however, Drusus, Tiberius' brother, was fatally injured in a riding accident while Consul and commander in Gaul. Tiberius rushed to his brother's side and following the latter's death, escorted the body on foot back to Rome where he gave one of the eulogies for Drusus, posthumously given the title Germanicus.

According to Suetonius' narrative, the couple were now sleeping apart. Despite the problems in the marriage, there was nevertheless a need for the members of Augustus' imperial family to promote images of marital and familial harmony. In 7 BCE, Tiberius and Livia held a joint public celebration of the new shrine of (marital) Concord. Julia held herself aloof from the proceedings.<sup>80</sup>

Other problems may have been posed by the popularity of Tiberius' closest rivals to succession. When Julia's oldest son Gaius assumed the *toga virilis* of Roman manhood, the people voted him consul in the elections for 6 BCE (Dio 55.9). Augustus held a special assembly to rebuke them for doing this prematurely and expressed a hope that the Roman State would not again have need to elect an under-age consul.<sup>81</sup> He would meanwhile appoint Gaius to a priesthood and admit him to the Senate in advance of his eligibility for the consulship in 1 BCE. While Gaius was being granted public promotion and privileges, Tiberius was offered diplomatic duties in the East. Tiberius, however, had other ideas.<sup>82</sup> He demanded to put aside all public office and retire to the island of Rhodes as a civilian and *privatus*. Despite the pleas of Livia to change his mind and Augustus' complaints to the Senate, Tiberius was so determined that he even undertook a hunger strike until he was permitted to go to Rhodes. Political life at Rome carried on without him and there is no sign that he was missed. Augustus continued to promote his

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<sup>80</sup> See Fantham, 2006.

<sup>81</sup> Octavian himself having been elected Consul in 43 BCE when he was nineteen.

<sup>82</sup> Both Velleius Paterculus (ii 99, 2) and Suetonius (*Tib.* 10.2) claim that Tiberius stepped aside because of Augustus' desire to promote Gaius and Lucius. Tacitus, too cites the rise of Julia's sons, as well as the ill-match between Tiberius and Julia, as Tiberius' reason for withdrawing. Syme, 1984, neatly casts him as retreating to Rhodes in sullen anger with Augustus over the promotion of the two youths.

chosen heirs and even made a show of holding the consulship to introduce Gaius and Lucius to the Senate in the years 5 and 2 BCE.

### **The Scandal of 2 BCE**

The year 2 BCE began propitiously for Augustus. At the age of sixty, he assumed the consulship for the thirteenth time. On February 5, some twenty-five years after he claimed to have restored the Roman republic to the people, Augustus accepted the title of *Pater patriae* (Father of the Fatherland) at the request of the elder Republican statesman Messala Corvinus and with accompanying manifestations from the order of knights and the Roman people. This was the crowning achievement of Augustus' career and he himself concludes his *Res Gestae* with the bestowal of this honour. The event was commemorated by the poet Ovid in his calendar poem, the *Fasti*.

*sancte pater patriae, tibi plebs, tibi curia nomen  
hoc dedit, hoc dedimus nos tibi nomen, eques.  
res tamen ante dedit: sero quoque vera tulisti  
nomina, iam pridem tu pater orbis eras.  
hoc tu per terras, quod in aethere Iuppiter alto,  
nomen habes: hominum tu pater, ille deum.*

To you, holy Father of your country, the people and senate have given this name, and we, too, the knights, give you this name. But your achievements awarded it before us; indeed you have been late in winning these titles, since you were long

since father of the world. You have the name on earth which Jupiter holds in highest heaven; you are father of men, and he of gods.

(Ovid *Fasti* 2.127-32; Fantham, 2006, transl.)

Ovid next glowingly compares Augustus to Rome's founder, Romulus, and proceeds to cite among Augustus' illustrious achievements that "he commands women to be chaste ... has driven away wickedness ... the laws flourish under Caesar" (*hic castas duce se iubet esse maritas/ ... reppulit ille nefas/ ... florent sub Caesare leges*, *Fasti* 2.139, 140, 141). Ovid is, of course, referring to Augustus' law on adultery and, like Horace's poem for the *Ludi Saeculares*, it praises Augustus' efforts to restore old-fashioned Roman values through his moral legislation. Unbeknownst to the poet, however, the timing of his words would soon prove disastrous.

In August, the month named for Augustus because it was witness to some of the most significant events in his rise to power, magnificent spectacles were presented for the pleasure the Roman people following the inauguration of the Forum of Augustus.<sup>83</sup> Soon after the pageantry of the month of August, however, came a spectacle of a different sort.

In the autumn of 2 BCE, Augustus sent a letter to be read in his absence by his quaestor in the Senate denouncing his daughter Julia (Suet. *Aug.* 65; Pliny *N. H.* 21.9). He was said to have 'discovered' that Julia had been engaging in adultery with numerous men and that they had been engaging in public revelries in the Forum 'from the very rostra where he had proclaimed the *leges Iuliae*' (Seneca, *De ben.* 6.32.1). Augustus

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<sup>83</sup> In his *Res Gestae*, Augustus describes in detail the *naumachia* presented on the Tiber for the Roman people (*RG* 23).

commended Julia's freedwoman and accomplice, Phoebe for having committed suicide and banished Julia to the island of Pandateria. He effectively disowned his daughter; Julia was no longer to be considered a member of Augustus' family, she was not to benefit under his will, nor be interred in his mausoleum.

### **Ancient Sources for the Scandal of 2 BCE**

We have numerous ancient authorities for Julia's supposed activities and the details of her downfall. Velleius Paterculus, born 20/19 BCE, is the earliest source and was a contemporary of and eye-witness to the Augustan age. He entered the Roman senate in 7 CE and reached the praetorship in 15 CE and was thus well placed to observe the political events of his day. His *History*, consisting of two books, was written around 30 CE and contains a summary of historical events with particular detail given for the Augustan and Tiberian periods. His account is loyal to the official imperial point of view and he is criticized for "fawning" on Tiberius, under whose military command he had served.<sup>84</sup> The Stoic moralist Seneca the Younger, c. 1 BCE – 65 CE, also embarked upon a career in the Roman Senate but was himself accused of adultery under Claudius and exiled to Corsica in 41 CE. Pliny the Elder, c. 23/4 – 79 CE, was a prominent member of the equestrian order and wrote his *Natural History* in 37 books, using 2,000 books as his sources, according to his own reckoning. Both his account and that of Seneca include details or references that appear to have originated in Augustus' letter to the senate denouncing Julia and it is possible that both of these sources had access to that document.

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<sup>84</sup> See M.G.L. Cooley, 2003, *The Age of Augustus*, p. 58.

The Roman historian Tacitus, born c. 56 CE, built a successful senatorial career under the Flavians and achieved the consulship under Trajan in 97 CE. In his *Annals* (3.24.3), he claims an intention to write an account of the reign of Augustus, but if he ever completed such a work, no trace of it survives. Rather, the beginning of the *Annals* itself is our source for the Augustan age according to Tacitus. He is one of the richest ancient sources for adultery trials and imperial scandals. Suetonius, c. 70 CE, was an equestrian best known for his *De Vita Caesarum*, accounts of the lives of twelve successive rulers of Rome beginning with Julius Caesar and ending with Domitian. The latest ancient source, Cassius Dio, c. 155 or 163/4 CE,<sup>85</sup> was a Roman consul who completed his sweeping *Roman History* in 80 books written in Greek. Though the accounts of the ancient sources differ somewhat in the details they provide, all are in agreement that the emperor's daughter Julia was accused of adultery and punished.

### **Julia's Alleged Adulterers**

Velleius names five men as Julia's lovers: Iullus Antonius, son of Fulvia and Antony, raised by Octavia and Consul in 10 BCE; Sempronius Gracchus; T. Quinctius Crispinus, Consul with Drusus in 9 BCE; Appius Claudius Pulcher, senator in 25 BCE;<sup>86</sup> and Cornelius Scipio, likely a kinsman of Julia through her mother, Scribonia's first husband. Velleius also claims that there were many other criminals of lesser note, including knights and even senators. Dio (55.10.15) says that one of the adulterers was a tribune, but that his punishment was delayed until after his year-long term in office was

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<sup>85</sup> Fergus Millar, 1966, *A Study of Cassius Dio*, Oxford, argues for the later date.

<sup>86</sup> Münzer, *RE* 10.902, cited in Bauman, 1967.

finished. It is unclear whether this tribune is one of the men already named by Velleius, possibly Gracchus or Scipio,<sup>87</sup> or whether he is yet another individual accused of adultery with Julia. Syme has managed to recover one more name, this one supplied by Macrobius (*Sat.* 1.11.7): a certain Demosthenes, likely one of the Greek intellectuals who found support in Roman high society. Demosthenes is said to have confessed to adultery after his slave refused to incriminate him despite being put to torture. Of the five *nobiles*, Velleius reports that only Iullus committed suicide (2.100.4).

Later reports by Tacitus name only Iullus and Gracchus among Julia's alleged *adulteri* (adulterers). Iullus, according to Tacitus, was executed, a claim not incompatible with Velleius' account if the suicide Velleius reports was forced.<sup>88</sup> Iullus was the full brother of Antyllus, to whom the infant Julia had been betrothed. According to Horace, Iullus considered himself a poet of Pindaric lyric (*Odes* 4.2). Prior to the scandal of 2 BCE, Iullus had managed to outlive by nearly thirty years his brother Antyllus who had been executed following the defeat and suicide of their father, Mark Antony.

Sempronius Gracchus is described by Tacitus as *pervicax adulter* (1.53.3), persistent adulterer, apparently having begun his affair with Julia while she was still married to Agrippa.<sup>89</sup> The relationship continued after her marriage to Tiberius and Gracchus is blamed for inciting Julia against her new husband, even composing letters attacking Tiberius, which Julia sent to her father (*Ann.* 1.54.5). Tacitus characterizes Gracchus as having a skillful intellect and perverse eloquence (*sollers ingenio et prave*

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<sup>87</sup> There is considerable disagreement over the identity of this tribune. See Bauman, 1967, n. 8, p. 201.

<sup>88</sup> Woodman, 2004, has interpreted Iullus' death as a forced suicide in his translation of Tacitus' *Annals*. See 1.10.4, n. 29 and 3.24.2, n. 56.

<sup>89</sup> There is speculation in modern sources that he was the father of Agrippa Postumus. See Bauman, 1967.

*facundus*, *Ann.* 1.54.3). Gracchus, too, appears to have been a poet of sorts. He figures in Ovid's list of contemporary poets, though Iullus does not (*Ex Ponto* 5.16.31).

### Julia's Crime

*Divus Augustus filiam ultra impudicitiae male dictum impudicam relegavit et flagitia principalis domus in publicum emisit: admissos gregatim adulteros, pererretam nocturnes comissionibus civitatem, forum ipsum ac rostra, ex quibus pater legem de adulteriis tulerat, filiae in stupra placuisse, cotidianum ad Marsyam concursum, cum ex adultera in quae stuarium versa ius omnis licentiae sub ignoto adultero peteret. Haec tam vindicanda principi quam tacenda, quia quarundam rerum turpitudine etiam ad vindicantem redit, parum potens irae publicaverat. Deinde, cum interposito tempore in locum irae subisset verecundia, gemens, quod non illa silentio pressisset, quae tam diu nescierat, donec loqui turpe esset.*

The deified Augustus sent his own daughter into exile. Her promiscuity put her beyond the reach of any formal indictment and brought the scandals of the imperial household into the public domain. It is said that she had made herself available to armies of adulterers, that she had wandered the streets of the city in nocturnal orgies, that the Forum and the Rostrum from which her own father had moved the law against adultery had been a favourite spot for her lecheries, that she went daily to the statue of Marsyas and there, abandoning adultery for prostitution, insisted on her right to every form of lascivious behaviour, even with unknown lovers. These were scandals which any *princeps* had the duty not only to punish but also to conceal, since there are some deeds whose sheer obscenity infects those who seek to punish them. But he could not contain his anger and made them all public. As time went by, however, his anger turned to shame and he came to lament the fact that he had not concealed her deeds and avoided public comment, having remained in ignorance of them for so long that comment could only bring disgrace.

(*De beneficiis* 6.32)

It is clear from the first lines of the narrative that Julia's alleged activities are being constructed as public offences. Seneca states initially that Julia's "promiscuity" (*impudicitia*) placed the "scandals of the imperial house into the public domain" (*flagitia principalis domus in publicum emisit*). In fact, it is Augustus' very public denunciation of Julia in the Senate that placed the issue in the public domain. There is no evidence in any

of the accounts of Julia's downfall that the charges against her were initiated by anyone other than her father; the ancient sources all agree that the source of Julia's indictment and punishment was Augustus himself. Given that the indictment rested with Augustus, it is reasonable to conclude that Augustus was able to represent Julia's activities as he saw fit. The original letter of denunciation to the senate was also published in an edict for general information. Therefore, the discourse that surrounds Julia and the scandal of 2BCE may well have been authored and constructed by Augustus himself. If Seneca has followed faithfully the version of events set by Augustus' letter and summarized its contents, we can glean key information from a close reading of Seneca's narrative.

### **The Scene of the "Crime"**

The discourse surrounding Julia does not represent her merely as being guilty of private indiscretions. She is instead accused of engaging in immorality of such enormity that it has crossed the line from private act to public spectacle. This much is apparent from the description of site of Julia's alleged crimes. The Forum, the Rostra and the statue of Marsyas are explicitly identified and all are potent symbols. The significance of the Forum and the Rostra is clear in the narrative: this is the exact place from which Augustus had handed down the *lex Iulia de adulteriis*. There could not be any clearer way to set Julia in opposition to the law than to accuse her of having flagrantly violated that law in the same place where it had been officially promoted by her own father. The meaning behind the statue of Marsyas is more elusive, but nevertheless must contain significant symbolic force. The reference to Julia and the statue of Marsyas is found not

only in Seneca's account but in Pliny's as well. Pliny directly attributes this detail to "the letter of Augustus" (N.H. 21.6).

Marsyas was the satyr who challenged the god Apollo to a contest of music and was flayed alive for his *hubris*. At Rome, the statue of Marsyas was a potent symbol of *libertas* (popular liberty) during the Roman Republic and later was set up in the forum as witness of civil liberty in the empire. The statue of Marsyas at Rome is well documented in the sources and in the material evidence although the statue itself does not survive. Servius twice mentions that Marsyas, as attendant of Liber, father of free cities, is set up in the forum with his hand raised to bear witness to the freedom of the city (*ad Aen.* 3.20 and 4.58). Based on the reference in Seneca, it stood close to the *Rostra Augusti* and a reference in Horace (Sat. 1.6.120) places it in close proximity to the *Rostra Caesaris*. There are representations of it on a coin of L. Marcus Censorinus of ca. 82 BCE (Crawford 363/1d; Sydenham 737; Marcia 24).<sup>90</sup> The Marsyas has a long history in Republican Rome and strong plebeian ties. Torelli (1982) has argued that C. Marcus Rutilus Censorinus, who was among the first plebeian censors, on the occasion of his censorship dedicated the Marsyas in the Comitium near the Tribunal Praetoris Urbani, the judgement seat of the urban praetor. When the tribunal was moved from rostra to rostra, the statue was moved with it. The statue's association with the tribunal is attested by surviving marble balustrades (*plutei*), dated to 120 CE, found on the Forum square and now housed in the Curia (Senate House). The relief scene on one of the balustrades

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<sup>90</sup> For the contemporary political significance of this coin's imagery, see Robert J. Rowland, Jr., 1966, "Numismatic Propaganda Under Cinna" *Transactions and Proceedings of the American Philological Association* 97: 407-419; T. J. Luce, 1968, "Political Propaganda on Roman Republican Coins" *American Journal of Archaeology* 72 (1): 25-39.

shows an emperor (headless, and therefore unidentifiable) addressing a crowd from the Rostra in front of the Temple of Divus Julius with the Arch of Augustus in the background. After a gap, the façade of the Basilica Julia appears, in front of which a figure is seated on a tribunal with the statue of Marsyas behind him. The statue is also shown on the second balustrade with the Basilica Julia (Claridge, 1998, fig. 14 and 15). The available evidence therefore demonstrates not only that the statue of Marsyas was a symbol for the concept of liberty, conceptualized as popular *libertas* in the Roman Republic and freedom of the city under the empire, but it also had a long standing association with the administration of justice. An epigram of Martial (2.64) mentions the statue of Marsyas in the forum and jokes that in the fever of litigation at Rome, Marsyas himself might become a lawyer, or ‘court-pleader’ (*Marsyas causidicus*, 2.64.8).

By locating Julia at the statue of Marsyas, Augustus has placed her squarely at the intersection of liberty and law in the heart of Rome. The claim that she went daily to the statue and there traded adultery for prostitution simply builds upon the claim that she violated the adultery law on the very spot where it had been first promoted. She is represented as committing a further outrage against the law by defiling the symbol most closely associated with the seat of the urban praetor, the location where justice would be meted out to those charged and tried under the law. She is, in essence, being accused of turning tricks outside a court of law.

On the one hand, the conflation of adultery and prostitution is typical of male Romans attitudes towards women accused of adultery. An unchaste woman not only was thought to be capable of any depravity, but Augustus’ adultery law actually punished women with such a severe and irrevocable loss of social status that they were classed

with prostitutes. This detail can also be read in another way, however, without placing credibility in the notion of Julia as a literal prostitute plying her trade in the Roman Forum. Accusations of outrageous sexual immorality were common against political figures in ancient Rome. These attacks also took the form of accusations of prostitution, even against male figures. During the height of his rivalry with Mark Antony, Augustus himself was accused by Lucius, the brother of Antony, of having given himself to Aulus Hirtius in Spain for a sum of three hundred thousand sesterces (*Suet. Aug.* 68). The attack on Julia is therefore consistent with the invective prominent Romans launched against their political opponents.

The language used to denounce Julia is also very deliberate in its attempts to construct her alleged activities not as private indiscretions but as public crimes that have a political colouring. Seneca describes Julia admitting lovers in droves (*gregatim*) in *De beneficiis* and in *De brevitate vitae* (4.5), he describes Augustus' old age as being terrorized by his daughter and the noble youths who were bound to her by adultery as if by sacred oath (*filia et tot nobiles iuvenes adulterio velut sacramento adacti iam intractam aetatem territabant*) and again Augustus had to fear a woman in league with an Antony (*et iterum timenda eum Antonio mulier*). Though the crime mentioned is of course adultery, the above lines from Seneca appear immediately after a discussion of the murderous plots against Augustus at Rome by Murena, Caepio, Lepidus, and Egnatius. The alleged crimes of Julia and the young nobles are thus clearly likened to the conspiracies which plagued Augustus at Rome. Like conspirators, they are bound to each other as if by oath, they "terrorize" Augustus in his failing years and once again there is a woman and an Antony (Iullus Antonius, Mark Antony's son) behind the threat. The

charge of adultery against Julia has such political force as to be elevated to a form of treason (*maiestas*) in the discourse.

Pliny goes further than other writers by casting Julia not merely as an adulterous woman, but a murderous one as well. Pliny claims that Julia was in fact forming an open conspiracy to commit parricide (*consilia parricidae palam facta*, 7.149). This claim is not corroborated by other ancient accounts and may result from a misunderstanding of the discourse surrounding Julia's alleged crime as well as an attempt on the part of Pliny to account for why Augustus reacted so violently against his daughter. It is worth noting that the accusation of parricide does not occur in the same context as Pliny's other discussion of Julia nor does he claim that this information was found in the original letter of Augustus.

There are other reasons to doubt that Julia's alleged activities formed part of a larger conspiracy to commit parricide or *maiestas*. Seneca asserts that L. Cinna's conspiracy was the last against Augustus (*Clem.* 1.9) in a passage that immediately precedes his discussion of Augustus' clemency towards Julia's alleged adulterers. Seneca clearly states that the charges against them were adultery (*Clem.* 1.10.3): "*Quoscumque ob adulterium filiae suae damnaverat, adeo non occidit ut, dismissis quo tutiores essent, diplomata darent.*" (He did not execute those whom he had convicted of adultery, but gave them travel-documents and sent them away for their own safety). Seneca's account is consistent with Velleius, who had written earlier that Augustus had seen fit to punish Crispinus, Pulcher, Gracchus, and Scipio no differently for committing adultery with the daughter of the Princeps and wife of Tiberius than if they had committed adultery with the wife of an average citizen (2.100.5). There is also no evidence of a customary

*senatusconsultum* decreeing a thanksgiving for the successful repression of a conspiracy and no *damnatio memoriae* for Iullus Antonius, whose name was not expunged from the *fasti* (Tac. *Ann.* 3.18.1), as would likely have happened had there been a conspiracy against Augustus (Bauman, 1967). Therefore, with the exception of the brief comment by Pliny, upon which he does not elaborate, the evidence is overwhelmingly in favour of an accusation of adultery alone against Julia and her co-accused.

### **The Judgement of Julia**

If Julia's crime was simply adultery in the strictest sense of sexual relations with men other than her legal husband, it is difficult to comprehend why she was not formally tried under the *lex Iulia de adulteriis*, for indeed there was no such trial. Although the procedure and penalties of Augustus' own adultery law were perfectly available to him for use, Augustus went well beyond the limits of his own law in dealing with Julia.

Tacitus is clear in his reproach of Augustus' heavy-handed treatment. He writes:

*Augusto in rem publicam fortuna ita domi improspera fuit ob impudicitiam filiae ac neptis quas urbe depulit, adulterosque earum morte aut fuga punivit. nam culpam inter viros ac feminas vulgatam gravi nomine laesarum religionum ac violatae maiestatis appellando clementiam maiorum suasque ipse leges egrediebatur.*

Though the fortunes of Divine Augustus prospered in matters of state, at home they were unfavorable owing to the immorality of the daughter and granddaughter whom he drove from the City, and punished their adulterers with death or banishment. For in calling their fault – widespread though it is between men and women – by the weighty name of “infringed obligations and violated sovereignty” he thereby exceeded the clemency of our ancestors and his own laws.

(Tac. *Ann.* 3.24.2; Woodman, transl.)

Tacitus' account supports the view that Julia was accused of adultery, but that her supposed crime was elevated to "infringed obligations and violated sovereignty (or majesty)" by Augustus himself. Bauman (1967) sees a link between the personal majesty Augustus had been building for himself throughout his reign and "the seal of official recognition" which was placed on this majesty when he was granted the title of *Pater patriae*. The majesty of Augustus also had a significant moral aspect. Bauman observes that Augustan writer Ovid emphasizes the involvement of moral values in the birth of the personified *Maiestas* in his *Fasti* (5.23-30). In the *Fasti*, *Maiestas* is born of a union between *Honor* and *Reverentia* (reverence); she sits with *Pudicitia* (sexual modesty) and *Metus* (awe). Given the moral thrust behind the concept of *maiestas*, it is clear how Julia's alleged adultery came to be linked with the notion of "violated majesty" (*violatae maiestatis*) and ultimately treason (*crimen maiestatis*, often rendered simply as *maiestas*) in the discourse. Just as Augustus had made adultery a public crime on a par with offences against the welfare of the Roman state with his *lex Iulia de adulteriis*, he had now surpassed even this law by constructing Julia's adultery as a violation of his own majesty, a crime tantamount to high treason.

The procedure followed in Julia's case is at best very unclear. Augustus must have intended that the charge against her should appear consistent with a charge under the *lex Iulia de adulteriis* as the sources all agree that she was punished for adultery. Augustus sent Julia a repudiation in the name of the absent Tiberius (Suet. *Tib.* 11) and dissolved their marriage as was required before a charge of adultery could proceed according to that law. Next, however, rather than allowing Julia the chance to answer the charge against her or defend herself in a public trial in the *quaestio* or Senate, Augustus pronounced

Julia guilty in his letter to the senate and immediately imposed a punishment of *relegatio in insulam* (relegation to an island) (Dio 55.10.4; Suet. *Tib.* 11.4).<sup>91</sup> She was treated as no longer belonging to the Augustan family, was not to benefit under Augustus' will, and following her own death would not be interred in his mausoleum. Julia was swiftly removed to Pandateria (modern Ventotene) where she was to live in remote obscurity. According to Suetonius, Augustus stressed the austerity of the conditions in which his daughter was expected to live by forbidding her to drink wine or eat anything other than the most basic foods. He also exercised strict control over who was allowed contact with her. No free man or slave was allowed contact with Julia without the permission of Augustus, who also demanded to know the age, physique, complexion and any marks on the body of any man who might visit her. Possibly Julia's only source of comfort was her mother, Scribonia who voluntarily opted to join her daughter on Pandateria in a demonstration of maternal love and faith in her daughter's moral character (Fantham, 2006).

Many modern scholars since Syme have attempted to interpret what may have provoked Augustus to charge his daughter with adultery and remove her utterly from the imperial family and from Rome. Syme (1984) proposes that Julia's alleged misconduct was used as a pretext by Augustus who was willing to sacrifice Julia in order to sever ties with Tiberius and thus secure the imperial succession for his chosen heirs, Gaius and Lucius. Lacey (1980) reasons that Augustus diverted attention away from Julia's alleged earlier affairs in order to protect the legitimacy of Gaius and Lucius and then treated her

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<sup>91</sup> See S. T. Cohen (2008) "Augustus, Julia and the Development of Exile *Ad insulam*," *Classical Quarterly* 58 (1): 206-17, for a discussion of Julia's punishment of *relegatio ad insulam* and the possibility that it was developed specifically by Augustus in order to remove Julia.

supposed adulteries as a recent development since the absence of Tiberius. Other theories hold that the adultery charge concealed a larger conspiracy against Augustus or an attempt by Antonius or Gracchus to supplant Tiberius and alter the imperial succession in their favour.<sup>92</sup> It is unlikely that any scholarly consensus can be reached on these issues and it is beyond the scope of the present study to attempt to account for the personal motivations of any of the *dramatis personae* in the scandal surrounding Julia. It is perhaps enough to locate her within a series of politically inconvenient women who were accused of adultery. Before adultery was made a public crime, Pompey divorced his third wife, Mucia, in order to marry Julius Caesar's daughter, Julia, and Caesar, as was discussed in the first chapter, divorced Pompeia amid an adultery scandal. Following the scandal of 2 BCE which saw Augustus' daughter Julia relegated, Julia's own daughter, Julia the Younger, was accused of adultery with D. Silanus and also relegated by Augustus in 8 CE. Even less is known about the circumstances surrounding Julia the Younger's downfall as most sources, if they mention her at all, tend to treat her as an aside in their discussion of her mother's supposed immorality. Tacitus states that she was relegated to Trimerus and was supported for the twenty years of her exile by the "generosity" of Livia Augusta (*Ann.* 4.71-7). While in exile she bore a child which Augustus ordered exposed (*Suet. Aug.* 65).

Whatever the motivation behind the charge, Julia was treated as guilty of adultery and relegated without trial. In effect, her condemnation was public (a letter read in the Senate) but she was afforded no opportunity to answer the charges publicly. If Augustus was determined to remove Julia, whatever the cause, he may have had good reason to

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<sup>92</sup> See Bauman, 1967, for an overview of the various conspiracy theories and the objections to them.

avoid the risk of public influence. Augustus may have been able to exercise complete control over the form of the charge against Julia, the details released, the procedure followed and the penalty imposed, but the judgement of the people may not have been on his side despite all attempts to cast Julia in the worst possible light. Fantham (2006) reasons that Augustus moved quickly to remove Julia because she enjoyed tremendous popularity among the Roman people and it would thus have been “politically dangerous to allow her time to stir up public resentment” (p. 89). There is some support for this view. After five years on Pandeteria, Julia was brought to Rhegium on the Italian mainland and some of the conditions of her virtual imprisonment were relaxed.<sup>93</sup> She was now permitted to leave the house and communicate with other people (Suet. *Tib.* 50). The reason for this change in Julia’s conditions is attributed by Dio (55.13.1) and Suetonius (*Aug.* 65) to active public demonstrations which demanded that Julia be recalled. Suetonius says that the Roman people interceded for Julia several times with great insistence, but that Augustus refused to recall her fully to Rome and, in full public assembly, called upon the gods to curse them with like wives and daughters in response to their display of support for Julia (*Nam ut omnino revocaret, exorari nullo modo potuit, deprecanti saepe p. R. et pertinacius instanti tales filias talesque coniuges pro contione inprecatus*). This would not be the last time that the Roman people would react with public demonstrations against a perceived injustice dealt to an imperial woman. Some sixty years after the Julia scandal, when the emperor Nero accused his wife Octavia of adultery with a freedman so that he might divorce her, the Roman people judged the

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<sup>93</sup> See Linderski, 1988, “Julia in Regium” *ZPE* 72: 181-200 for an exploration of Julia’s final years based in part upon surviving inscriptions erected by members of Julia’s household in Rhegium.

charge false and reacted with violent public protests (Tac. *Ann.* 14.59-61). Thus, despite attempts by Augustus and subsequent emperors to seize control of the now public charge of adultery for use against members of their own family, the Roman people would nevertheless insist upon having their say.

## Conclusion

In this thesis, I have suggested that although the *lex Iulia de adulteriis* has been linked, not unjustifiably, with the Augustan social legislation, especially the marriage law of 18 BCE, it also deserves separate consideration, and has particular aims that are independent of the demographic need to promote marriage and childbearing. The criminalization of adultery and the creation of the *quaestio perpetua de adulteriis* by the Augustan Principate served to transfer the moral regulation of elites, particularly women, from the private, domestic sphere into the legal and political arena in a manner unprecedented in the Roman Republic. Building upon the previous work of Leanne Bablitz which has identified the Roman courtroom as a public “stage”, I have endeavoured to show how the *lex Iulia de adulteriis* forms part of a larger trend under Augustus towards staging the aristocracy and making public spectacle of their moral regulation in the interests of promoting his regime. The *lex Iulia de adulteriis* represents a shift away from the Republican-era authority of the Roman *paterfamilias* to punish transgressions privately at his discretion and towards the legal power of the Roman emperor and Senate to define and regulate sexual morality publicly. By implementing his own adultery law, the first Roman emperor established himself as the dominant voice in the political discourse on morality.

In Chapter One, I have placed the *lex Iulia de adulteriis* within the context of distinctly Roman anxieties over sexual morality among the elite which were heightened after the Civil Wars and which found expression in the political rhetoric. As emperor, Augustus engaged with the discourse linking immorality among the elite with the

political disorder of Rome by launching his programme of social legislation, which included the criminalization of adultery. Augustus promoted his regime and its moral legislation with grand public spectacles, such as the *Ludi Saeculares*. Romans were invited to engage with the new Augustan legislation through these spectacles, in which customs thought characteristic of Rome's illustrious past were redeployed. I have shown how the *lex Iulia de adulteriis* belonged to this trend of staging elites in public spectacles in order to serve the Augustan Principate's preoccupation with the regulation of morality.

Chapter Two builds on the issue of the regulation of morality as spectacle through an exploration of adultery trials in the age of Augustus. My initial approach to this chapter was to attempt to set out the legal procedures involved in the *quaestio perpetua de adulteriis* in order to illustrate the very public nature of a Roman trial. Recreating the conditions inside the *quaestio de adulteriis*, or indeed any Roman courtroom, is extremely challenging given the scarcity of sources that present a clear picture of how a trial would have proceeded. In order to integrate seamlessly the crime of adultery and its newly created *quaestio* into the existing body of criminal trials, the *quaestio perpetua de adulteriis* must have followed much the same court procedure as other contemporary *quaestiones*. I have argued that the Gracchan legal reforms set down for the crime of *repetundis*, which survive in an inscription, established the essentially open nature of all subsequent *quaestiones*. The *quaestio perpetua* was not the only venue in which an adultery trial could take place, however. Most of the adultery trials preserved in the sources take place in the Senate, often before the emperor himself. These too were clearly a matter of public record and certainly involved elements of "staging". The use of the Senate as a courtroom, with senators or emperors serving as judges in adultery and other

cases, represents a widening of senatorial jurisdiction previously unattested. The fact that adultery trials were held in the Senate concurrent with the continued existence of the *quaestio perpetua de adulteriis* speaks to the fact that adultery was regarded as serious enough to warrant consideration as a matter of state, particularly where high status individuals were involved.

Chapter Three focuses specifically on one of the earliest recorded individuals accused of adultery after the introduction of the *lex Iulia de adulteriis*, Augustus' own daughter, Julia. Though we have no evidence to suggest that she was actually accorded a trial in the Senate or elsewhere, Augustus' letter to the Senate, which set out the supposed details of her alleged crime and which was influential in shaping all subsequent historical accounts of Julia and her downfall, stands as a very public form of accusation, judgement, and condemnation of a high profile woman for adultery. I have explicitly and deliberately chosen to ignore the possible underlying motivations or political conspiracies underlying this charge in order to focus instead on how her alleged adultery was constructed and represented by Augustus. As seen in the first chapter of this thesis, Augustus made use of moral legislation in order to make his mark on the discourse on sexual immorality which pervaded Roman politics. His one-sided, even hypocritical, condemnation of Julia using the *lex Iulia de adulteriis* is a clear example of how skilled the emperor was at shaping and dominating that discourse for his purposes. One factor outside the emperor's control, however, was the reaction of the Roman people, accustomed as they were to at least the appearance of publicly transparent dispensation of justice.

The studies in the *lex Iulia de adulteriis* which make up this thesis have together, I hope, suggested that the criminalization of adultery and the creation of the *quaestio perpetua de adulteriis* set down by that Augustan legislation should not be viewed as a simple response to an allegedly rampant social ill, nor should the law be considered only in light of the marriage law which preceded it. The *lex Iulia de adulteriis* can of course be linked with the *lex Iulia de maritandis ordinibus*, as has been done in the existing scholarship, but it is equally, if not more fruitful, to examine some of the other political and legal context surrounding the adultery law. The law's role in promoting or strengthening Roman marriage is poorly attested and highly suspect, yet the *lex Iulia de adulteriis* experienced significant longevity and spawned numerous trials in the *quaestio perpetua* and in the Senate despite its supposed inutility and unpopularity. Clearly the law had some use beyond the purpose made explicit by its implementer in his *Res gestae*. The *lex Iulia de adulteriis* did certainly involve promotion, but not simply of marriage or ancestral *mores*. The inclusion of a reference to his moral laws in the *Res gestae* demonstrates Augustus' awareness of the laws' role in promoting his regime and its supposed restorative power. The very public staging of Roman elites demanded by the *lex Iulia de adulteriis* and its trials assured that anxieties surrounding sexual immorality, and underlying fears about the insecurity of the political situation of the state, could be exposed and played out in the form of spectacle for the people and promotion for the emperor.

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