

# **THE LANGUAGE OF ROMAN ADULTERY**

A thesis submitted to The University of Manchester for the degree of  
Doctor of Philosophy  
in the Faculty of Humanities

**2012**

**JESSICA E. DIXON**

**SCHOOL OF ARTS, LANGUAGES AND CULTURES**

# Contents

<b>CONTENTS.....</b>	<b>2</b>
<b>LIST OF FIGURES.....</b>	<b>4</b>
<b>ABSTRACT .....</b>	<b>5</b>
<b>DECLARATION .....</b>	<b>6</b>
<b>COPYRIGHT STATEMENT .....</b>	<b>7</b>
<b>ACKNOWLEDGEMENTS .....</b>	<b>8</b>
<b>CHAPTER ONE: INTRODUCTION AND DEFINITIONS .....</b>	<b>9</b>
1.1) LAW AND SOCIETY.....	9
1.2) MORAL REFORM .....	10
1.3) THE LANGUAGE OF ADULTERY .....	12
1.4) LEGAL SOURCES.....	15
1.5) DEFINITIONS OF <i>ADULTERIUM</i> AND <i>STUPRUM</i> .....	17
<b>CHAPTER TWO: ROMAN ADULTERY .....</b>	<b>27</b>
2.1) ADULTERY IN THE REPUBLIC .....	27
<i>Republican Morality</i> .....	27
<i>Women</i> .....	29
<i>The Prosecution of Adultery</i> .....	32
<i>Lex Scantinia</i> .....	42
2.2) THE PROVISIONS AND PENALTIES OF THE <i>LEX IULIA</i> .....	48
<i>Accusations</i> .....	48
<i>Other Charges</i> .....	55
<i>Torture of Slaves</i> .....	58
<i>Prosecution</i> .....	60
<i>Punishment</i> .....	62
<i>Punishment in Literature</i> .....	66
<i>Punishment of the Adulteress</i> .....	71
<i>Scope</i> .....	77
<i>Purpose</i> .....	78
2.3) AFTER THE <i>LEX IULIA</i> .....	83
2.4) CONCLUSIONS .....	87
<b>CHAPTER THREE: <i>ADULTERIUM</i> AND <i>STUPRUM</i> IN LATIN PROSE .....</b>	<b>89</b>
3.1) THE AUTHORS .....	89
3.2) THE TERMS.....	95
3.3) STATUS.....	98
<i>Cicero</i> .....	101
<i>Sallust</i> .....	104
<i>Livy</i> .....	105
<i>Valerius Maximus</i> .....	106
<i>Tacitus</i> .....	107

<i>Suetonius</i> .....	109
3.4) ASSOCIATIONS.....	110
<i>Cicero</i> .....	110
<i>Sallust</i> .....	116
<i>Livy</i> .....	118
<i>Valerius Maximus</i> .....	120
<i>Tacitus</i> .....	120
<i>Suetonius</i> .....	124
3.5) CONCLUSIONS .....	125
<b>CHAPTER FOUR: ADULTERIUM AND STUPRUM IN LATIN VERSE.....</b>	<b>127</b>
4.1) THE AUTHORS .....	128
4.2) THE TERMS.....	134
4.3) STATUS .....	140
<i>Plautus</i> .....	142
<i>Terence</i> .....	143
<i>Catullus</i> .....	144
<i>Horace</i> .....	145
<i>Propertius</i> .....	146
<i>Ovid</i> .....	149
<i>Martial</i> .....	150
<i>Juvenal</i> .....	151
4.4) ASSOCIATIONS.....	152
<i>Plautus</i> .....	152
<i>Terence</i> .....	155
<i>Catullus</i> .....	156
<i>Horace</i> .....	157
<i>Propertius</i> .....	164
<i>Ovid</i> .....	165
<i>Martial</i> .....	168
<i>Juvenal</i> .....	171
4.5) CONCLUSIONS .....	175
<b>CONCLUSION.....</b>	<b>177</b>
<b>APPENDIX ONE: SENECA THE ELDER.....</b>	<b>181</b>
<b>APPENDIX TWO: WORD FREQUENCY TABLES .....</b>	<b>184</b>
(I) PROSE AUTHORS.....	184
(II) VERSE AUTHORS .....	187
(III) SENECA THE ELDER.....	189
<b>BIBLIOGRAPHY .....</b>	<b>190</b>

**Word count: 79,983**

## List of Figures

FIGURE 1: INDIVIDUAL WORD FREQUENCY OF THE PROSE AUTHORS .....	96
FIGURE 2: FREQUENCY OF <i>ADULTERIUM</i> AND <i>STUPRUM</i> (INCLUDING THEIR DERIVATIVES) IN THE PROSE AUTHORS ..	97
FIGURE 3: STATUS OF THE PASSIVE PARTNER IN THE SEXUAL AFFAIR IN THE PROSE AUTHORS .....	99
FIGURE 4: INDIVIDUAL WORD FREQUENCY IN THE VERSE AUTHORS .....	135
FIGURE 5: MASCULINE AND FEMININE FORMS IN THE VERSE AUTHORS .....	135
FIGURE 6: USE OF <i>ADULTER/A</i> OR <i>MOECHUS/A</i> IN THE VERSE AUTHORS.....	137
FIGURE 7: PERCENTAGE FREQUENCY OF <i>ADULTERIUM</i> , <i>STUPRUM</i> , AND <i>MOECHUS</i> (INCLUDING THEIR DERIVATIVES) IN THE VERSE AUTHORS .....	140
FIGURE 8: STATUS OF THE PASSIVE PARTNER IN THE SEXUAL AFFAIR IN THE VERSE AUTHORS .....	141
FIGURE 9: PERCENTAGE FREQUENCY OF <i>ADULTERIUM</i> AND <i>STUPRUM</i> (INCLUDING THEIR DERIVATIVES) IN SENECA THE ELDER.....	181
FIGURE 10: STATUS OF THE PASSIVE PARTNER IN THE SEXUAL AFFAIR IN SENECA THE ELDER .....	182

# Abstract

## The Language of Roman Adultery

This thesis uses the language of adultery to examine the relationship between law and society in ancient Rome. In particular, questions will be asked about the ways in which this exchange functioned – do social norms determine law or vice versa? To begin, the *lex Iulia de adulteriis coercendis* will be contextualised within Augustus' wider programme of moral reform, and definitions will be given for *adulterium* and *stuprum*, the terms which the law used to classify the actions it penalised.

The thesis will use these two terms as a lens through which to investigate changes in attitudes to adultery following the introduction of the *lex Iulia*. A survey of the use of *adulterium* and *stuprum*, including their derivatives and the borrowed Greek form *moechus*, will be made within Latin literature from the 2<sup>nd</sup> century BC until the 2<sup>nd</sup> century AD. It will be argued that changes in the use and meaning of the terms following the introduction of the *lex Iulia* are indicative of changes in attitudes to adultery within the Roman male elite. This in turn will show that law can and does impact on society and it can be used as a positive force to change society's conception of a given behaviour.

Chapter two looks closely at the punishment of adultery in the republic in order to provide a framework through which to understand the *lex Iulia* as an innovative piece of legislation. The provisions of the law will then be recreated using the juristic texts of the sixth century legal compilations and the chapter will conclude by looking at the attempts to revive the *lex Iulia* by later emperors and the changes that were made to the law.

The focus of chapters three and four is the use of the terms *adulterium* and *stuprum* in prose and verse literature. A selection of authors has been chosen to provide a sample that covers the chronological period in question and to include a wide range of genres. It will be shown that in the republic *stuprum* was the more frequent term as it could be used to refer to sexual transgression in general, including adultery. However, following the introduction of the adultery law, *adulterium* is found with much greater frequency and its use reflects the new legal definition of adultery and the need to qualify accusations in terms of the law. Moreover, whereas previously *stuprum* had been conceived of as the more damaging and disgraceful concept, *adulterium* became to be of greater concern. The legal significance which the *lex Iulia* gave to adultery and the terms used to describe it are also evident.

Overall, it is the aim of this thesis to show how the introduction of the *lex Iulia de adulteriis coercendis* shaped and altered attitudes to adultery within Roman society. Nevertheless, the validity of using law to control morality continued to be questioned by some of the authors studied and there were negative effects on ideas of marital fidelity and sexual morality as a result of the law.

## **Declaration**

**No portion of the work referred to in the thesis has been submitted in support of an application for another degree or qualification of this or any other university or another institute of learning.**

## Copyright Statement

i. The author of this thesis (including any appendices and/or schedules to this thesis) owns certain copyright or related rights in it (the “Copyright”) and s/he has given The University of Manchester certain rights to use such Copyright, including for administrative purposes.

ii. Copies of this thesis, either in full or in extracts and whether in hard or electronic copy, may be made only in accordance with the Copyright, Designs and Patents Act 1988 (as amended) and regulations issued under it or, where appropriate, in accordance with licensing agreements which the University has from time to time. This page must form part of any such copies made.

iii. The ownership of certain Copyright, patents, designs, trade marks and other intellectual property (the “Intellectual Property”) and any reproductions of copyright works in the thesis, for example graphs and tables (“Reproductions”), which may be described in this thesis, may not be owned by the author and may be owned by third parties. Such Intellectual Property and Reproductions cannot and must not be made available for use without the prior written permission of the owner(s) of the relevant Intellectual Property and/or Reproductions.

iv. Further information on the conditions under which disclosure, publication and commercialisation of this thesis, the Copyright and any Intellectual Property and/or Reproductions described in it may take place is available in the University IP Policy (see <http://documents.manchester.ac.uk/DocuInfo.aspx?DocID=487>), in any relevant Thesis restriction declarations deposited in the University Library, The University Library’s regulations (see <http://www.manchester.ac.uk/library/aboutus/regulations>) and in The University’s policy on Presentation of Theses.

## Acknowledgements

Firstly, I would like to thank my supervisor, Prof. Tim Parkin, both for introducing me to the world of Roman law and for sharing with me his knowledge and enthusiasm for the subject. Without his support this research would not have been possible. I have also been very grateful for the support of my panel supervisors, Prof. Roy Gibson and Prof. Tim Cornell, who have always kept me on my toes and offered insightful and comprehensive guidance. I would also like to express my gratitude for the advice and congenial atmosphere provided by the University of Manchester Classics department.

Many thanks are due to my friends and family who have supported and encouraged me throughout. I would like to mention (in no particular order) Stevie Spiegl, James Corke-Webster, Carina Spaulding, Sheona Davies, Katherine Fennelly, James Greenhalgh, Ben Wilcock, Maarten Walraven, and everyone else who works in the Haworth. Special thanks also need to go to Mum, Carina, and John Strachan for their help with proofreading and formatting at the end, as well as Rebecca Frater, Elspeth Beidas, Gemma Bunn, Kirsty Betts, and the Hallé Pub Team for keeping me sane.



# Chapter One: Introduction and Definitions

## 1.1) Law and Society

The state recognizes that it has a duty to encourage high moral standards. Although the state does not regulate the private sexual activity of consenting adults, the state does not condone or encourage any form of sexual conduct outside the institution of marriage. Marriage is the foundation of family and society. Its stability is basic to morality and civilization, and of vital interest to society and this state.

(Wisconsin State Statute 944.01)<sup>1</sup>

In this passage the State of Wisconsin sets out the intention with which adultery is included within current state law as a criminal offence.<sup>2</sup> The values of marital fidelity and the concerns surrounding the stability of both the family and wider society enshrined in this modern statute are the same as those found in Rome at the time in which Augustus introduced the *lex Iulia de adulteriis coercendis*.<sup>3</sup> Throughout history adultery may be seen as being closely connected to ideas of stability, not just within the family unit but also within society. Moreover, the inclusion of adultery within US State law shows that the relationship between law and the control of sexual morality is still a current topic and an area in which governments feel that they can interfere.<sup>4</sup>

---

<sup>1</sup> Accessed at [https://docs.legis.wisconsin.gov/statutes/statutes/944/III/16/2/\\_1](https://docs.legis.wisconsin.gov/statutes/statutes/944/III/16/2/_1) on 23/10/2012.

<sup>2</sup> Those found guilty would be charged with a Class I felony, which incurs either a fine up to \$10,000 or up to 3 years and 6 months imprisonment or both (Wisconsin State Statute 939.50.3, accessed at <http://docs.legis.wisconsin.gov/statutes/statutes/939/IV/51/3/b> on 23/10/2012).

<sup>3</sup> Augustus' adultery law is known today as the *lex Iulia de adulteriis coercendis* and it was called this by several jurists: Tryphoninus, *Disp.* book 3, *D.* 4.4.37.1; title of *D.* 48.5; Julian, *Dig.* book 86, *D.* 48.5.5; Tryphonius, *Disp.* book 2, *D.* 48.5.43; Paul, *de Adult.* book 1, *Coll.* 4.2.1; *CJ.* 9.9.3, AD 213; *CJ.* 9.9.17, AD 257. However, the majority referred to it solely as the *lex Iulia de adulteriis*: Papinian, *Quaest.* book 1, *D.* 1.21.1.pr.; Ulpian, *Ed.* book 6, *D.* 3.2.2.3; Paul, *de Adult.* book 2, *D.* 22.5.18; Ulpian, *de Leg. Iul. et Pap.* book 1, *D.* 23.2.43.13; Ulpian, *de Leg. Iul. et Pap.* book 2, *D.* 25.7.12; Ulpian, *Sab.* book 1, *D.* 28.1.20.6; Ulpian, *Ed.* book 47, *D.* 38.11.1.1; Macer, *de Pub. Iud.* book 1, *D.* 48.1.1; Paul, *de Adult.* book 3, *D.* 48.2.3.pr.; Ulpian, *Diff.* book 8, *D.* 48.5.2.2; Ulpian, *de Adult.* book 2, *D.* 48.5.16.1, 6; Papinian, *Resp.* book 6, *D.* 48.5.40.pr.; Marcian, *Inst.* book 14, *D.* 48.6.5.2; Ulpian, *Disp.* book 3, *D.* 48.18.4; Modestinus, *Diff.* book 9, *D.* 50.16.101; title of *CTh.* 9.7; *CTh.* 9.19.4.1, AD 376; *CJ.* 9.9.10, AD 225. It did, however, have two alternative names in the *Codex Justinianus*: it was called the *lex Iulia de adulteriis et de stupro* in the title for chapter 9.9 and the *lex Iulia de pudicitia* twice at *CJ.* 9.9.8 and *CJ.* 9.9.9 (both AD 224). Cf. Suetonius who says that Augustus introduced laws "*de adulteriis et de pudicitia*" (*Aug.* 34). References to the *lex Iulia de adulteriis coercendis* will be abbreviated to the *lex Iulia* throughout.

<sup>4</sup> The variations in penalty between the 23 American states that include adultery as a punishable offence (ranging from life sentence in Michigan to a \$10 fine in Maryland) and the history of the criminalisation of adultery in America are discussed by Weissler (2012). Adultery is also a criminal offence in India, where the

The relationship between law and social norms is complicated and often hard to distinguish. Moreover, law is invariably a product of the time in which it was created, meaning that it is not possible to study law without consideration of the surrounding social and political environment.<sup>5</sup> Thomas McGinn has demonstrated that to understand fully law's position within society, as well as the relationship between social norms and legal sanctions, it is necessary to move away from the traditional 'evolutionary hypothesis' of law, whereby social norms are seen gradually to inform law, making it a one-way process.<sup>6</sup> Moreover, law cannot be separated from the interests and beliefs of the man or men who introduced it. Instead he suggests a model "that explains, first, the social and legal forces that contribute to lawfinding; second, the structures and rules that make up the 'law'; and, third, the impact the law has on behaviour in society" (McGinn 1998a:7). It is the third part of this model that this study will address by looking at the relationship of the *lex Iulia de adulteriis coercendis* to society and the impact that it had (or did not have) on behaviour in society.

## 1.2) Moral Reform

Augustus introduced the *lex Iulia de adulteriis coercendis* as part of a wider restoration of Roman society following the comparative instability and trauma of the civil war period. The basis for this programme of revival was the reinforcement of traditional morality and religion.<sup>7</sup> Moreover, following Augustus' illness in 23 BC and his absence from Rome from 23 to 19 BC the importance

---

law has been recently criticised as being sexist, for it only penalises the male adulterer as the adulteress is not liable under the law (<http://www.rediff.com/news/2003/aug/12adultery.htm> accessed on 23/10/2012). Moreover, adultery is viewed as a sin in Christianity and Judaism (Exodus 20:14) and Islam (Quran 17:32).

<sup>5</sup> See Humphreys (1985:257): "law as discourse, as a combination of speech and action, is inherently historical and political. Laws are drafted and passed at particular moments in time in response to historically conditioned conceptions of society and its needs."

<sup>6</sup> McGinn 1998a:4-9. Sawyer (1965:135), whilst discussing a piece of Australian legislation, shows that after a period of time people overlook the fact that their behaviour has been moderated by law: "although the changes involved were to a considerable extent merely a matter of fitting relevant law to a social situation which had changed, there was also an element of conscious social direction, as in provisions encouraging marriage guidance and requiring greater attention to be paid to the position of children of a dissolved marriage. But within a decade these Acts will be accepted as part of the system of lawyers' law, something to which people adjust their behaviour as best they can, and the name of their author will be remembered only by lawyers; they will have ceased to be examples of social control, and become aspects of social order."

<sup>7</sup> The importance of the moralising discourse of the late republic and the early empire is discussed further in section 2.1.

of the issue of succession and the nature of Augustus' place and role in Rome had become clear.<sup>8</sup> It was on the principles of *mos maiorum* that Augustus based his power and he consolidated this through extensive building works, literature, and art.<sup>9</sup> Moreover, in 18 BC he introduced a series of laws that regulated marriage and sexuality.<sup>10</sup>

Marriage and childrearing were encouraged by the *lex Iulia de maritandis ordinibus*, which was later amended in AD 9 by the *lex Papia et Poppaea* and is often referred to subsequently as the *lex Iulia et Papia*.<sup>11</sup> The legislation restricted the unmarried from inheriting outside of the sixth degree of blood relationship and limited the ability of the childless to inherit.<sup>12</sup> It also contained legal incentives, such as the *ius trium liberorum*.<sup>13</sup> Unmarried men younger than twenty-five and older than sixty, and unmarried women younger than twenty and older than fifty, were given dispensations from the limitations on inheritance (McGinn 1998a:74). Moreover, women were allowed only one year after the death of their husband and six months after a divorce before they were expected to remarry.<sup>14</sup> The marriage law also restricted marriage between the senatorial class and those at the lowest levels of Roman society:

*lege Iulia ita cavetur: 'qui senator est quive filius neposve ex filio proneposve ex filio nato cuius eorum est erit, ne quis eorum sponsam uxoremve sciens dolo malo habeto libertinam aut eam, quae ipsa cuiusve pater materve artem ludicram facit fecerit. neve senatoris filia neptisve ex filio proneptisve ex nepote filio nato nata libertino eive qui ipse cuiusve pater materve artem ludicram facit fecerit, sponsa nuptave sciens dolo malo esto neve quis eorum dolo malo sciens sponsam uxoremve eam habeto.'*

The *lex Iulia* provides that: 'A senator, his son, or his grandson, or his great-grandson by his son shall not knowingly or fraudulently become betrothed or marry a freedwoman, or a woman who is or has been an actress or whose father or mother are or have been

---

<sup>8</sup> Cf. Augustus' address to the senate in 27 BC on his position in Rome (Dio 53.2-11). The political context in which the moral legislation was introduced is set out by Raditsa (1980:297-305).

<sup>9</sup> Galinsky 1996; Kleiner 1978; Zanker 1988.

<sup>10</sup> The dating of the marriage law to 18 BC is based on Dio 54.16.1. However, the adultery legislation cannot be precisely dated (Crawford 1996:781). A reference by Horace to the law at *Od.* 4.5.21-22 shows that it was in effect by 16 BC and the sentiments of his *Carmen Saeculare* also suggest it was in place before 17 BC. Yet still, the timing of its introduction in relation to the marriage law is unclear (Raditsa 1980:296-297). However, scholars tend to favour a date of 18 BC (Last 1934:443; Riccobono 1945:112; Berger 1953:553; Raditsa 1980:296; Richlin 1981b:381; Mette-Dittmann 1991:15; Treggiari 1991:277; McGinn 1998a:140; Fayer 2005:212).

<sup>11</sup> On the opposition to the legislation and the need to make amendments see Dio 56.1-10.

<sup>12</sup> Wallace-Hadrill 1981; McGinn 1998a:72-73.

<sup>13</sup> Treggiari 1991:66-80; Gardner 1998:47-55. Other incentives for having children included preference in elections for magistracies and better seats in the theatre.

<sup>14</sup> This was increased to two years and eighteen months respectively by the *lex Papia et Poppaea*.

actors. Nor shall the daughter of a senator, his granddaughter by his son, or great-granddaughter by his grandson become betrothed to or marry, knowingly or fraudulently, a freedman, or a man who is or has been an actor or whose father or mother is or has been an actor. Nor shall any of these people knowingly or fraudulently become betrothed to or marry such a woman.'

(Paul, *ad Leg. Iul. et Pap.* book 1, D. 23.2.44.pr.)<sup>15</sup>

Moreover, freeborn men were prohibited from marrying prostitutes, procuresses, actresses, and women convicted of adultery or condemned in any public court (Ulpian *Tit.* 13.2). In this respect the marriage legislation worked closely with the *lex Iulia de adulteriis coercendis* to define the types of women suitable for marriage and those with whom a man could freely engage in casual sexual relations.

### 1.3) The Language of Adultery

Modern scholarship on adultery in Rome has tended to view it solely from a legal perspective, with little attention paid to the relationship of law to society<sup>16</sup> or it has been approached as a secondary topic within studies of wider aspects of Roman society.<sup>17</sup> The spotlight has instead been on the marriage legislation.<sup>18</sup> This is particularly true within English language scholarship, in which no modern monograph on adultery exists.<sup>19</sup> The means by which scholars have addressed adultery in Rome<sup>20</sup> include the use of sources,<sup>21</sup> Augustus' aims and the social context,<sup>22</sup> the

---

<sup>15</sup> However, a senator's daughter who had been a prostitute, an actress, or had been convicted of a criminal offence could marry a freedman (Paul, *ad Leg. Iul. et Pap.* book 2, D. 23.2.47). All translations of the *Digest* are by Watson (1998). However, slight amendments have been made so that *adulterium* and *stuprum* are kept in their Latin form within all translations.

<sup>16</sup> Riccobono 1945; Thomas 1961; Fayer 2005. See Raditsa (1980:283-290) for overview of the scholarship on the marriage and adultery legislation prior to 1980.

<sup>17</sup> Women in law and society (Gardner 1986); marriage (Treggiari 1991); prostitution (McGinn 1998a).

<sup>18</sup> On the marriage law: Brunt 1971:558-566; Frank 1975; Raditsa 1980; Nörr 1981; Galinsky 1981; Wallace-Hadrill 1981; Treggiari 1991, chapter 2; McGinn 1998a, chapters 3 and 4.

<sup>19</sup> There are a number of monographs, mostly in German and Italian, that look at the *lex Iulia* in detail but their focus is not solely on adultery: Mette-Dittmann has surveyed the marriage and adultery legislation (1991) and Fayer's work on concubinage, divorce and adultery (2005) is one volume in a wider study of the Roman family but it does not offer commentary on the social history of the law. Concubinage and the *lex Iulia* is also considered by McGinn (1991).

<sup>20</sup> Dorey 1961; McGinn 1992.

<sup>21</sup> Richlin 1981b.

<sup>22</sup> Last 1934; Galinsky 1981; des Bouvrie 1984; Cohen 1991.

courts prosecuting adultery,<sup>23</sup> the working of specific provisions of the law,<sup>24</sup> and adultery in comedy and mime.<sup>25</sup>

This legal emphasis of modern scholarship is unsurprising considering the nature of our sources. The richest source material on adultery is the legal texts of the classical jurists that are contained within the sixth century legal compilation of the *Digest*. However, their narrow legal focus and late date makes it impossible to use them to investigate the social impact of adultery in the early imperial period. At the same time adultery is not a standard topic within the literary sources and so no single extended discussion on adultery and its position within Roman society is available to us (such detailed evidence for a social issue rarely is). When adultery is found within literature its inclusion is made either for political or comedic/satiric reasons as the male elite authors do not write about private sexual relations for their own sake. Therefore, the representation of adultery contains inevitable bias and distortion to meet the author's purpose. An impasse is then reached on how to use these two types of source material to fully understand adultery in Roman society, when neither of them directly provides the information needed to undertake such a study.

This thesis bridges the gap by looking at the two terms that became the criminal charges of the *lex Iulia* – *adulterium* and *stuprum*.<sup>26</sup> Also included are the verbal and adjectival derivatives of these terms as well as the Greek colloquial form *moechus*, which is often used interchangeably with *adulter*.<sup>27</sup> These terms were used within Latin literature both before and after the introduction of the legislation. It is therefore expected that any impact that the law had on Roman society, in terms of attitudes to adultery and expectations of behaviour, will be reflected in the way the authors use the terms and the meanings that they ascribe to them. Duncan Kennedy has highlighted the need to acknowledge the interplay between language and power:

Speaking and writing are social acts, and what gets said or written is subtly moulded and modified by the context of the utterance and the anticipated conditions of reception, whether it will meet with consent, opposition, defiance, or whatever... When taken on a

---

<sup>23</sup> Garnsey 1967; Bauman 1968.

<sup>24</sup> Thomas 1961; Daube 1972.

<sup>25</sup> Reynolds 1946; Kehoe 1984; Braund 2005.

<sup>26</sup> The texts that form the basis of this research were accessed via thelatinlibrary.com and an online search was made of the terms through this website.

<sup>27</sup> The full list of words included in this study is therefore: *adulterium*, *adulter*, *adultera*, *adulterare*, *adulterus*, *adulterinus*, *stuprum*, *stuprare*, *constuprare*, *stuprator*, *stuprosus*, *moechus*, *moecha*, *moechari*. Greek sexual terms held a special resonance for the Latin reader "because of a Roman tendency to regard certain 'vices' as characteristic of the Greeks" (Adams 2003:405). See Adams (1983b) for the development of the Greek term *μοιχός* into the Latin *moechus*.

large scale, acts of speech and writing will tend to mobilise meaning in one direction rather than another, to the interests of particular individuals or groups rather than others, and so cumulatively produce the social structures and hierarchies of a particular society.

(Kennedy 1992:29)

Language, therefore, both adapts and is adapted in response to the wider political and social context in which it is used, particularly as it is a fluid and evolutionary system. For this reason, our study of the language used in relation to Roman adultery will allow us to determine the extent to which the *lex Iulia* changed (or did not change) social norms and expectations of behaviour.

Before the language study proper, chapter two offers a detailed survey of adultery in Rome that provides a legal and social framework from which the use of language and its relationship to the *lex Iulia* can be understood. It first explores the moral and social context in which Augustus introduced his legislation, particularly looking at how adultery was punished during the republic. The legal sources will then be used to set out the terms of the *lex Iulia* and the ways in which it penalised adultery. Chapter two will conclude by looking at changes made to the *lex Iulia* after the Augustan period and the ways in which the law continued to be imposed.

Chapters three and four contain the language study, separated into prose and verse literature.<sup>28</sup> The prose authors – Cicero, Sallust, Livy, Valerius Maximus, Tacitus, and Suetonius – are the focus of chapter three.<sup>29</sup> Chapter four then turns to verse literature, which includes the authors Plautus, Terence, Catullus, Horace, Propertius, Ovid, Martial, and Juvenal. Within each chapter consideration will first be given to the authors themselves and when they were writing in relation to the introduction of the *lex Iulia*. After this each chapter is separated into three elements: first, a systematic look at the use of the terms in terms of frequency; second, the marital status of the women with whom the terms were used will be determined in order to establish whether *adulterium* and *stuprum* are used to refer to adultery or sexual transgression in general; and third, an investigation of the associations that the authors make with adultery and the opinions or assumptions they hold about it.

---

<sup>28</sup> Amy Richlin has argued for the necessity to study adultery through a range of literary material as there are inherent contradictions between the depictions of adultery given in the legal texts, history, exempla, and satire; a false picture of adultery would be gained if only one form was studied (1981b:396).

<sup>29</sup> A survey of the use of the terms by Seneca the Elder is also included in appendix one. This was done in order to gain a better understanding of the anomalies found in Valerius Maximus' use of the terms (see section 3.2) through a comparison with Seneca who was also writing in the early first century AD. However, it is included as a separate case study both because of the late date at which it was included into the thesis and also because the high frequency with which Seneca uses the terms due to the legal nature of his work meant that it would have skewed the results in comparison with the author prose authors.

The authors have been chosen so as to provide a selection of Latin literature published both before and after the introduction of the legislation in order to understand variations over a wide chronological period. Nevertheless, the list of authors included is not an exhaustive look at Latin literature; time and space constraints have meant that it was impossible to include every Latin author within this period. Instead, they have been selected to offer as wide a range as possible in terms of chronology and genre but particular attention was also paid to those authors and genres which it was felt might offer the greatest insights into adultery in Rome. It is for this reason that epic was not included at this time as its subject matter does not naturally lend itself to discussions of adultery. Future research into this area would widen the selection of authors to include, among others, Virgil, Statius, Pliny the Elder, Pliny the Younger, Seneca the Younger, and Quintilian. This would also significantly expand the sample of first century AD literature.

Furthermore, due to the nature of the sources this study focuses primarily on the elite male view of adultery in the upper classes in the city of Rome. It is therefore hard to extrapolate from the extant sources an understanding of either the opinions of women or of the lower classes on this topic. Nevertheless, it is still possible to determine how the male authors conceived of women and the expectations that they had for female sexual behaviour. Similarly, the focus of the sources is on the city of Rome and so the influence of the cultural, social and political variations in the provinces is not included in this study.

#### **1.4) Legal Sources**

As the original wording of the legislation introduced by Augustus is lost to us, we must rely on later legal writing to understand the law. The classical period of Roman law began at the end of the first century BC and ended in the middle of the third century AD, and during this time the greatest jurisprudence of the Roman age was developed. Jurists such as Gaius (AD 130-180), Papinian (AD 142-212), Ulpian (c. AD 170-223), and Modestinus (first half of the third century AD) dominated and their opinions and writings were considered to be the height of legal thought. In addition to the legal writing of the jurists, imperial rescripts, edicts, and pieces of legislation were continually being written and amended. The result was a series of often contradictory precedents that were brought into legal cases to be used as evidence, as well as being continually commented on by others. The work of the fifth and sixth century compilers was intended to bring together the huge mass of legal writing and imperial legislation that existed, so that a

comprehensive record of legal thought could be produced. The most important of these are the *Codex Theodosianus*<sup>30</sup> and the *Corpus Iuris Civilis* of Justinian.<sup>31</sup>

There are, however, inherent dangers when using these sources to look beyond legal history into the social history of Rome. For instance, the compilers deliberately left out the information surrounding the origin of the piece of legislation or rescript that they were copying. This makes it difficult to understand the circumstances and events which led up to each law being introduced. Nevertheless, the source of the legal opinions and rulings was always acknowledged – for example, in the *Digest* the name of the jurist whose work was being quoted and references to their work were given. However, the ‘corrections’ and additions that the compilers were asked to make in the effort to produce a single coherent body of legal opinion create a large margin for error and misrepresentation. These changes, or interpolations, have been investigated by scholars since the sixteenth century, with varying views on how far they corrupt the original text. Current opinion generally sees the interference of Justinian’s compilers in the juristic texts as “abbreviations, as opposed to positive rewriting of law” (McGinn 1998a:5). Even so, although they may not greatly affect the original meaning and intention of the law, it is still necessary to bear in mind their presence.

Whilst the legal sources are considered to be consistent with the tone of the original law (Richlin 1981b:381), they only provide us with limited procedural detail. For example, the jurists were not concerned with recording real cases, the frequency of accusations, or how often the penalties were imposed in full. They used invented situations and cases to show the ideal of how a lawful society should work. For Robinson, “most juristic law is so abstract, so deliberately remote from the facts except insofar as they were used to pose a question of law, that it is difficult to deduce anything about the flesh and blood social relations from the legal sources alone;

---

<sup>30</sup> The *CTh.* was an official compilation of imperial legislation enacted between AD 311 and 437 (Evans Grubbs 1995:1), which was collected and published between AD 429 and 438. All imperial legislation from this period was to be recorded; even where later entries superseded them. However, the committee was instructed to simplify each piece of legislation so that any superfluous information outside of the sanctions of the law was omitted, and as a result the majority of information regarding the reasons and events that preceded each change to the law is lost.

<sup>31</sup> The *Corpus Iuris Civilis* is a collection of four works of legal writing (the *Codex*, *Digest*, *Institutes*, and *Novels*) authorised by the emperor Justinian in the early sixth century. The *Codex Justinianus* collected together imperial rulings made between the second century AD and the time of Justinian. It varied from the previous codes as any irrelevant laws were to be excluded, or where possible amended to comply with the precedent that was being set. The fifty books of the *Digest* collected together a comprehensive collection of legal opinion from the commentaries of the classical jurists that were currently still valid and this was to be used as precedent in all future cases. However, McGinn warns that the classical texts were vulnerable to alteration and corruption before they were added into the *Digest*, so it cannot be assumed without some hesitation that all of the texts included are classical (1998a:5).



the literary and epigraphic (and perhaps the archaeological) sources are also needed for a setting in life” (1997:119). For this reason it is not possible to rely on the legal texts alone to understand adultery in Rome. Consequently, this study will bring together an extensive collection of literary evidence on adultery in Rome in order to supplement the legal sources.

### 1.5) Definitions of *adulterium* and *stuprum*

The definition of the terms of the law – *adulterium* and *stuprum* – poses numerous problems. For a start, the understanding of their meaning was confused and their use fluctuated within both Latin legal and literary sources – a fact that some (if not all) of the jurists were aware of themselves.<sup>32</sup> Before moving on to the study of the language of adultery within Latin literature it will be necessary to identify how these terms are understood by the jurists and by the law.

The word *adulterium* and its composites are said to have originated from *alter*.<sup>33</sup> For Festus, the reason for this was because in an adulterous relationship the lovers are with an *alter*, an other to whom they are not married: “*adulter et adultera dicuntur, quod et ille ad alteram et haec ad alterum se conferunt*” (“they are said to be an adulterer and an adulteress, because they come together both he to another woman and she to another man”; 20.5-6, Lindsay edition). Papinian also thought the word originated from *alter*, but rather it was because any children that would be born after an adulterous relationship would belong to another and not to the husband (*de Adult.* book 1, *D.* 48.5.6.1). Adultery, therefore, could only be committed by someone who had a prior bond to another (Treggiari 1991:263).<sup>34</sup> The verb *adulterare* also carries the basic meaning of to

---

<sup>32</sup> “*inter ‘stuprum’ et ‘adulterium’ hoc interesse quidam putant, quod adulterium in nuptam, stuprum in viduam committitur. sed lex Iulia de adulteriis hoc verbo indifferenter utitur*” (“some people think that there is this difference between ‘stuprum’ and ‘adulterium,’ that *adulterium* is committed against a married woman, *stuprum* against a widow, but the *lex Iulia* on *adulterium* uses this word indifferently”; Modestinus, *Diff.* book 9, *D.* 50.16.101.pr.). Also acknowledged by Papinian (*de Adult.* book 1, *D.* 48.5.6.1).

<sup>33</sup> Greek, however, used the term *μοιχεία* for adultery. See Carey 1995:407-409 and Cole 1984:98-101 for Greek vocabulary and definitions of adultery in Athens. Scafuro also provides an overview of Athenian law and its relation to social practice (1997:194-216). There does not appear to be a Greek word that correlated to *stuprum*. The noun *moechus/a* and the verb *moechari* were used within Latin satire and colloquial writing as a more convenient and less prodigious alternative to *adulter/a* and *adulterare* (Treggiari 1991:263). Similarly, *moecha* was more or less equivalent to *adultera*, “designating a freeborn married woman who has sexual relations with someone other than her husband” (Williams 2004:144).

<sup>34</sup> Cf. Quintilian who says that *adulterium* was something that could not happen in a brothel (Quint. *Inst. Orat.* 7.3.9), but which took place with another’s wife (“*aliena uxore*”) at home (Quint. *Inst. Orat.* 7.3.10).

alter or falsify<sup>35</sup> but when used in relation to married women carries the extra meaning of to pollute or corrupt (Fayer 2005:198).

The original meaning of *stuprum* did not have a sexual connotation, but rather referred to disgrace in general:

*stuprum pro turpitudine antiquos dixisse apparet in Nelei carmine (2): 'foede stupreque castigor cotidie.' et in Appi sententis (1): 'qui animi conpotem esse, nequid fraudis stuprique ferocia pariat.' Naevius (Bell. Pun. 45): 'sesequi i perire mavolunt ibidem, quam cum stupro redire ad suos popularis.' item (43): 'sin illos deserant fortissimos viros, magnum stuprum populo fieri per gentis.'*

The ancients appear to have said *stuprum* for disgrace in the poem of Neleus (2): 'Horribly and shamefully<sup>36</sup> I am restrained everyday.' And in the *Sententiae* of Appius (1): 'He should have control of the mind, lest his ferocity provides any fraud or *stuprum*.' Naevius (*Bell. Pun.* 45): 'And they wish that they themselves would die at that moment, rather than return to their people with *stuprum*.' Likewise (43): 'If however, they desert the bravest men, there will be great *stuprum* by the people through the nations.'

(Festus 418.8-18, Lindsay edition)

Throughout this passage *stuprum* is best translated as disgrace and it does not have a sexual connotation. Instead, in the mid-third century BC, the time when the three authors Festus is quoting were writing, the term *probrum* was used to refer to sexual disgrace (Fantham 1991:269).<sup>37</sup> Festus' text is the only extant source which uses *stuprum* in such a wide sense (Williams 2010:105) and by the time of Plautus, we start to see *stuprum* used in reference to sexual disgrace:

*nunc domum ibo atque ex uxore hanc rem pergam exquirere,  
quis fuerit quem propter corpus suum stupri compleverit.*

---

<sup>35</sup> "ille sua faciem transformis adulterat arte" ("by his art he changed his real form into something else"; Ovid *Fast.* 1.373).

<sup>36</sup> *Stupre* is used here as an adverb; a suggested translation by Williams is "shamefully" (2010:105).

<sup>37</sup> Cf. the use of *probrum* to mean sexual disgrace in Plautus in the early 2<sup>nd</sup> century BC: "*neque iam quo pacto celem erilis filiae/ probrum, propinqua partitudo cui appetit,/ queo comminisci*" ("nor can I imagine how I am to hide the disgrace of the master's daughter, whose delivery approaches near"; Plaut. *Aul.* 74-76).

Now I will go home and find out from my wife how this affair has proceeded, who it was, who lying close together she gave her body to through *stuprum*.

(*Amph.* 1015-1016)<sup>38</sup>

The uses of *stuprum* were varied and it could refer to forms of sexual relations that appear to our modern understanding to be opposed to one another: heterosexual or homosexual sex (to use the modern terminology), rape or consensual sex, a one-off encounter or a continued affair, married or unmarried partners, active or passive sexual acts. The word had a tone of formality and disapproval, so that it was closer to the English term 'fornication' than the more colloquial 'fucking' (Fantham 1991:270). There is no English word that allows a confident translation of *stuprum*.<sup>39</sup> Translators tend to use the term 'debauch' as an equivalent of *stuprum*. However, this word has connotations in English that lead the reader to think of forcible sexual corruption or perversion. *Stuprum*, rather, could be used to refer to both consensual and forced sexual relations and so this translation can be misleading.

*Stuprum* was the opposite of *pudicitia*, as demonstrated by Aulus Gellius, who records the use of the verb *depudicavit* (to remove the *pudicitia* of) by the republican mime writer Laberius, which he then interprets for his readers as '*stupravit*' (16.7.2). *Stuprum* caused damage and disgrace as it took away the *pudicitia* which separated free citizens from slaves, who did not hold any *pudicitia* (Williams 2010:107). This lack of *pudicitia* would effectively reduce a person to the moral status of a slave by taking away the protection that it gave to a person's morality and sexual autonomy. Moreover, *stuprum* between two males posed a danger to the state, as it was seen to make men effeminate and therefore weak (Langlands 2006:119). In his account of the Bacchanalian affair, Livy makes recurring references to homosexual activities: "*plura virorum inter sese quam feminarum esse stupra*" ("there was more *stupra* among men towards themselves than among women"; 39.13.10). *Stuprum* is then linked to a man's inability to protect his family (Livy 39.15.14).<sup>40</sup>

The injury that illicit sexual relations caused was not dependent on whether it was consensual or not; for either the perpetrator damaged the passive partner by forcing them to commit *stuprum* or by consenting to take part one damaged oneself. Furthermore, *stuprum*

---

<sup>38</sup> Also: "*ita me probri, / stupri, dedecoris a viro argutam meo*" ("being accused so by my own husband of disgrace, *stuprum* and dishonour"; Plaut. *Amph.* 882-883). See Adams 1982:200-201.

<sup>39</sup> For this reason I will not translate *stuprum* within my English translations and instead keep it in its Latin form, unless it causes problems with the sense of the passage.

<sup>40</sup> "*hi cooperti stupris suis alienisque pro pudicitia coniugum ac liberorum vestrorum ferro decernent?*" ("Will men overwhelmed by their own *stupra* and that of others fight with the sword for the chastity of their wives and children?")

threatened the *potestas* that a father had over his family. Even if two people freely chose to have sex with each other, if the *paterfamilias* of a woman or boy had not given his consent, then the act was still technically non-consensual and ‘rape’ of the father’s rights and *potestas* (Fantham 1991:270).

The jurists do make several attempts to define the terms and who was liable under each charge:

*sed proprie adulterium in nupta committitur, propter partum ex altero conceptum composito nomine: stuprum vero in virginem viduamve committitur.*

But properly speaking, *adulterium* is committed with a married woman, the name being derived from children conceived by another (*alter*); *stuprum*, however, is committed against a virgin or a widow.

(Papinian, *de Adult.* book 1, *D.* 48.5.6 1)

*adulterium in nupta admittitur: stuprum in vidua vel virgine vel puero committitur.*

*Adulterium* is committed with a married woman: *stuprum* is committed with a widow, or a virgin, or a boy.

(Modestinus, *Reg.* book 1, *D.* 48.5.35.1)<sup>41</sup>

A ‘*nupta*’ or married woman was the only person with whom an adulterous relationship could be committed. A woman who was betrothed to be married would also come under liability for *adulterium* rather than *stuprum*, although the fiancé was not able to bring a charge against her with the right of a husband and must do so as a third party (Ulpian, *de Adult.* book 2, *D.* 48.5.14.3; Paul, *de Adult.* book 1, *Coll.* 4.6.1). *Stuprum*, however, could be committed with a widow (*vidua*), a virgin (*virgo*), or a boy (*puer*) of respectable status. Moreover, it would be committed if a man had sexual relations with a freewoman (*libera*) who was not his wife or concubine and who did not meet the other exempt criteria of prostitute or tavern girl (Modestinus, *Reg.* book 1, *D.* 48.5.35.pr.; *CJ.* 9.9.22, AD 290).<sup>42</sup>

The charges of *adulterium* and *stuprum* were gender specific so that a wife could not bring a charge against her husband for having extra-marital affairs (*CJ.* 9.9.1, AD 197) and neither could an unmarried man be charged with *stuprum* – that is provided they did not have relations

---

<sup>41</sup> Cf. the similarities with the list given by Plautus for the types of people with whom sexual relationships should be avoided (*Curc.* 33-38, quoted in section 2.1).

<sup>42</sup> Tavern girls fell below the notice of the legislation even if they were free and not slaves, as their role of serving alcohol lowered their social standing (*CJ.* 9.9.28, AD 326; *CTh.* 9.7.1, AD 326).

with women who were liable under the law. The focus of the law was on the sexual behaviour of the female population. A wife, therefore, had no legal recourse against a straying husband.<sup>43</sup> Yet still, there were expectations from some of the jurists that a husband should at least set a good example (Ulpian, *de Adult.* book 2, *D.* 48.5.14.5).<sup>44</sup> Nevertheless, regardless of these discrepancies between the expectations of faithfulness for the husband and the wife, wives did not always passively ignore their husbands' affairs (Fayer 2005:194-195).

The status of the woman also mattered in defining *adulterium* and *stuprum*. According to Papinian, the *lex Iulia* only applied to free women (*liberae*, *de Adult.* book 1, *D.* 48.5.6.pr.). Therefore, a slave was not able to bring an accusation of *adulterium* against his partner.<sup>45</sup> Yet, a slave who committed either *adulterium* or *stuprum* with a freewoman could be charged under the *lex Iulia* (Papinian, *de Adult.* book 2, *D.* 3.6.9; Ulpian, *de Adult.* book 3, *D.* 48.2.5).<sup>46</sup> In such a case, the husband had to accuse his wife before torturing the slave (Marcian, *de Pub. Iud.* book 1, *D.* 48.5.34.pr.). If a man killed a slave whom he had caught in *adulterium* with his wife he could not be charged under the *lex Aquilia* for damages done to the slave (Paul, *ad Ed.* book 22, *D.*

---

<sup>43</sup> This also seems to have been the same in the republic – Aulus Gellius records Cato saying that a wife has no recourse against a husband “*si adulterares sive tu adulterarere*” (“if you commit *adulterium* or are ‘adulterated’”; 10.23.5). Cf. *CJ.* 5.17.8.2 (AD 449), where included amongst the reasons given for a wife divorcing her husband are a conviction of *adulterium* or if he “*ad contemptum sui domi suae ipsa inspiciente cum impudicis mulieribus (quod maxime etiam castas exasperat) coetum ineuntem*” (“in contempt of his home, associates with lewd women while she herself is looking on, which especially exasperates chaste women”). Therefore, a wife was only able to divorce a husband who had been condemned for adultery by the law or if he openly associated with *impudicae muliere*. However, this was only because this brought shame and ridicule against herself and the family. It is the fact that the husband is doing so out in the open and in full view of his wife that is the problem. She would have no case for divorce if he associated with these women in a more concealed manner.

<sup>44</sup> “*iudex adulterii ante oculos habere debet in inquirere, an maritus pudice vivens mulieri quoque bonos mores colendi auctor fuerit: periniquum enim videtur esse, ut pudicitiam vir ab uxore exigat, quam ipse non exhibeat: quae res potest et virum damnare, non rem ob compensationem mutui criminis inter utrosque communicare.*” (“A judge [in a case] of *adulterium* ought to keep before his eyes and to inquire into whether the husband by his own chaste life was also setting his wife an example of cultivating sound morals; for it appears the height of injustice that a husband should demand of his wife a purity which he does not show himself; this is something which can condemn the husband also, that the pair of them did not come to an agreement for the balancing out of their mutual offences.”)

<sup>45</sup> *CJ.* 9.9.23.pr., AD 290: “*servi ob violatum contubernium adulterii accusare non possunt*” (“slaves cannot bring the charge of *adulterium* for violation of their marriage bed”). As slaves were not able to contract a legal marriage any unions between them did not come under the notice of the legislation.

<sup>46</sup> *Stuprum* could also be used by the jurists to describe sexual relations with a slave: “*servo stuprato*” (“with a slave having been *stuprare*”; Papinian, *de Off. Adsess.* book 1, *D.* 1.18.21); “*stuprum serva passa sit*” (“if a female slave suffers *stuprum*”; Ulpian, *ad Ed.* book 18, *D.* 47.10.25). However, the man would only suffer *infamia* if he had *stuprum* with a free woman, not a slave: “*tamen cum ancillam comprehendisse et non liberam stuprasset detectum sit, ex huiusmodi sententia gravatam potius opinionem tuam quam infamia adflectam esse manifestum est*” (“since it appears that you seduced a female slave and not a free woman, it is clear that by a decision to that effect, your reputation was injured but you did not become infamous”; *CJ.* 9.9.24, AD 291).

9.2.30.pr.). Whereas if any criminal charges were to be made against someone who had sex with a female slave without the owner's permission they would be charged under the *lex Aquilia*, particularly if she was a virgin (Papinian, *de Adult.* book 1, *D.* 48.5.6.pr.; Ulpian, *ad Ed.* book 18, *D.* 47.10.25).

For Ulpian, it made no difference whether the marriage was *iustum* (lawful) or *iniustum* (unlawful), accusations could still be made against the wife (*de Adult.* book 2, *D.* 48.5.14.1).<sup>47</sup> A *iustum* marriage required that both parties were of a permitted age (which was puberty), it also needed *conubium* and consent (Gardner 1986:31). *Conubium* was only held by citizens, although non-citizens could be given special grants of *conubium* to be able to contract *iusta* marriages. Therefore, *peregrinae* who were married to Roman citizens, either in *iusta* or *iniusta* marriages, could be liable under the *lex Iulia* for *adulterium*. But a charge of *stuprum* would not be brought against an unmarried *peregrina* as she only came under the notice of the law when she married a citizen (McGinn 1998a:200). However, a Roman citizen who was married to a *peregrina* was not able to use the right of a husband to charge her with adultery (Papinian, *Resp.* book 15, *Coll.* 4.5.1), but he would still hold the right of a third party to bring an accusation against her.

One type of woman who was unequivocally liable under the *lex Iulia* was the *materfamilias*: “*ab his feminis pudicitiae ratio requiratur, quae iuris nexibus detinentur et matris familias nomen obtinent*” (“chastity is required only of those women to whom the law applies and who have the name *materfamilias*”; *CJ.* 9.9.28, AD 326).<sup>48</sup> The usual translation given for *materfamilias* is ‘mother of the family’.<sup>49</sup> However, the legal sources suggest that the term had a wider definition than just a wife and mother. Papinian says that the term “*significatur non tantum nupta, sed etiam vidua*” (“means not only a married woman but also a widow”; Papinian, *de Adult.* book 2, *D.* 48.5.11.pr.). Ulpian’s understanding of the term allows a much broader definition:

*‘matrem familias’ accipere debemus eam, quae non inhoneste vixit: matrem enim familias a ceteris feminis mores discernunt atque separant. proinde nihil intererit, nupta sit an vidua, ingenua sit an libertina: nam neque nuptiae neque natales faciunt matrem familias, sed boni mores.*

We ought to regard as ‘*materfamilias*’ a woman who has not lived dishonourably; for her behaviour separates and distinguishes a *materfamilias* from other women. It will make no

---

<sup>47</sup> “*plane sive iusta uxor fuit sive iniusta, accusationem instituere vir poterit*” (“clearly, a husband can bring an accusation whether his wife is party to a *ius civile* or a *ius gentium* marriage”).

<sup>48</sup> Translations of the Justinian Code are taken from Blume 2009.

<sup>49</sup> See Saller 1999:194-196 for a discussion of the legal and literary uses of the term.

difference whether she is still married or a widow, freeborn or freed; for neither the state of being married nor birth make a *materfamilias* but good behaviour.

(Ulpian, *ad Ed.* book 59, D. 50.16.46.1)<sup>50</sup>

The defining qualities of a *materfamilias* are those which the regulations against *adulterium* and *stuprum* sought to uphold: chastity and good *mores*. Moreover, a *materfamilias* could commit *stuprum*.<sup>51</sup> This use of the term within the legal sources corresponds to its use within literary sources, where *materfamilias* was often used to distinguish a respectable woman from the *meretrix*, *ancilla*, and *concubina* (Saller 1999:195).

There are occasions where *stuprum* is used in regards to a married woman, where we would expect the charge to have been *adulterium*:

*stuprum in sororis filiam si committatur, an adulterii poena sufficiat mari, considerandum est.*

If *stuprum* be committed on a sister's daughter, it has to be considered whether the penalty for *adulterium* is enough for the woman.

(Papinian, *Quaest.* book 36, D. 48.5.39.1)<sup>52</sup>

Within these two passages, *stuprum* refers to the act of sexual transgression rather than the legal charge. As such, the word can legitimately be used to describe the actual act of sexual transgression with a married woman, whereas the term *adulterium* has a more legal connotation and refers specifically to the charge of adultery and not to the sexual act. This use of *stuprum* is much more closely linked to its non-legal sense. Furthermore, it is notable that it is Ulpian and Papinian, writing in the 2<sup>nd</sup> century AD, that use *stuprum* in this way, for it suggests that the word did not develop into a solely legal term as the jurists use it in its non-legal capacity.

It was possible to keep a concubine without being liable for *stuprum* if she was a freedwoman, of low birth, had been convicted of *adulterium*, or was a prostitute, but a charge of *stuprum* would be made if the woman was freeborn and of respectable status (Ulpian, *ad Lex Iul.*

---

<sup>50</sup> Watson's translation has been amended throughout to retain *materfamilias*, *paterfamilias* and *filiusfamilias* in their Latin forms.

<sup>51</sup> For example, Papinian, *de Adult.* book 2, D. 48.5.9.pr.: "*stuprum adulteriumve cum aliena matre familias*" ("*stuprum* or *adulterium* with a *materfamilias* of another").

<sup>52</sup> See also: "*plectitur et qui pretium pro comperto stupro acceperit: nec interest, utrum maritus sit qui acceperit an alius quilibet*" ("he also is punished who takes a bribe [to conceal] a *stuprum* which he has discovered, nor does it make any difference whether he who takes it is the husband or someone else"; Ulpian, *de Adult.* book 4, D. 48.5.30.2).

et Pap. book 2, D. 25.7.1.2; Marcian, *Inst.* book 12, D. 25.7.3.pr.).<sup>53</sup> The purpose of trying to discourage respectable freeborn women from becoming *concubinae* was to encourage marriage between couples of equal status so that they would go on to have legitimate freeborn children (Treggiari 1981:76). Moreover, a freedwoman who had become her patron's concubine could still be charged with *adulterium* if she were to have an affair:

*si uxor non fuerit in adulterio, concubina tamen fuit, iure quidem mariti accusare eam non poterit, quae uxor non fuit, iure tamen extranei accusationem instituere non prohibebitur, si modo ea sit, quae in concubinatum se dando matronae nomen non amisit, ut puta quae patroni concubina fuit.*

If a woman caught in adultery is not a wife but was a concubine [her man] cannot accuse her with a husband's right for she was not a wife, but he is not forbidden to institute an accusation by the right of a third party, provided that she was someone, as, for example, one who was her patron's concubine, who did not lose the name of matron by giving herself in concubinage.

(Ulpian, *de Adult.* book 2, D. 48.5.14.pr.)

The term *matrona* referred to a wife and mother, and it epitomised the ideal of the virtuous Roman woman. This passage, therefore, suggests that certain concubine relationships were regarded as respectable and so the woman would still be expected to maintain the same moral and sexual standards as a married woman.<sup>54</sup>

The legal sources show that adultery was considered to be a very serious crime. It is repeatedly placed alongside the seemingly (to our modern perspective) more severe crimes of murder and rape, as well as magic and sorcery (*CJ.* 1.55.7, AD 405; *CJ.* 7.65.2, AD 344; *CJ.* 9.47.16, AD 315; *CTh.* 9.2.5, AD 390). Moreover, adulterers, alongside murderers, robbers and sorcerers, are repeatedly exempted from imperial pardons on holy days during the later empire (*CTh.* 9.38.1-8, all dated AD 322 to 385).<sup>55</sup> The fact that cases of adultery came under a criminal court (Papinian, *Quaest.* book 1, D. 1.21.1.pr.) further shows the extent to which it was seen as a

---

<sup>53</sup> Treggiari suggests that although the jurists say that a respectable freeborn woman would be liable if she became a *concubina*, in reality as soon as she became a *concubina* she became the sort of woman with whom *stuprum* could be committed freely and so both the *concubina* and the man who kept her would always escape the penalties of the *lex Iulia* (1981:76). See McGinn (1991) for a detailed discussion of how the jurists viewed concubinage and its liability under the *lex Iulia*.

<sup>54</sup> See Treggiari 1981:72.

<sup>55</sup> The influence of Christianity can be seen in the timing of these amnesties during religious festivals such as Easter, yet the practice itself was known in the third century and so was not a new Christian idea (Arjava 1996:4).



heinous and terrible crime that damaged not only the family but also the state. Similarly, a further indication of the severity of the charge of *adulterium* was that evidence could be taken through the torture of slaves and used against their master as evidence collected in this way was only used for a select number of crimes and as a last resort (Paul, *de Adult.* book 2, *D.* 48.18.8.pr.).<sup>56</sup> Yet, this was not the case for charges of *stuprum* (Papinian, *Resp.* book 16, *D.* 48.18.17.pr.-1). This suggests that *stuprum* was seen as the lesser crime and did not pose such a threat to society.

*Adulterium* and *stuprum* are placed within the legal sources in opposition to the ideals of *pudicitia* and chastity. Indeed, the legislation is referred to as the *lex Iulia de pudicitia* in the *Codex Justinianus* (9.9.8, AD 224; 9.9.9, AD 224). Chastity itself can be the direct object of the verb *stuprare*, here meaning corrupted, violated: “*si tutor pupillam quondam suam violata castitate stupraverit*” (“if a guardian shall have violated the chastity, by seduction, of his former female ward”; *CJ.* 9.10.1, AD 326). A woman can also be polluted or dishonoured (*polluere*) by adultery (*CJ.* 9.9.12, AD 239).<sup>57</sup>

On the whole, vague references are made to ‘the act of *adulterium/stuprum*’ or being ‘caught in *adulterium/stuprum*’. Little attention is paid to what actions and level of intimacy constituted *adulterium* and *stuprum* and so were liable for criminal prosecution. As far as the legal sources allow us to define them, *adulterium* and *stuprum* refer to sexual intercourse with the groups of women already mentioned. According to Ulpian, for a father to have the right to kill the adulterer and the adulterous daughter he must catch them in a sexual relationship (Ulpian, *de Adult.* book 1, *D.* 48.5.24.pr.).<sup>58</sup> A more definitive understanding is found in the later *lex Romana Burgundiorum* where a husband is allowed to punish the adulterer if he finds the adulterer and his wife “*ut in unum sint et sese commisceant*” (“as if they were one and are mixed up with each other”; 25).

The crimes of *adulterium* and *stuprum* had to be committed knowingly and with malicious intent (Ulpian, *ad Adult.* book 1, *D.* 48.5.13; Gaius, *ad Leg. Duodecim Tab.* book 3, *D.* 48.5.44), so that a defence is made possible for those who were legitimately ignorant of the status of the

---

<sup>56</sup> The torture of slaves in cases of *adulterium* is discussed in section 2.2 in more detail.

<sup>57</sup> Cf. the association of *adulterium* and *stuprum* with ideas of pollution in the prose authors in chapter three.

<sup>58</sup> “*quod ait lex ‘in filia adulterum deprehenderit’, non otiosum videtur: voluit enim ita demum hanc potestatem patri competere, si in ipsa turpitudine filiam de adulterio deprehendat. Labeo quoque ita probat, et Pomponius scripsit in ipsis rebus veneris deprehensum occidi.*” (“The words of the statute ‘shall have caught the adulterer in his daughter’ do not appear to be otiose; for the intention was that this power should be available to the father if and only if he should catch his daughter actually engaged in the crime of *adulterium*. Labeo also approves [this interpretation], and Pomponius has written that a person caught in the actual act of love is killed.”)

woman.<sup>59</sup> Furthermore, rape did not fall under either charge: “*ceterum quae vim patitur, non est in ea causa, ut adulterii vel stupri damnetur*” (“if, however, a woman is subject to violence, there are no grounds for her to be condemned for *adulterium* or *stuprum*”; Ulpian, *de Adult.* book 2, *D.* 48.5.14.7).<sup>60</sup> The word *stuprum* can also be used by the jurists to indicate rape: “*ut morte virginis contumeliam stupri arceret*” (“so that with the death of the virgin he prevents the outrage of *stuprum*”; Pomponius *Ench.* 1.24).<sup>61</sup>

The definition that we find in the legal sources for the terms *adulterium* and *stuprum* is largely consistent. *Adulterium* is sex with a married woman and *stuprum* is sex with a free woman who is unmarried (either a virgin or a widow) or with a boy of respectable status. The use of the terms is also consistent; *adulterium* is not used in relation to a non-married woman or to a boy and rarely does one find *stuprum* used in relation to a married woman. When it is used with a married woman, *stuprum* does not contain a legal capacity but refers instead to the act of illicit sex. The unified nature of the use of the terms must partly be a result of the nature of the sources. As the majority of the legal sources have come down to us through the editing of the Theodosian and Justinian compilers it is no surprise that they would have tried to ‘correct’ any misused words and created a more cohesive definition of the terms. Nor do we get a sense that the definition of the terms changed over time within the legal sources. The legal sources also show *adulterium* and *stuprum* to be serious offences that the law treated with the upmost severity. This consistency in the use of the terms by the jurists will facilitate a cohesive comparison in the following chapters of the use of the terms in Latin prose and poetry.

---

<sup>59</sup> Papinian, however, does not allow a woman to use the defence that she was unaware of the law (*Quaest.* book 36, *D.* 48.5.39.4).

<sup>60</sup> See also *CJ.* 9.9.20, AD 290; Papinian, *Resp.* book 15, *D.* 48.5.40.pr. However, we see in a late imperial edict that the man, if his victim was a married woman, would be charged with both rape (*rapina*) and *adulterium* (*CJ.* 9.13.1a, AD 533).

<sup>61</sup> The *virga* in question is Verginia.

## Chapter Two: Roman Adultery

The *lex Iulia de adulteriis coercendis* was not introduced in a vacuum of moral discourse nor did the legislation itself solve the ‘problem’ of sexual transgression once and for all. It was one stage in a long series of dialogue and action surrounding sexual morality and the social health of Rome. We must therefore examine not only the *lex Iulia* itself but also the moral, social, and political contexts in which it was introduced and in which it continued to be revived and used for centuries afterwards. Following this it will be possible in the language study to gain a full understanding of the impact that the law had on Roman society and the influences that it had on the use of language.

### 2.1) Adultery in the Republic

The *lex Iulia* heralded a stark change in the relationship between the state and the family (which traditionally the *paterfamilias* would have had ultimate control over). Moreover, the legislation meant that what was once a private family concern now became a public crime.<sup>62</sup> Augustus’ legislation stands out, therefore, as innovative,<sup>63</sup> and is one demonstration of the changes that took place in the relationship between politics and Roman society as Rome moved from republic to empire. Nevertheless, the regulation of sexual morality had always been a concern of the male elite and expectations for feminine chastity were not new.<sup>64</sup>

#### Republican Morality

The conclusion of the male moralising elite,<sup>65</sup> when they assessed the condition of Roman society in the late republic, was to find the cause in the eastern expansion of Rome’s military and political

---

<sup>62</sup> For Severy, this connection between individuals, their families, and the state served to provide a context within which the imperial family could be publically promoted and displayed (2003:50). Richlin, however, sees this association of adultery with other criminal activities, particularly violent crime, “as an impractical touch and a serious weakness in Augustus’ approach to moral legislation” (1981b:381).

<sup>63</sup> For Milnor, Dionysius of Halicarnassus’ portrayal of the early marriage laws of Romulus (2.35) is an attempt to provide a history to Augustus’ actions in order to smooth over any concerns about this innovative element in the *lex Iulia* (2005:148).

<sup>64</sup> For the representation of expectations of female morality in proverbs, fables, and *gnomai* see Morgan (2007).

<sup>65</sup> Such as Sallust, Cornelius Nepos, Cicero, and Livy.

influence during the second century BC.<sup>66</sup> This expansion brought with it a significant influx of wealth and the introduction of Greek ideas and values, and so what followed was a period of great social change as Roman society became used to a more extravagant way of life and gained greater expectations for personal pleasure. According to Livy, the result of this expansion was a relaxation of discipline (*disciplina*) and a loss of morals (*mores*, 1.pr.9). Sallust also comments on this moral decline in the *Bellum Catilinae* (10-13), where he claims that *cupido* for *imperium* and *pecuniae* ("desire for power and wealth"), as well as *avaritia* and *ambitio* had taken over (10.3-5). Also of concern was the rejection of sexual morality that accompanied this (Sall. *Bel. Cat.* 13.3).<sup>67</sup> The discourses surrounding this decline were juxtaposed with tales of the mythical Golden Age and the traditional ideal of the hard-working rustic.<sup>68</sup>

The senate was dependent on custom and precedent to maintain its power and control (Earl 1967:30). Therefore, either at times of national crisis or due to the influence of particularly conservative individuals, action was taken to try to curb extravagance and to reinforce traditional moral values. For example, in the late second century BC the censor Metellus Macedonicus made a speech encouraging marriage<sup>69</sup> for the benefit of the state (Livy *Per.* 59; Suet. *Aug.* 89.2; Aul. Gel. 1.6.1).<sup>70</sup> However, successive decades of civil war in the first century BC only served to exacerbate Rome's moral and social problems. In 52 BC Pompey was elected consul for a third time in order to reform morals (Tac. *Ann.* 3.28) and in 46 BC Cicero lobbied Caesar to fix the problems that had

---

<sup>66</sup> See Treggiari 1996:883-886.

<sup>67</sup> "*sed libido stupri, ganeae ceterique cultus non minor incesserat: viri muliebria pati, mulieres pudicitiam in propatulo habere.*" ("But the desire for *stuprum*, gluttony, and other refinements was no less advanced. Men submitted themselves to the woman's role; women sold their *pudicitia* in the open.")

<sup>68</sup> These became key themes in Latin poetry during the late republic and the early empire. The move from the Golden Age to the Iron is described by Ovid at *Met.* 1.89-150 and Virgil claims that Augustus is bringing the Golden Age back at *Aen.* 6.791-797 (see Galinsky 1996:96-98). Virgil also played heavily with the rustic ideal in the *Eclogues* and *Georgics*. See Evans (2008) for Roman discourses on utopia and decline and Wallace-Hadrill (1982) for a discussion of the concept of the Golden Age and how it helped shape Augustan ideology.

<sup>69</sup> This speech was later used by Augustus as a precedent for his own drive to encourage marriage and he recited it to the senate alongside another speech regarding the height of buildings: "*quo magis persuaderet utramque rem non a se primo animadversam, sed antiquis iam tunc curae fuisse*" ("he persuaded them that both matters had not been thought of first by himself, but they had previously been an object of concern to their ancestors"; Suet. *Aug.* 89.2).

<sup>70</sup> Gellius in fact attributes the speech to a Metellus Numidicus, who was censor in 102 BC. Berger (1946) argues that this is a mistake by Gellius and that he is actually making reference to the speech by Metellus Macedonicus in 131 BC. This is refuted by McDonnell (1987) who believes that there were two separate speeches that encouraged marriage and it was the second, by Numidicus, that Augustus read out. Badian agrees that there were two speeches, but proposes that it was the speech by Macedonicus that Augustus recited (1988).

been created by civil war, including a decreased birth-rate and immorality (*Pro Marc.* 23).<sup>71</sup> Caesar attempted to tackle the problem by introducing laws on expenditure in a hope to curb greed and by offering rewards for large families to encourage a population increase (Dio 43.25.2). However, these measures were “both erratic and ineffective” (Nörr 1981:350) – so much so that in the early years of Augustus’ imperial age Horace still showed concern about this decline and in *Odes* 3.6 he describes a Rome in which the temples are crumbling, the army suffers defeats, and the youth are impure. Moreover, he finds little to hope for as each generation sinks deeper into moral decline:

*aetas parentum, peior avis, tulit  
nos nequiores, mox daturos  
progeniem vitiosiore.*

The age of our parents, worse than that of our ancestors, has made us more worthless and soon we will be given descendants that are even more corrupt.

(Hor. *Od.* 3.6.46-48)

The impression gained from the elite male authors of the last years of the republic is of an atmosphere of uncertainty, fear, and apprehension surrounding the state of Roman society and its ability to maintain its superiority, both militarily and morally.

### Women

Throughout Rome’s literary history elite Roman women tended to be constructed as one of two extremes; the virtuous wife or the wanton adulteress.<sup>72</sup> These categories provide an important tool with which to gain an understanding of the importance that republican Rome placed on female chastity and how attempts were made to control it. Moreover, Augustus’ legislation sought to define more clearly the scale running from chastity to sexual depravity. That is not to say, however, that these were the only ways in which women were either praised or ridiculed. Women portrayed in a negative context are usually sexualised, but it is our modern preconceptions that put the emphasis on this; the woman who smelled, drank, or was old and ugly was just as ‘bad’ in Roman eyes (Dixon 2001:43).

---

<sup>71</sup> However, Cicero also questioned the effectiveness and value of controlling morality through punishment (*De Fin.* 2.73, quoted below).

<sup>72</sup> The depiction of other types of women, such as slaves and freedwomen, or mythical figures and goddesses, was much more fluid and varied.

The figure of the *matrona* was central to the Roman ideal of virtue and chastity. Draped in the *stola* she represented a modest and loyal mother and wife, who worked to preserve the dignity and lineage of her family.<sup>73</sup> The purpose of such a figure was to produce children that would ensure the continuation of the family line and to manage the household.<sup>74</sup> An important part of this ideal was the spinning of wool to produce clothing for the whole family and so the loom became a symbol of female virtue and domesticity.<sup>75</sup>

*Pudicitia* was a key concept underpinning female morality and can be translated as modesty, chastity, or virtue.<sup>76</sup> In Plautus' *Amphitryo*, Alcmena claims that *pudicitia* formed part of her dowry:

*non ego illam mihi dotem duco esse, quae dos dicitur,  
sed pudicitiam et pudorem et sedatum cupedinem,  
deum metum, parentum amorem et cognatum concordiam,  
tibi morigera atque ut munifica sim bonis, prosim probis.*

I do not consider that the dowry I brought with me is what would be called a dowry, but *pudicitia*, *pudor* and a composed lust, fear of god, love for my parents and harmony with my family, being obedient to you and generous to the good and of benefit to the upright.

(839-842)

Moreover, *pudicitia* could hold as much worth to a potential husband as a large dowry.<sup>77</sup> The cult of *Pudicitia* was a central part of female religious participation and provided a means through which Roman women could convey their virtue to others and personally control the perception of their own chastity (Langlands 2006:47). Participants were required to be a *univira* (married to only one man, Livy 10.23.3-10), despite the fact that this was going beyond the accepted norms of

---

<sup>73</sup> The *stola* was protected by *Pudicitia* (Val. Max. 6.1.pr.); see Sebesta 1994:48-49 for discussion of the dress of the Roman *matrona*.

<sup>74</sup> See Musonius Rufus 13a. The importance of a wife being able to produce children can be seen in the account of the alleged first divorce in Rome in the third century BC – the husband had to swear an oath that he had married for the purpose of producing children and it was only because of his wife's infertility that he wanted a divorce (Dio. Hal. 2.25.7).

<sup>75</sup> Lucretia is the model of wifely virtue as she sits at the loom late into the night whilst the royal wives are entertaining themselves at feasts (Livy 1.57.9); Augustus' daughter Julia and his granddaughters were taught spinning and weaving (Suet. Aug. 64.2). Cf. the second century BC epitaph of Claudia, in which she is said to have "*lanam fecit*" ("worked wool"; CIL 6.15346).

<sup>76</sup> Langlands 2006:2; Treggiari 1991:105-107; Mueller 1998:224 n.10. Male virtues, however, were centred on *virtus* (Earl 1967:30-35).

<sup>77</sup> According to Livy, Ligustinus accepted his wife with only *pudicitia*, *libertas*, and *fecunditas* as her dowry (42.34.3).

Roman society, in which divorce was commonplace and remarriage was encouraged and then later required by the Augustan marriage laws.<sup>78</sup>

The wanton woman, however, was an entirely different creature. She did not weave and care for her household but involved herself in politics and scandal. Nor was she a loyal wife who produced heirs. Instead, she had numerous affairs and aborted the products of these liaisons.<sup>79</sup> One such woman was Fulvia, the third wife of Mark Antony, who Plutarch describes as having no thought for spinning and weaving and as being meddlesome and headstrong (*Ant.* 10.3, 30.2).

Female immorality was also closely connected to the influx of wealth from the east. The *lex Oppia* was introduced in 215 BC as a means to crush this behaviour in women and to force them to give up their luxuries in aid of the war effort.<sup>80</sup> However, in 195 BC the law was strongly opposed and during a debate in the senate over whether to repeal it the *matronae*<sup>81</sup> of Rome took to the streets to protest against the law (Livy 34.1-8). In favour of retaining the *lex Oppia* was Cato, who argued that women needed to be kept at home and should abstain from luxury (Livy 34.4.16-18). The danger lay in the assumption that if a woman could neither afford this luxury herself nor get it from her husband then she would turn to other men to get what she wanted. Greed and selfishness in a woman, therefore, were seen as leading directly to immorality and adultery.<sup>82</sup>

What is more, during the period from the end of the republic until Christianity emerged as a dominant power in society, elite Roman women had a significant level of personal and economic freedom.<sup>83</sup> The emergence of this new class of emancipated women created great contradictions

---

<sup>78</sup> See section 1.2 for the requirements for widows and divorcees to remarry under the *lex Iulia de maritandis ordinibus*.

<sup>79</sup> Ovid describes Corinna's abortion at *Amores* 2.13 and 14. Octavia was also said to have had an abortion to hide her *libido* (Tac. *Ann.* 14.63).

<sup>80</sup> The *lex Oppia* restricted the amount of gold a woman could own and made it an offence for women to wear garments trimmed in purple (Livy 34.1.3).

<sup>81</sup> It would have been particularly offensive in the eyes of Cato that it was the *matronae* who were protesting. As the *matrona* was held up as the bastion of Roman morality and loyalty she should not be openly opposing the laws (and the men who support them) in the forum. Milnor has identified close links between this episode and the questions surrounding gender, the law, and politics that came to the fore in Augustan Rome, especially with the introduction of the moral legislation (2005:154-179).

<sup>82</sup> Cf. chapter four, where the theme of presents and gifts being passed between the adulterer and the adulteress is highlighted by the verse authors.

<sup>83</sup> Sullivan rightly identifies the reasons for this increased emancipation as: the growing instability and casualness of marriage; changes in the law in regards the control of the wife's dowry; Roman attitudes to multiple divorce and marriages of convenience; frequent absence of male family members on business and civil duties abroad; influence of role models such as Cleopatra and the women of the imperial family (1979:296-297).

between reality and the ideal of the Roman woman held up by the elite male moral discourse.<sup>84</sup> Furthermore, as a result there developed within Latin literature a set of characters, composed of both legendary and real women, who came to exemplify each side of this divide. Lucretia, Cornelia, and Octavia were placed in opposition to Sempronia, Fulvia and the Greek Helen.

### The Prosecution of Adultery

It is clear from Plautus that relationships with married women had been forbidden and censured throughout Rome's history:

*nemo hinc prohibet nec vetat,  
quin quod palam est venale, si argentum est, emas.  
nemo ire quemquam publica prohibet via;  
dum ne per fundum saeptum facias semitam,  
dum ted abstineas nupta, vidua, virgine,  
iuventute et pueris liberis, ama quid lubet.*

No one keeps you from coming here nor prohibits you from buying what is openly for sale, as long as you have the money. No one prohibits anyone from travelling on the public roads; as long as you do not make your way through a fenced-off farm, as long as you keep off married women, widows, virgins, young men and freeborn boys, love whatever pleases you.

(*Curc.* 33-38)

Moreover, there were expectations for the types of partner who were marked as being unavailable for sexual relations outside marriage. According to Dionysius of Halicarnassus, Romulus did not need to introduce a law giving the husband cause to divorce an adulterous wife. Instead, he introduced a law that all wives should share in the possessions and sacred rites of her husband so that an unbreakable union would be made between them (2.25.1-3).<sup>85</sup> Adultery was

---

<sup>84</sup> See Hallett (1973), who argues that the elegists used this contradiction as a way to fulfil their "subversive desire to differentiate themselves and their own system of values from existing forms of conduct" (1973:103).

<sup>85</sup> Treggiari has little confidence in Dionysius' understanding of the laws of Romulus but instead highlights his use in demonstrating what people in the Augustan period wanted to believe about early Rome (1991:265). It is interesting that Dionysius tells us he came to Rome in late 30 or early 29 BC (1.7.2) and began publishing his history in 7 BC (1.3.4). He was, therefore, writing his history at the time that the *lex Iulia* was introduced and in the period immediately following; any debates amongst the Roman elite on the suitability of using legislation to control morality would have been fresh in his mind.



instead dealt with by a family council (2.25.6).<sup>86</sup> However, reference to the republican procedure of family councils is not made within the sources due to the fact that they were private matters and unless they held some importance to state affairs (in which case a public trial would most likely be held) they remained obscure to the historian and so lost to us. Similarly, though adultery had been a reason for divorce since the earliest period of Rome's history,<sup>87</sup> there are very few references made to divorces during the republic that were a result of adultery. The most notable example is Julius Caesar's divorce of Pompeia after she was suspected of adultery with Clodius (*Jul.* 6.2).<sup>88</sup> Following a divorce on account of the wife's adultery the husband was permitted to keep a share of her dowry. However, this was to be a sixth for *adulterium* and for lesser offences an eighth (Ulpian *Disp.* 6.12).<sup>89</sup> Edwards suggests, therefore, that during the republic Roman law did not treat adultery as a serious offence for the husband was only allowed to retain a slightly larger fraction for adultery when compared with other offences (1993a:41). However, it is not known what these other offences were and so it is hard to compare the severity with which adultery was viewed.<sup>90</sup>

The notion of a family council is found in the Lucretia episode but her male relatives do not hold a meeting in order to punish her transgressions – it is Lucretia who calls her husband and father together to bear witness to the wrongs done to her. Reference is also made by Catullus to a family council:

*Ameana puella defututa  
tota milia me decem poposcit,  
ista turpiculo puella naso,  
decoctoris amica Formiani.  
propinqui, quibus est puella curae,  
amicos medicosque convocate:*

---

<sup>86</sup> See Scafuro 1997:220-222.

<sup>87</sup> Watson 1975:33.

<sup>88</sup> "*cum qua deinde divortium fecit adulteratam opinatus a Publio Clodio*" ("but he then divorced her, thinking that she had been 'adulterated' by Publius Clodius"). Other examples of divorce due to the wife's adultery: Pompey divorced Mucia for her adultery with Julius Caesar (Suet. *Jul.* 50.1; Cic. *Ad Att.* 1.12); Lucullus divorced both Clodia and Servilia, the sister of Cato the Younger, for their unchaste behaviour (Plut. *Luc.* 34.1, 38.1; *Cat. Min.* 24.3); Cato the Younger also divorced his wife Atilia for disgraceful behaviour (Plut. *Cat. Min.* 24.3).

<sup>89</sup> "*morum nomine graviorum quidem sexta retinetur, leviorum autem octava. graviores mores sunt adulterium tantum, leviores omnes reliqui.*" ("In the name of severer customs a sixth is to be retained, but for more trivial an eighth. The severest customs are only *adulterium*, all the others are slighter.")

<sup>90</sup> One suggestion for what these lesser offences were has been the drinking of wine (Edwards 1993a:41 n.24). For the connection between wine and female immorality see MacCormack (1975), Purcell (1994), Bettini (1995), Russell (2003).

*non est sana puella, nec rogare  
qualis sit solet aes imagosum.*

Ameana, a girl fucked by all, demanded from me a whole ten thousand, that girl with the ugly little nose, friends with the bankrupts of Formiae. Relations, who have care of the girl, call a meeting with friends and doctors: the girl is not well; she never asks how much money her likeness should be worth.

(41)

This poem does not concern adultery but rather a prostitute who charges more than she is worth. Yet still, her family is present to regulate and control her behaviour. Later, Tiberius seemed to move away from the public prosecution of *adulterium* set up by the *lex Iulia* and reverted back to this system of family jurisdiction:

*matronas prostratae pudicitiae, quibus accusator publicus deesset, ut propinqui more  
maiorum de communi sententia coercerent auctor fuit.*

He authorised the nearest relations to punish *matronae* who had ruined their chastity, and for whom a public prosecutor was missing, by a common agreement and in line with *mos maiorum*.

(Suet. *Tib.* 35.1)

However, whilst no examples survive that involve a family punishing *adulterium* we have a number of episodes in which Tiberius personally oversaw the public prosecution of adultery.<sup>91</sup>

From the mid-fifth century BC the regulation of *mores* was undertaken by the censor: “*ensoris populi aevitates suboles familias pecuniasque censento... caelibes esse prohibento, mores populi regunto, probrum in senatu ne relinquonto*” (“the censors take a census of the population, their ages, offspring, household and wealth... they forbid being unmarried, they regulate the *mores* of the people so that disgrace is not allowed into the senate”; Cic. *De Leg.* 3.7).<sup>92</sup> However, there was no formal definition of what they had to regulate or of what standards were to be kept. As a result, “there was no continuity of criteria and no *rationale* behind individual decisions” (Astin 1988:19). It was the idea of the *mos maiorum*, the traditional morals and customs upon which Rome was built, that standardised the process. The purpose of this intervention of the censor into the bed-chamber (*δωμάτιον*, Dio. Hal. 20.13.3) was to promote

<sup>91</sup> For example: Ide (Jos. A.J. 18.69-71; Dio 57.18.5a), Aemilia Lepida (Tac. *Ann.* 3.22-23; Suet. *Tib.* 49.1), Aquilia (Tac. *Ann.* 4.42).

<sup>92</sup> Dionysius of Halicarnassus (20.13.3) and Plutarch (*Cat. Mai.* 16.1-3) also discuss the areas in which the censor had influence.

marriage and childrearing.<sup>93</sup> However, when the censors did involve themselves in domestic affairs it was usually associated with luxury and extravagance and there are very few attested instances in which only private concerns are addressed (Astin 1988:25).

Several trials for sexual misbehaviour that took place before the introduction of the *lex Iulia* are reported by Livy and Valerius Maximus. The *crimen* (charge) of *stuprum* could be made by the aediles, whilst the judgement itself was made by the people:

*erant qui per speciem honorandae parentis meritam mercedem populo solutam interpretarentur, quod eum die dicta ab aedilibus crimine stupratae matrisfamiliae absoluisset.*

There were some who understood that through the appearance of honouring his parent a deserved reward had been paid to the people, because they had acquitted him when he was charged by the aediles on a charge of *stuprum* with a married woman.

(Livy 8.22.3)<sup>94</sup>

Notably, the charge here is brought against a *materfamilias*, yet the term *stuprum* is preferred over *adulterium*. In cases that involve a daughter or son it was the father that brought accusations or exacted punishments (Val. Max. 5.9.1, 6.1.6). Charges could also be brought by the tribune of the plebs (Val. Max. 6.1.11). In Valerius Maximus' *exempla* offenders were brought for trial before the people (6.1.7, 6.1.11), before a public court (8.2.2) or we are not told who is overseeing the trial (6.8.1, 8.1.absol.12). Livy also records a trial where *matronae* were charged with *probrum* by the aediles and again the judgement is made by the people: "*L. Villius Tappulus et M. Fundanius Fundulus, aediles plebei, aliquot matronas apud populum probri accusarunt; quasdam ex eis damnatas in exilium egerunt*" ("*L. Villius Tappulus and M. Fundanius Fundulus, the aediles of the plebs, accused some matronae before the people of disgrace; some of them being convicted, they drove them into exile*"; 25.2.9). The charge here is not explicitly said to be sexual but the similarity to the reports of *matronae* being charged for *stuprum* and the severity of the punishment would suggest Livy is using *probrum* here with a sexual meaning.

There are only four examples of public prosecutions before the people for *stuprum* in the republic. Two are found in Livy: Marcus Flavius (8.22.3, quoted above); a group of *matronae* are

---

<sup>93</sup> See Val. Max. 2.9.1; Astin 1988:25-26.

<sup>94</sup> The person who is acquitted is Marcus Flavius and it is thought he is the same Flavius acquitted by the people at Val. Max. 8.1.abs.7 (Oakley 1998:626). See also Livy 10.31.9, where a group of *matronae* are judged by the people for *stuprum*.

charged with *stuprum* (10.31.9). The others are recorded by Valerius Maximus: C. Scantinius Capitolinus, the tribune of the plebs, was brought before the people by the curule aedile, M. Claudius Marcellus, on a charge of *stuprum* with his son (6.1.7);<sup>95</sup> M. Laetorius Mergus, a military tribune, was brought before the people by the tribune of the plebs on a charge of *stuprum* (6.1.11). It is the large number of women who are charged at Livy 10.31.9 (and at Livy 25.2.9 if we include the *probrum* trial) that meant it was necessary to charge them publically rather than rely on private family deliberation, which would have been the norm.<sup>96</sup> In the case of Scantinius, it is his political position as tribune of the plebs that leads Marcellus to make the trial public and use his own position as curule aedile to apply pressure for a guilty verdict.<sup>97</sup> The same applies to the trial of Laetorius Mergus, that it is his position as military tribune that made a public trial necessary.<sup>98</sup> Prosecution could also be made by the senate when the offender held a political or military position, as in the case of the centurion C. Comelius (Val. Max. 6.1.10).

Of further interest is a brief reference to a *moechus* in a letter from Caelius to Cicero:

*Servius Ocella nemini persuasisset se moechum esse nisi triduo bis deprehensus esset. Quaeres ubi. ubi hercules ego minime vellem. relinquo tibi quod ab aliis quaeras; neque enim displicet mihi imperatorem singulos percontari cum qua sit aliqui deprehensus.*

Servius Ocella would have persuaded no-one that he was he was a *moechus* if he had not been caught twice in three days. You ask ‘where?’ By heavens, in the last place I would wish. But I leave something for you to find out from others; indeed it is not displeasing to me for an *imperator* to question one man after another about whom the lady was someone was caught with.

(*ad Fam.* 8.7.2)

Caelius says that one Servius Ocella has been *deprehendere* (caught) in adultery twice in the last three days and now the *imperator* is questioning people to find out who the woman caught with Servius was. The woman, therefore, was obviously not apprehended at the same time. What is

<sup>95</sup> The trial of Scantinius is also recorded by Plutarch (*Marc.* 2.3) though he mistakenly says that the trial took place before the senate (Oakley 2005:342). See below for discussion of the potential relationship between this trial and the *lex Scantinia*.

<sup>96</sup> Oakley offers the suggestion that the large numbers of women in these two episodes may imply some sort of organised behaviour (2005:342). The large numbers also suggest that it may not be adulteresses that are being prosecuted here but perhaps prostitutes.

<sup>97</sup> See Oakley 2005:342.

<sup>98</sup> It is impossible to determine whether we know about these trials because they involved people in positions of power and so were recorded (whereas public trials that involved less important individuals were not) or whether it was because these people were in positions of power that they received a public trial in the first place.

most interesting about this brief anecdote then is that it shows that in 50 BC a man could be investigated for adultery on his own. Yet, even under the *lex Iulia* it is necessary to know who the woman was as it is her status that determines a relationship as *adulterium*. Furthermore, the woman's family could not have brought forward a complaint because her identity was unknown. Nevertheless, if they were involved it would still be expected in this period that the family would punish adultery through a family council. It is impossible to know under what law or power this investigation was being made and whether this reflects a legal practice not referred to elsewhere in our sources. However, as Caelius was so shocked that Servius had been found to be a *moechus* perhaps it was not a legal enquiry at all but rather an attempt to satisfy the curiosity of gossip.

Punishment for adultery is described by Horace as *ius*, carrying the sense of law but also importantly of custom: “‘iure’, omnes” (“‘it is law’, say all”; *Sat.* 1.2.46). Catullus also claims that women should be chaste in their marriage beds by *ius* (66.83, quoted in section 4.4). That there was a relationship during the republic between a wife's marital fidelity and the concept of *ius* is therefore evident. However, the punishment for adultery was not yet determined by a *lex*, which we see being used at *Od.* 4.5.22, dated after the *lex Iulia*.<sup>99</sup>

Punishment was also seen by Livy as a necessary deterrent to prevent others from engaging in such behaviours. In the Lucretia episode the assumption is that those who take part in adultery deserve punishment. Firstly, Lucretia makes her father and husband swear that they will not let the *adulter* go *impune* (unpunished).<sup>100</sup> Moreover, she submits herself to punishment for the act, even though it was forced upon her:

*‘ego me etsi peccato absolve, supplicio non libero; nec ulla deinde impudica Lucretiae exemplo vivet.’ cultrum, quem sub veste abditum habebat, eum in corde defigit, prolapsaque in vulnus moribunda cecidit.*

‘Though I absolve myself from the sin,<sup>101</sup> I do not free myself from the punishment; hereafter no immodest woman will be able to live through the example of Lucretia.’ She thrust a knife, which she was hiding under her clothing, into her heart, and sliding down onto the wound, she died as she fell.

(Livy 1.58.10-11)

<sup>99</sup> Horace does, however, refer to *leges* against *fures*, *latrones* and *adulteri* in early Rome (*Sat.* 1.3.104-106, quoted in section 4.4).

<sup>100</sup> “*sed date dexteras fidemque haud impune adultero fore*” (“but give your right hands and your assurance that the adulterer will not go unpunished”; Livy 1.58.7).

<sup>101</sup> Throughout this work, the translation of *peccatum* as ‘sin’ does not carry the religious connotations that the Christian understanding of the word contains.

Tarquinius' actions deserved punishment but so did she, the passive partner in the act. Lucretia's reason for committing suicide was to prevent her experience being used by other women as an example of how to lead their lives. Punishment for sexual transgression, therefore, was not only deserved for those who committed rape and sexual violence but also for those who willingly took part in illicit sex. Plautus and Terence also show an expectation that an adulterer who is captured will face punishment:

*nam ni illic hodie forte fortuna hic foret,  
miles Mnesilochum cum uxore opprimeret sua  
atque obtruncaret moechum manifestarium.*

If [the slave] had not been here today by lucky fortune, the soldier would have surprised Mnesilochus with his wife and cut him down as an adulterer caught in the act.

(Plaut. *Bacch.* 916-918)<sup>102</sup>

Moreover, we can see in this passage, and also at Plautus *Amph.* 1048, that even before the *lex Iulia* the couple must be caught inside the house in order for punishment to be exacted.<sup>103</sup> The severity of their punishment is implied by Terence:

*nunc minatur porro sese id quod moechis solet:  
quod ego numquam vidi fieri neque velim.*

---

<sup>102</sup> See also: "*certumst, intro rumpam in aedis: ubi quemque hominem aspexero, / si ancillam seu servom sive uxorem sive adulterum / seu patrem sive avom videbo, obtruncabo in aedibus*" ("it is settled; I will burst into the house: as soon as I catch sight of any man, whether I see a slave girl or slave, a wife or an adulterer, a father or a grandfather, I will cut them down in my halls"; Plaut. *Amph.* 1048-1050); "*hunc pro moecho postea / comprehendere intus et constrinxere*" ("afterwards they apprehended him inside the house as a *moechus* and tied him up"; Ter. *Eun.* 992-993).

<sup>103</sup> This may be a reflection of Greek law. In Athenian law the right to kill the adulterer was allowed to a husband who caught his wife in adultery (Carey 1995:408-413). Moreover, Cole sees the distinction between adultery and rape is that adultery had to happen in the home (1984:101). Therefore, although Athenian law did not specify that the husband had to catch the adulterous couple in his home to have the right to kill the adulterer it can be assumed that this was the case more often than not. Similarly, for a husband to claim the full amount of compensation from the adulterer (if he had not already killed him) the adultery had to happen in the home (Cole 1984:110). Scafuro, however, compares the judicial remedies for adultery and rape in fourth century Athens and mid-republican Rome and finds some similarities but also significant differences (1997:229-231). She therefore suggests that "we might expect that Roman playwrights, if called upon to translate scenarios of sexual offence in which the threat of legal redress appeared in the original, will have to summon their creative powers to find an appropriate adaptation" (1997:231).

Now he is threatening to do what is usually done to *moechi*: which I have never seen being done nor do I wish to.

(*Eun.* 957-958)

Plautus also suggests that the punishments meted out to adulterers were severe enough to deter any potential errant lovers: "*si sic aliis moechis fiat, minus hic moechorum siet,/ magis metuant, minus has res studeant*" ("if other *moechi* were treated this way, there would be fewer *moechi*, their fear would be greater and they would be less keen about these things"; *Mil.* 1436-1437).

Cicero, however, argued that the prevention of *adulterium* and *stuprum* should not rely solely on fear of punishment:

*iam si pudor, si modestia, si pudicitia, si uno verbo temperantia poenae aut infamiae metu coercebuntur, non sanctitate sua se tuebuntur, quod adulterium, quod stuprum, quae libido non se proripiet ac proiciet aut occultatione proposita aut impunitate aut licentia?*

Now if chastity, modesty, honour, if in one word temperance are to be confined by the fear of punishment and disgrace, and not to be guarded by their own sacredness, what form of *adulterium*, *stuprum* or lust will not rush forward and come forth when it is promised concealment, impunity or liberty?

(*De Fin.* 2.73)

Likewise, someone who is chaste (*pudicus*) only through fear of *infamia* cannot truly be called chaste.<sup>104</sup>

In the republic the punishment for *adulterium* and *stuprum* varied considerably, depending on the circumstances involved and on who was making the accusation. In 216 BC two Vestal Virgins were charged with *stuprum* (*Livy* 22.57.2-3).<sup>105</sup> We are not told who brought the charge against the

---

<sup>104</sup> "*possumus eos, qui a stupro arcentur infamiae metu, pudicos dicere, cum ipsa infamia propter rei turpitudinem consequatur?*" ("Is it possible for us to call those chaste who are kept from *stuprum*, by the fear of *infamia*, when the disgrace itself is a consequence of the vileness of the deed?"; *Cic. De Leg.* 1.51).

<sup>105</sup> "*territi etiam super tantas clades cum ceteris prodigiis, tum quod duae Vestales eo anno, Opimia atque Floronia, stupri compertae et altera sub terra, uti mos est, ad portam Collinam necata fuerat, altera sibimet ipsa mortem consciverat; L. Cantilius scriba pontificius, quos nunc minores pontifices appellant, qui cum Floronia stuprum fecerat, a pontifice maximo eo usque virgis in comitio caesus erat ut inter verbera exspiraret.*" ("[The senate] were terrified due to the great disasters but also several other portents, and then because in that year two Vestals, Opimia and Floronia, were found guilty of *stuprum* and one was put below the ground to die, according to custom, near to the Porta Collina, and the other committed suicide. L. Cantilius, a scribe to the pontiffs, one of those who are now called the minor pontiffs, who had taken part in the *stuprum* with Floronia, was beaten with sticks in the *comitium* so severely by the Pontifex Maximus that he died amongst the blows.")

Vestals or who made the judgement against them, yet it is the Pontifex Maximus who carried out the punishment. The punishment for the Vestals and their lovers was death, though one of the Vestals committed suicide before she could be buried alive.

Death is the most frequent outcome following sexual transgression in the republican period. Aulus Gellius records a speech of Cato in which he says that a wife who commits adultery will be put to death and if the husband catches her in adultery he can kill her on the spot with impunity (10.23.4-5).<sup>106</sup> Watson suggests that presumably this meant that if the adulterous couple were not caught in the act then some form of investigation would have to be made before she was sentenced with death (1975:36). Those who were the victims of rape or sexual violence were known to either commit suicide or murder their abusers: Lucretia commits suicide (Livy 1.58.11; Val. Max. 6.1.1); the wife of Ortiago kills the centurion who raped her (Livy 38.24.9; Val. Max. 6.1.ext.2);<sup>107</sup> Gaius Plotius was judged as having rightly killed a military tribune because he had tried to compel him to *stuprum* (Val. Max. 6.1.12). The participants of the Bacchanalia who engaged in *stuprum* were sentenced to *capitalis poena* by the consul (Livy 39.18.4). Verginia is killed by her father before she can be subjected to *stuprum* (Livy 3.48.5; Val. Max. 6.1.2). Moreover, Julius Caesar sentenced a freedman to capital punishment for *adulterium* with the wife of an *eques* (Jul. 48.1). We are also told of episodes where those involved in the sexual transgression committed suicide because of their shame; “*illi nefarium concubitus voluntaria morte pensarunt*” (“they judged their wicked union through voluntary death”; Val. Max. 1.8.ext.3).<sup>108</sup> Punishment could also be made in the form of a fine, with the proceeds going to the state (Livy 10.31.9).<sup>109</sup> And in Valerius Maximus several episodes are related in which punishment was taken into a person’s own hands:

---

<sup>106</sup> “*“si cum alieno viro probri quid fecit, condemnatur.” de iure autem occidendi ita scriptum: ‘in adulterio uxorem tuam siprehendisses, sine iudicio inpune necares.’*” (“If she has committed a disgrace with another man, she is condemned.” About the *ius occidendi* he wrote this: ‘If you catch your wife in *adulterium*, you can kill her with impunity without trial.’”) Mette-Dittmann follows Gellius and supports a republican law that allowed the husband to kill the adulterer (1991:62). Edwards, however, is sceptical and argues that the exact meaning of *ius* here is hard to determine (1993b:739). Cf. Seneca the Elder who records two cases where the right to kill the adulterous pair is given to anyone as long as they kill both at the same time (*Contr.* 1.4.pr., repeated at 9.1.pr., quoted in appendix one). Bonner sees here a reference to a Roman legal position that existed before the *lex Iulia* was passed – he does not see it as a Greek influence for the requirement that both the adulterer and the adulteress are killed is not found anywhere in Greek law (1949:120).

<sup>107</sup> The rape of the wife of Ortiago is also told by Plutarch (*Mor.* 258.D-F) and Polybius (21.38), who tells us her name is Chionara.

<sup>108</sup> M. Laetorius Mergus also went into voluntary exile and committed suicide for *stuprum* with his adjutant (*cornicularium*, Val. Max. 6.1.11). He continued to be tried and convicted in a court even after his death.

<sup>109</sup> “*eo anno Q. Fabius Gurges consulis filius aliquot matronas ad populum stupri damnatas pecunia multavit; ex multaticio aere Veneris aedem quae prope Circum est faciendam curavit.*” (“In this year Q. Fabius Gurges,



*sed ut eos quoque, qui in vindicanda pudicitia dolore suo pro publica lege usi sunt, strictim percurram, Sempronius Musca C. Gallium deprehensum in adulterio flagellis cecidit, C. Memmius L. Octavium similiter deprehensum pernis contudit, Carbo Attienus a Vibieno, item Pontius a P. Cerennio deprehensi castrati sunt. Cn. etiam Furium Brocchum qui deprehenderat familiae stuprandum obiecit. quibus irae suae indulsisse fraudi non fuit.*

But I will briefly run through those who in avenging chastity used their pain instead of the public law; Sempronius Musca killed C. Gallius with lashes after he was caught in *adulterium*, C. Memmius beat L. Octavius, whom he had similarly caught, with bones, Carbo Attienus was caught and castrated by Vibienus and Pontius by P. Cerennius. Besides the man who caught Cn. Furius Brocchus offered him to his slaves to be subjected to *stuprum*. There was no penalty for them for having indulged in their anger.

(6.1.13)

Physical punishment could vary from a simple beating to castration or to being raped by slaves.<sup>110</sup> However, we are not told what the relationship of these men to the adulterous couples was; it can only be assumed that they were offended husbands taking revenge for their wives' infidelities. Moreover, there were no consequences for those who took it upon themselves to avenge themselves. Yet still, Valerius commends Lucius Gellius for not acting in anger when he first thought he had discovered his son in an affair with his stepmother<sup>111</sup> and planning patricide but instead took time to take counsel from the rest of the senate: "*quod si impetu irae abstractus saevire festinasset, admisisset magis scelus quam vindicasset*" ("but if he had been carried away by angry impulse and hastened into a rage, he would have committed a crime rather than have punished one"; 5.9.1).

Horace's list of punishments is very similar to Valerius Maximus' and shows the lengths that adulterers would go to avoid these punishments:

*hic se praecipitem tecto dedit; ille flagellis  
ad mortem caesus; fugiens hic decidit acrem  
praedonum in turbam, dedit hic pro corpore nummos,*

---

the son of the consul, punished with a fine some *matronae* who had been convicted before the people of *stuprum*; he saw to it that out of this fine the temple of Venus which is near the Circus was built.") Dated to 295 BC this is thought to be the first temple to Venus built in Rome and the use of a fine gathered from illicit sexual behaviours shows that already by this time the Roman deity Venus was equated with Greek Aphrodite (Oakley 2005:343).

<sup>110</sup> See also Aulus Gellius (17.18, quoted in section 4.3), where Sallust is said to have received a beating for his *adulterium* with the wife of Annius Milo.

<sup>111</sup> An affair between a son and his stepmother was a plotline within the adultery mime (Kehoe 1984).

*hunc perminxerunt calones; quin etiam illud  
accidit, ut quidam testis caudamque salacem  
demeteret ferro.*

One has thrown himself headfirst from a roof; another has been whipped to death; a third when he was fleeing fell into a fierce group of pirates; another gave money to save his body; another has been abused by the stable-boys. Indeed it even befell one that someone cut off his testicles and lustful prick with a sword.

(*Sat.* 1.2.41-46)

The punishments to be expected are the loss of money, personal safety, and reputation, and this is reinforced again at the end of the satire at 1.2.132-133.<sup>112</sup> Horace also highlights Villius, who was punished by being “*pugnis caesus ferroque petitus*” (“hit with fists and struck with the sword”; *Sat.* 1.2.66).

### Lex Scantinia

There has been much debate over whether there were laws that regulated adultery and sexual morality before the *lex Iulia de adulteriis coercendis*, based on a comment by the jurist Paul (*de Adult.* book 1, *Coll.* 4.2.2).<sup>113</sup> Plutarch attributes Sulla with introducing laws regulating marriage and the good morals of the citizens (*Comp. Lys. et Sul.* 3.2) but this is rejected by Fayer who argues there is not sufficient detail to see it as an adultery law (2005:215).<sup>114</sup> Nevertheless, the mysterious *lex Scantinia* was known to punish *stuprum*, the secondary offence of the *lex Iulia*. Moreover, the two laws were often mentioned in tandem in later literature suggesting that the *lex Scantinia* had some connection to the Augustan adultery legislation.<sup>115</sup> As a result, the *lex Scantinia* may offer insights into the regulation of sexual morality in republican Rome.

---

<sup>112</sup> “*discincta tunica fugiendum est et pede nudo,/ ne nummi pereant aut puga aut denique fama*” (“with tunic removed and with bare feet I must flee, lest money, person or reputation is finally lost”).

<sup>113</sup> “*et quidem primum caput legis (Iuliae de adulteriis) prioribus legibus pluribus obrogat*” (“the first chapter of the law (the *lex Iulia* on *adulterium*) invalidated several previous laws”). Kunkel (1962:123) favours these earlier republican laws.

<sup>114</sup> As there is no substantial evidence for any republican laws that punished *adulterium*, the suggestion continues to be dismissed by scholars: Gardner 1986:123; Fantham 1991:284; Treggiari 1991:277.

<sup>115</sup> *Juv.* 2.36-46; *Aus. Ep.* 99; *Prud. Peris.* 10.201-205.

Traditionally, scholars have understood the *lex Scantinia* as a law that penalised homosexuality.<sup>116</sup> However, there was no concept of the difference between homosexual and heterosexual relationships in ancient Rome, and Latin did not contain words to distinguish male-male or female-female relationships from male-female ones.<sup>117</sup> Moreover, male-male relationships were not in themselves viewed as problematic or unnatural, as long as a man of respectable status did not allow himself to become the passive partner.<sup>118</sup> It was the threat of damaging the family's reputation through a relationship with an unsuitable partner or by taking the passive (and therefore feminine role) that caused a moral problem. Accusations of effeminacy, especially wearing women's clothes, were a common part of political invective in the republic, as were references to dalliances with older men during youth.<sup>119</sup> Not even Augustus escaped such allegations (Suet. *Aug.* 68.1).<sup>120</sup> Nonetheless, the sexual and moral extravagance associated with the influx of Greek culture during the second century BC was thought to have fostered an atmosphere in Rome in which sexual relations, whether homosexual or heterosexual, flourished outside the traditional confines of marriage, either with slaves or prostitutes. This not only posed a threat to the traditional ideals of the Roman family but also diverted a young man's attention from his military and political career (Fantham 1991:289).

Our knowledge of the *lex Scantinia*, however, is extremely fragmentary and we are reliant on indirect and vague references from sources that were written several centuries after the introduction of the law.<sup>121</sup> The earliest reference to the law is in two letters from Caelius to Cicero dated to 50 BC (Cic. *ad Fam.* 8.12, 8.14).<sup>122</sup> No detail is given about what the law penalised and

---

<sup>116</sup> The entry in Berger's *Encyclopedic Dictionary of Roman Law* describes the *lex Scantinia* as "against *stuprum cum masculo* (= pederasty)" (1953:559). See Lilja (1983) for brief overview of previous scholarship.

<sup>117</sup> Williams 2010:6; see also Ormand 2009, introduction.

<sup>118</sup> Fantham 1991:289. Williams discusses the use of the term 'passive homosexual' and the potential ambiguities in its meaning: "does it suggest a man who fails to enact his desires for men? one who sits at home waiting for the phone to ring?" (2010:230).

<sup>119</sup> "*debilitati stupris*" ("enfeebled by *stupra*"; Cic. *In Cat.* 2.10); "*hi pueri tam lepidi ac delicati non solum amare et amari... didicerunt*" ("these boys, so elegant and effeminate, have learnt to love and to be loved"; Cic. *in Cat.* 2.23); *Pro Sest.* 18, quoted in section 3.3.

<sup>120</sup> "*prima iuventa variorum dedecorum infamiam subiit. Sextus Pompeius ut effeminatum insectatus est; M. Antonius adoptionem avunculi stupro meritum.*" ("In his early youth he came under disgrace of various shames. Sextus Pompeius attacked him as being effeminate; M. Antonius of having earned adoption by his uncle through *stuprum*.")

<sup>121</sup> In total there are seven references to the *lex Scantinia*: two in letters from Caelius to Cicero, and one in Suetonius, Juvenal, Tertullian, Ausonius and Prudentius. Lilja warns of the need to question the reliability of the latter three due to their late date; moreover, while Tertullian had studied law and knew the context of the *lex Scantinia*, Ausonius and Prudentius (both writing in the 4<sup>th</sup> century) may not necessarily have known anything about it (1983:119).

<sup>122</sup> It has been suggested by Lilja that *Scantinia* here should be read as *Atinia*, as found at *Phil.* 3.16 (1983:120). This would then make Suetonius (*Dom.* 8.3) the earliest attestation of the law. Lilja further

the offhand manner in which Caelius mentions his own trial under this law suggests that it was of no great concern.<sup>123</sup>

The next reference to the law is in the early 2<sup>nd</sup> century AD. Suetonius records that Domitian punished senators and equestrians under the *lex Scantinia* (*Dom.* 8.3). However, no detail as to what the law punished is offered.<sup>124</sup> Juvenal offers more insight:

*non tulit ex illis torvum Laronia quendam  
clamantem totiens 'ubi'<sup>125</sup> nunc, lex Iulia? dormis?'  
atque ita subridens: 'felicia tempora, quae te  
moribus opponunt. habeat iam Roma pudorem:  
tertius e caelo cecidit Cato. sed tamen unde  
haec emis, hirsuto spirant opobalsama collo  
quae tibi? ne pudeat dominum monstrare tabernae.  
quod si vexantur leges ac iura, citari  
ante omnis debet Scantinia: respice primum  
et scrutare viros; faciunt nam plura, sed illos  
defendit numerus iunctaeque umbone phalanges.'*

Laronia could not bear it when one of those grim men often shouted out, 'where are you now, *lex Iulia*? Sleeping?' and to which she answered with a smile, 'O happy times in which our morals are set before you. Again Rome will have modesty, a third Cato has fallen from the sky. But, however, where did you buy that balsam juice that exhales from your uncouth neck? Do not fear to show me the owner of the shop. But if statutes and laws are to be shaken up, the first that ought to be recalled is the *Scantinia*. Look first and scrutinise what men do, for they do more wicked things than we do; but they are protected by their numbers and by the joined shields of their phalanxes.'

(2.36-46)

---

suggests that the *lex Scantinia* was not a republican law at all but was introduced by Domitian as it is only this reference by Caelius that places it earlier (a papyrus fragment of Livy has been used to date the law to 149 BC, its unreliability is discussed below).

<sup>123</sup> On these two letters see Lilja (1983:114-118), who concludes that Caelius makes no allusion to homosexual activity and instead the references to the *lex Scantinia* appear to concern financial matters.

<sup>124</sup> Similarly, Tertullian refers to a bishop who did not fear the Scantinian law but does not provide any detail as to what it penalised (*de Monog.* 12): "*prospiciebat spiritus sanctus dicturos quosdam: 'omnia licent episcopis', sicut ille vester Utinensis nec Scantiniam timuit.*" ("The Holy Spirit foresaw that some would say: 'all things are allowed to bishops', just as that bishop of Utina of yours does not fear the Scantinian [law].")

<sup>125</sup> Housman (1938:8) explained *ubi* as having a rhetorical meaning to show that the law was nowhere to be found. Powell suspects that Housman "half suspected that readers of a less reverent cast might see a subsidiary meaning: that the *lex Iulia* had been sleeping around. The joke, if it was so intended, seems entirely in Juvenal's manner" (2010:230 n.13).

Laronia's speech<sup>126</sup> shows that the *lex Iulia* and the *lex Scantinia* were two separate pieces of legislation but that they were closely connected and both regulated sexual morality. It also illustrates that the law focused on the sexual behaviour of men as it is the perfumed male, associated with effeminacy, who is vilified by Laronia and threatened by the *lex Scantinia*. Laronia goes further: "*Hispo subit iuvenes et morbo pallet utroque*" ("Hispo submits to young men and suffers from both diseases"; Juv. 2.50). The two diseases are identified by Richlin as fellatio and anal penetration (1993:552). One suggestion, therefore, is that the law penalised passive homosexual activity (Cantarella 1992:112; Richlin 1993:569-570),<sup>127</sup> which is supported by Seneca the Elder: "*impudicitia*<sup>128</sup> in ingenuo crimen est, in servo necessitas, in liberto officium" ("sexual passivity in the freeborn is a crime, in a slave is necessary and in a freedman is a duty"; *Contr.* 4.pr.10).<sup>129</sup>

The fourth century poet Ausonius also implies that the law penalised men associated with effeminacy:

*iuris consulto, cui vivit adultera coniunx,  
Papia lex placuit, Iulia displicuit,  
quaeritis, unde haec sit distantia? semivir ipse  
Scantiniam metuens non metuit Titiam.*

A lawyer, who lives with an adulterous wife, was pleased with the Papinian law, but was displeased by the Iulian. Do you ask where this difference came from? Effeminate himself, he feared the Scantinian law but not the Titian.<sup>130</sup>

(Aus. *Ep.* 99)

<sup>126</sup> It is to be assumed that Laronia is a defendant on a charge under the *lex Iulia* (Braund 1996:129; Powell 2010:230-231) as she uses legal language "*tristis sententia*" ("guilty verdict"; 2.62; see further Braund 1996:138).

<sup>127</sup> Writing at the end of the second century AD, Sextus Empiricus said that homosexuality was forbidden by law in Rome (*Outlines of Pyrr.* 1.152). However, Boswell sees him as an unreliable source as he was a Greek physician and not an expert on Roman law (1980:67). Whereas, Williams suggests that Sextus was not referring to all sexual acts between males, but only sexual acts with freeborn males (2010:362 n.97). Ormand is also cautious about this reading of Juvenal, for though the passage shows that the *lex Iulia* focused on female sexual transgressions and the *lex Scantinia* on male, it does not indicate that it was only male *stuprum* with other men that the Scantinian law penalised (2009:178).

<sup>128</sup> When referring to males *impudicitia* carries the meaning of sexual passivity rather than lewdness in general.

<sup>129</sup> Cicero also throws accusations of passivity at Verres: "*at homo inertior, ignavior, magis vir inter mulieres, impura inter viros muliercula proferri non potest*" ("but it is not possible to find a more inactive or lazier man, who is more a man among women and a dirty little woman among men"; *In Verr.* 2.2.192; see Ormand 2009:166-167).

<sup>130</sup> This law directed provincial governors to appoint guardians for children (Green 1991:415).

However, we have already seen that although accusations were used as a form of invective, effeminate behaviour was not in itself illegal and at no point does Cicero show awareness of a law against effeminate or homosexual behaviour despite repeatedly accusing his rivals of such. The republican *lex Scantinia*, therefore, must have punished a type of behaviour closely associated with ideas of effeminacy but not consenting homosexual relations between adult males.<sup>131</sup>

In the first century AD, Quintilian referred to a law punishing the *stuprum* of *ingenui*:

*ingenuum stupravit et stupratus se suspendit: non tamen ideo stuprator capite ut causa mortis punietur, sed decem milia, quae poena stupratori constituta est, dabit.*

He had *stuprum* with a freeborn boy, who after this *stuprum* hung himself: however, the *stuprator* should not be given capital punishment for causing his death, but he should pay the fine of 10,000 sesterces, which is the agreed punishment for a *stuprator*.

(Quint. *Inst. Orat.* 4.2.68-69)<sup>132</sup>

The law in question is not named but Williams suggests that this refers to the *lex Scantinia* (2010:132).<sup>133</sup> The main concern of the *lex Scantinia* would then be the protection of minors from *stuprum*.<sup>134</sup> Two praetorian edicts from the republican period protected freeborn citizens of both sexes from unwanted sexual advances by penalising those who tried to accost or pursue *matronae* or girls and boys wearing the *toga praetexta*.<sup>135</sup> Williams suggests that the *lex Scantinia* took this further. So that whereas the praetorian edict had only penalised those who attempted to have sexual relations with these forbidden dependents, the *lex Scantinia* punished those who actually took part in such activities (2010:132). The legislation then can be seen to be codifying sanctions on sexual transgression that were already enforced within Roman society. Similarly,

---

<sup>131</sup> However, these actions had become illegal by the early third century AD: “*qui masculum liberum invitum stupraverit, capite punietur. qui voluntante sua stuprum flagitiumque inpurum patitur, dimidia parte bonorum suorum multatur nec testamentum ei ex maiore parte facere licet.*” (“He who submits a free male to *stuprum* against his will, shall suffer capital punishment. He who voluntarily suffers *stuprum* and impure disgrace, is fined half of his property and is not permitted to make testamentary disposition of more than half of the remainder.”; Paul, *De Adult.* book 2, *Coll.* 5.2.1).

<sup>132</sup> See also 4.2.71 and 7.4.42.

<sup>133</sup> Boswell (1980:67), Lilja (1983:114), and Richlin (1993:565 n.99) on the other hand argue that we are not seeing the *lex Scantinia* here but perhaps an unknown law that concerned rape.

<sup>134</sup> Veyne argues that it protected both male and female youth (1985:29); Gray-Fow (1986:451) and Richlin (1993:569-570) refer to pederasty only. On the other hand, Lilja (1983:121) suggests that it may have protected young boys from involuntary prostitution and castration, based on references to unnamed laws by Martial (2.60, 9.6, 9.8).

<sup>135</sup> The exact words of the edicts are lost but reconstructions have been attempted based on the juristic sources (see Williams 2010:131-132, who follows a reconstruction by Otto Lenel 1927). See also Paul, *Sent.* book 5, *D.* 47.11.1.2.

Fantham argues that the law consolidated the prosecution process and the penalties faced by offenders to provide a fairer system (1991:286). The *lex Scantinia*, therefore, was aimed at all forms of *stuprum* and so encompassed both male and female transgressors, but particularly it tried to protect freeborn youth from harassment and penalised men of high status who played a passive role.<sup>136</sup> It was only with the introduction of the *lex Iulia*, which took over the regulation of female sexual practices that the *lex Scantinia* became solely focused on male sexual transgression. That the *lex Scantinia* and the *lex Iulia* continue to be held in close association within the later sources and appear to work alongside each other demonstrates the close relationship that these two pieces of legislation held.<sup>137</sup> Moreover, in the absence of evidence for any other republican laws on sexual morality, the *lex Scantinia* remains the only (plausible) means for understanding a comment by Suetonius that Augustus revised a previous law when he introduced the *lex Iulia*.<sup>138</sup>

To add to the problems associated with understanding what the law actually entailed, the date at which the law was introduced has also been extensively debated. Traditionally, the law has been dated to 149 BC based on a papyrus fragment of Livy,<sup>139</sup> in which the name Scantius is followed by a nine letter gap and then the words “...am tulit in stupro deprehensi” (P. Oxy. IV, 668, col. V, lines 115-116). The text has been amended so that it reads that a certain Scantius (changed to Scantinius) introduced a law on *stuprum*. However, Cantarella is sceptical and argues that the line could just as easily read that a man called Scantius committed an act of *stuprum* (1992:110).<sup>140</sup> Other suggestions for the dating of the law have been found in the trial of C. Scantinius Capitolinus in 227 BC (Val. Max. 6.1.7; Plut. Marc. 2.3-4). However, laws are traditionally named after the person who introduced them, not the offender, and so despite the

---

<sup>136</sup> See Plautus (*Curc.* 33-38, quoted above) for evidence of republican restrictions on sexual relationships with married women, virgins, widows, and freeborn boys. There is no indication within the legal texts that those who submitted to passive sexual activity were associated with *infamia* (Ormand 2009:180). However, there is evidence that they were prevented from full participation in Roman life: “*removet autem a postulando pro aliis et eum, qui corpore suo muliebria passus est. si quis tamen vi praedonum vel hostium stupratus est, non debet notari, ut et Pomponius ait.*” (“He also forbids a man who has been a catamite to make applications on behalf of others. However, anyone raped by the violence of robbers or the enemy ought not to be blacklisted, as Pomponius also says.”; Ulpian, *de Ed.* book 6, D. 3.1.1.6). The reference to rape also shows that the law is concerned with the intention of the person who is being penetrated, similar to charges of *adulterium* where the accused had to be aware that the woman was married in order to be guilty.

<sup>137</sup> The two laws continue to be linked together as late as the fourth century, for Prudentius says that Jupiter would be charged under both the *lex Iulia* and the *lex Scantinia* if he were to come to Rome (*Peris.* 10.201-205). He does not give any detail as to what action would come under the *lex Scantinia* but he gives the penalty for both as being taken to prison.

<sup>138</sup> *Aug.* 34.1; see also Paul, *de Adult.* book 1, *Coll.* 4.2.2, quoted above.

<sup>139</sup> Veyne 1985:29; Treggiari 1991:277.

<sup>140</sup> Williams agrees (2010:362 n.95).

connection in name the law cannot be seen as a result of this trial (Cantarella 1992:109).<sup>141</sup> Cantarella instead suggests a slightly later date sometime in the 210s BC and that it was introduced by the Scantinii family to restore the family reputation following the trial of Capitolinus a couple of decades before (1992:111). The meaning of the term *stuprum* changed sometime in the mid-third century BC as fragments of Neleus, Appius, and Naevius recorded by Festus show that in the early and mid-third century the term was used to mean disgrace without any sexual connotations.<sup>142</sup> However, by the time Plautus was writing at the end of the third century, *stuprum* was now used to mean sexual disgrace. This change in meaning occurred at the same time that Cantarella proposes that the *lex Scantinia* was introduced, adding support to this date. It can be inferred, therefore, that once the term was appropriated by the law to refer to sexual transgression it quickly lost its previous non-sexual connotations.

## 2.2) The Provisions and Penalties of the *lex Iulia*

The focus of the juristic texts on adultery is on the working of the law: who had the right to accuse, when accusations could be made, and details of other charges and punishments. Discussion of these details was still taking place centuries after the law was introduced. It is evident that the original text of the law was regarded as ambiguous and was open to multiple readings in regards to how it was to be implemented.

### Accusations

The *lex Iulia* only allowed accusations to be made by certain people, at certain times.<sup>143</sup> There was a complex series of rules that dictated the right of accusation, the time at which accusations had to be made, and who had to be accused first. *Adulterium* is not an act that is committed alone and so for each case there would be at least two defendants – the adulterer and the adulteress.<sup>144</sup> However, the two parties to the *adulterium* could not be accused by the same person at the same

---

<sup>141</sup> Boswell suggests that the law was introduced in 226 BC but does not connect it to the trial of Scantinius Capitolinus (1980:65-66).

<sup>142</sup> Festus 418.8-18, Lindsay edition, quoted in section 1.5.

<sup>143</sup> Fayer 2005:270ff.

<sup>144</sup> It is for this reason the law is called the *lex Iulia de adulteriis* rather than the singular *adulterio*.



time (Papinian, *Resp.* book 15, *D.* 48.5.40.6).<sup>145</sup> The prosecution of the other offender had to wait until the earlier trial was concluded (Macer, *de Pub. Iud.* book 1, *D.* 48.5.33.1). If an accuser made concurrent accusations against both the accusations would be thrown out, but the accuser would then have the opportunity to make a fresh accusation against whichever he wanted to accuse first without any impediment (Ulpian, *de Adult.* book 2, *D.* 48.5.16.9). However, the accuser was allowed to bring simultaneous charges for other crimes that came under the *lex Iulia*, such as *lenocinium* and aiding *adulterium* (Macer, *de Pub. Iud.* book 1, *D.* 48.5.33.1). Alternatively, whilst one person brought an accusation against the adulterer, a different person could accuse the adulteress (Ulpian, *ad Leg. Iul. de Adult.* book 2, *D.* 48.5.18.6). It was possible to bring charges against two adulterers accused of *adulterium* with the same woman concurrently, but no more (Paul, *Sent.* 2.26.10).

An accusation of *adulterium* could not be made by a third party whilst the marriage of the woman continued:

*constante matrimonio ab iis, qui extra maritum ad accusationem admittuntur, accusari mulier adulterii non potest: probatam enim a marito uxorem et quiescens matrimonium non debet alius turbare atque inquietare, nisi prius lenocinii maritum accusaverit.*

So long as her marriage lasts, a wife cannot be accused of *adulterium* by those persons, apart from her husband, who are allowed to make an accusation; for no third party should upset and disturb a wife approved of by her husband and a peaceful marriage, unless he shall first have accused the husband of *lenocinium*.

(Ulpian, *Disp.* book 3, *D.* 48.5.27.pr.)<sup>146</sup>

Moreover, Papinian states that an accusation against the adulterer could also not be made while the woman continued in her marriage (*de Adult.* book 1, *D.* 48.5.12.10). If the husband refused to divorce and charge her, a case of *lenocinium* had to be brought against him and won before a charge of *adulterium* could be brought against his wife (Ulpian, *Disp.* book 3, *D.* 48.5.27.pr.).

<sup>145</sup> “*duos quidem adulterii, marem et feminam, propter commune crimen simul non iure nec a viro postulari convenit.*” (“It is agreed that two persons, male and female, cannot lawfully be accused simultaneously of a joint charge of *adulterium*, [not even] by the husband.”)

<sup>146</sup> This suggests that the husband was able to bring an accusation whilst he was still married to his wife (see also Papinian, *de Adult.* book 1, *D.* 48.5.12.10). However, *CJ.* 9.9.11 (AD 226) states that a husband must divorce his wife before he makes an accusation. As Ulpian (*de Adult.* book 4, *D.* 48.5.30.5) and Paul (*de Adult.* book 1, *D.* 48.5.31.1) both state that the sixty-day period for accusations by the husband begin from the day of the divorce it can be inferred that the husband had to divorce his wife before making an accusation.

The same protection was given to women who had remarried before the accusation of *adulterium* had been made against them. In this case, an accusation had to be made against the adulterer first (Ulpian, *Dist.* book 8, *D.* 48.5.2.pr.; Julian, *Dig.* book 86, *D.* 48.5.5).<sup>147</sup> If he was acquitted then no charge could be brought against the adulteress (Ulpian, *ad Leg. lul. de Adult.* book 2, *D.* 48.5.20.3).<sup>148</sup> However, if he was convicted this would not lead to the automatic conviction of the adulteress; she had to be given her own independent trial as she had the right to defend her *pudicitia* (Ulpian, *ad leg. lul. de Adult.* book 2, *D.* 48.5.18.6). This protection ended with the dissolution of the marriage:

*plane si nupta esse desierit, accusari poterit: neque enim aliam lex tuetur quam eam, quae nupta est, quamdiu nupta erit.*

Clearly, if she ceases to be married, she can be accused; for the statute does not protect anyone other than a married woman for as long as she is married.

(Ulpian, *ad leg. lul. de Adult.* book 2, *D.* 48.5.20.3)

If the woman was a widow or divorced, then an accusation could be made straight away (Ulpian, *de Adult.* book 4, *D.* 48.5.30.5). The accuser could also make his own choice over whether to accuse the adulterer or the adulteress first (Ulpian, *de Adult.* book 2, *D.* 48.5.16.8).

A person became liable for the charges of *adulterium* and *stuprum* from puberty and could be accused even if they were below the age of majority (Papinian, *Quaest.* book 3, *D.* 48.5.37). However, no-one under twenty-five was able to bring an accusation under the *lex Iulia*, unless the *adulterium* was committed against his own marriage (Ulpian, *de Adult.* book 2, *D.* 48.5.16.6). A *filiusfamilias* was able to bring an accusation of *adulterium* against his own wife without the consent of his father for “*vindictam enim proprii doloris consequitur*” (“he is pursuing satisfaction for his own personal distress”; Papinian, *Quaest.* book 5, *D.* 48.5.38). Further restrictions were also made on who could make accusations:

*is, qui iudicio publico damnatus est, ius accusandi non habet, nisi liberorum vel patronorum suorum mortem eo iudicio vel rem suam exsequatur. Sed et calumnia notatis ius accusandi ademptum est, item his, qui cum bestiis depugnandi causa in harenam*

---

<sup>147</sup> If the woman was a widow then the accuser had a free choice as to whom he accused first (Julian, *Dig.* book 86, *D.* 48.5.5).

<sup>148</sup> “*nupta non potest accusari, non tantum ab eo, qui adulterum accusavit nec optinuit, sed nec ab alio quidem, si adulter absolutus est.*” (“A married woman cannot be accused, not only [not] by the person who accused the male adulterer unsuccessfully but also not by anyone else, if the male adulterer was acquitted.”)

*intromissi sunt, quive artem ludicram vel lenocinium fecerint, quive praevaricationis calumniaeve causa quid fecisse iudicio publico pronuntiatus erit, quive ob accusandum negotiumve cui facessendum pecuniam accepisse iudicatus erit.*

A person condemned in criminal proceedings has no right to bring an accusation, unless he is pursuing justice for the death of his children [or parents], or of his patrons in that trial, or matters touching himself. Furthermore, the right of accusation is taken away from those who are branded with calumny, as also from those who have been sent to the arena to fight with the beasts, from stage players and pimps, or from anyone adjudged in criminal proceedings to have done anything by way or *praevaricatio* or calumny, or found to have accepted money for the purpose of bringing an accusation or of causing trouble for someone.

(Ulpian, *de Adult.* book 2, *D.* 48.2.4)

The law set out a time frame which determined who had the right to accuse. An initial period of sixty days was enforced, within which accusations could only be made by the husband or the father if the woman was a *filiafamilias* (Scaevola, *Reg.* book 4, *D.* 48.5.15.2).<sup>149</sup> If both wanted to make an accusation, the right to do so would be given to the husband above the father: “*nam et propensiore ira et maiore dolore executurum eum accusationem credendum est*” (“for it is to be believed that he will carry through the accusation with a more intimate anger and a greater grief”; Ulpian, *Disp.* book 8, *D.* 48.5.2.8).<sup>150</sup> However, if the father could prove that the husband had been negligent in bringing an accusation or was in collusion with his wife, he would be given precedence (Ulpian, *Disp.* book 8, *D.* 48.5.2.8; *de Adult.* book 2, *D.* 48.5.3). An accusation could not be made with the right of a husband if the woman was a concubine or if the transgression had taken place before they were married and so would be classed as *stuprum* (Ulpian, *de Adult.* book

---

<sup>149</sup> According to Papinian, fathers had no special right of accusation over a daughter who was a widow (*de Adult.* book 1, *D.* 48.5.23.1). Neither is any distinction made between the type of marriage and whether the marriage was made *cum manu* or *sine manu*. The sixty-day period of accusation is referred to by Tacitus: “*exactum et a Titidio Labeone, Vistiliae marito, cur in uxore delicti manifesta ultionem legis omisisset. atque illo praetendente sexaginta dies ad consultandum datos necdum praeterisse, satis visum de Vistilia statuere*” (“It was demanded from Titidius Labeo, the husband of Vistilia, why he had omitted the vengeance of the law in light of his wife’s obvious wrong. And his excuse was that, as the sixty days given to deliberation were not yet passed, it seemed enough [time] to judge Vistilia”; *Ann.* 2.85). Goodyear sees this as “a particularly outrageous case” for *lenocinium* should only be charged where a husband has profited from his wife’s adultery or where the adulterers had been caught in the act, it was not enough for adultery to only be suspected (1981:440; see Ulpian, *Disp.* book 8, *D.* 48.5.2.3 and *CJ.* 9.9.2 (AD 199) in the later discussion of *lenocinium*).

<sup>150</sup> It is interesting that it is because of this passion and anger that the husband is not given the right to kill the adulterous couple and only the father can use the *ius occidendi* (see below).

2, *D.* 48.5.14.pr., 6, 8).<sup>151</sup> If at any point the husband and father said that they did not wish to bring forth an accusation the sixty-day period would end (Ulpian, *de Adult.* book 2, *D.* 48.5.16.5).<sup>152</sup> If they wanted to bring an accusation after this they would only be able to do so with the right of a third party (*CJ.* 9.9.6.pr., AD 223).

Following this sixty-day period, third parties could accuse the woman as well (Ulpian, *Disp.* book 8, *D.* 48.5.4.1).<sup>153</sup> As there was no precedent for who should be allowed to make an accusation at this point, it was up to the judge to decide who should be allowed to make the accusation if a number of people came forward at once (Ulpian, *Disp.* book 8, *D.* 48.5.2.9). Following the end of the sixty-day period, a further four months were given in which accusations could be brought against the woman (Ulpian, *Disp.* book 8, *D.* 48.5.4.1). The total time in which an accusation could be brought against the adulteress was therefore six months – six months from the time of divorce if she was married and six months from the time the offence was committed if she was widowed (Marcian, *Sen. Cons. Turp.* sole book, *D.* 48.16.1.10).

A much longer time limit for accusations was given for accusations against the adulterer. The jurists were in agreement that this period was five years from the time the *adulterium* was committed (Marcian, *Sen. Cons. Turp.* sole book, *D.* 48.16.1.10; Papinian, *de Adult.* book 1, *D.* 48.5.12.4;<sup>154</sup> Ulpian, *de Adult.* book 4, *D.* 48.5.30.6, 7; Paul, *de Adult.* book 2, *D.* 48.5.32; *CJ.* 9.9.5, AD 223).<sup>155</sup> According to Ulpian, however, the five-year period was to be applied to all offences under the *lex Iulia* for both male and female defendants (*de Adult.* book 4, *D.* 48.5.30.6).<sup>156</sup> Yet, the question remains as to how it was possible to have both a six-month and a five-year time limit for making an accusation against the adulteress. This apparent contradiction is made clear in another passage from Ulpian:

---

<sup>151</sup> However, if she was a freedwoman who was her patron's concubine he could charge her with the right of a third party (Ulpian, *de Adult.* book 2, *D.* 48.5.14.pr., quoted in section 1.5).

<sup>152</sup> Ulpian says that Pomponius was the first to say this.

<sup>153</sup> Powell proposes that the *delatores* in adultery cases would have been particularly unpopular due to the surreptitious nature of making an accusation of adultery, which would be based more often than not on circumstantial evidence and personal attack rather than hard evidence (2010:239).

<sup>154</sup> Papinian also states here that the adulterer can still be in danger of prosecution if the adulteress dies.

<sup>155</sup> Based on Dio 55.10.16, Bauman suggests that Augustus introduced the five-year time limit in 2 BC following an increase in accusations after the conviction of Julia the Elder (1968:82).

<sup>156</sup> "*hoc quinquennium observari legislator voluit, si reo vel reae stuprum adulterium vel lenocinium obiciatur.*" ("The legislator intended this five-year period to be observed if an accused person, male or female, faces a charge of *stuprum*, *adulterium*, or *lenocinium*.") This blanket time scale of five years was also to include secondary offences that came under the *lex Iulia*, such as making your house available for *adulterium* or *stuprum* (see below).

*si ex die divortii sexaginta dies sint, ex die vero commissi criminis quinquennium praeteriit, debuit dici nec mulierem posse accusari, ut, quod dantur sex menses utiles, sic sit accipiendum, ne crimen quinquennio continuo sopitum excitetur.*

Moreover, if it be sixty days since the date of the divorce but a five-year period has elapsed since the commission of the offence, it must be said that the woman cannot be accused; so that the granting of the six *menses utiles* must be taken in the sense that an offence which has been asleep for a continuous period of five years may not be awakened.  
(Ulpian, *de Adult.* book 4, *D.* 48.5.30.5)

The five-year time period was enforced on all accusations made under the *lex Iulia* so that the threat of accusation could not be held against a person, and also to compel people to bring forward accusations swiftly. Therefore, as we can see from Ulpian, if a woman was not divorced within the five-year period then no accusations could be made against her. There is no suggestion within the sources as to why there was such difference between the time allowed for accusations against the adulterer and the adulteress.

The time restrictions were counted up to the day on which the accusation was made, not the day that a judgement was given (Ulpian, *de Adult.* book 4, *D.* 48.5.30.7). The sixty-day and five-year periods were to consist of *dies utiles* – days on which the courts were open and it was possible to bring accusations (Papinian, *de Adult.* book 1, *D.* 48.5.12.6; Ulpian, *Disp.* book 8, *D.* 48.5.4.1; *CJ.* 9.9.6.pr., AD 223; 9.9.21.pr., AD 290). For Papinian, this was also to include holidays (*de Adult.* book 1, *D.* 48.5.12.6)<sup>157</sup> but according to Paul they were not to be counted as *dies utiles* at all, instead every day counted (*de Adult.* book 2, *D.* 48.5.32).

This timeframe was paused for the father if the husband made an accusation first (Ulpian, *Disp.* book 8, *D.* 48.5.4.pr.).<sup>158</sup> Therefore, if the husband was the first to accuse but he either dropped his accusation part way through or failed to get a conviction, the father would then be able to bring a further accusation in his own name. Furthermore, Ulpian also states that, as it was not possible to accuse both the adulteress and the adulterer at the same time, while you were making an accusation against one the sixty-day timeframe was paused in relation to an accusation against the other. However, he only allows the right to pause the time restrictions to husbands

---

<sup>157</sup> “sexaginta dies, qui marito accusanti utiles computantur, feriatis quoque diebus, si modo facultatem praesidis adeundi accusator habuit, numerari certum est, quoniam de plano quoque libellus dari potest.” (“It is certain that the sixty days which are reckoned as *dies utiles* to an accusing husband are counted including holidays, provided the accuser had the opportunity of approaching the governor, since a document laying the accusation can be handed in outside the court.”)

<sup>158</sup> “ubi vero maritus occupavit, residua tempora ei, qui occupare non potest, non cedant.” (“If a husband takes precedence and begins an accusation, time [to make an accusation] does not run against the father so as to prevent his bringing one.”)

and fathers and not to third parties. Other circumstances in which the time period was paused were if the husband was away on public business or in the army (*CJ.* 9.9.15.1, AD 242; 9.9.21.pr., AD 290). The father's right to make an accusation would also be paused at the same time (Ulpian, *de Adult.* book 2, *D.* 48.5.16.pr.).<sup>159</sup> This suspension of the time limits helped to ensure that the husband and father were given as much opportunity to accuse as possible.

Both the accuser and the accused had to be present at the trial and this was to be carried out in the province in which the *adulterium* was said to have been committed (*CJ.* 9.9.12, AD 239; *CJ.* 9.9.19, AD 287). Individuals who had left the province could not be accused in their absence and neither could they be asked to come back to that province to face prosecution (*CJ.* 9.9.15.pr., AD 242). This exemption was only valid if they had left the province before the accusation was made, so that it was not possible to avoid prosecution by fleeing and in such an event the offender could be charged even in their absence (Ulpian, *de Adult.* book 2, *D.* 48.5.16.2; *CJ.* 9.9.14, AD 242). In the same way, a person absent on public business could not be prosecuted until he returned (Ulpian, *de Adult.* book 2, *D.* 48.5.16.1). However, if the accused committed *adulterium* in the province in which he held office then he was liable to prosecution (Ulpian, *de Adult.* book 2, *D.* 48.5.16.4), unless his *persona* (i.e. high status, one assumes) meant that he could not be prosecuted by the governor.

The form for indictments is set out by Paul:

*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 et 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: neque autem diem neque horam invitus comprehendet.*

The layout of forms of indictment is as follows: 'Consul and date. L. Titius announces in the presence of 'S', praetor or proconsul, that he accuses Maevia under the *lex Julia de adulteriis*, stating that she has committed *adulterium* with G. Seius in the *civitas* of 'A', in 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 *adulterium* was committed, the person with

---

<sup>159</sup> *"et putat Pomponius debere dici, quoad maritus magistratum gerit, patris quoque accusationem impediendam, ne praeripiatur marito ius, quod cum eo aequale habet: igitur non cedent sexaginta dies patri, cum accusare non potest."* ("Pomponius also thinks that it should be stated that so long as the husband is holding the magistracy, the father's right to bring an accusation should also be held up, to prevent the husband's right, which is equal with that [of the father], being taken away from him; therefore, the father's sixty days will not run out since he cannot bring an accusation.")

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 all those who bring a charge against another; but he shall not include the day and hour unless he wishes.

(*de Adult.* book 3, *D.* 48.2.3.pr.)<sup>160</sup>

The importance of the place in which the adultery took place is clearly shown. Furthermore, an accusation could be made by the accuser in person or he could send an agent to do so on his behalf (Ulpian, *ad leg. Iul. de Adult.* book 2, *D.* 48.5.18.5). If time permitted, the accuser was able to correct any errors in his accusation to prevent the case from falling through (Modestinus, *Reg.* book 8, *D.* 48.5.36). However, if he wanted to change the name of the adulterer whom he was accusing he had to submit a new accusation (Ulpian, *ad leg. Iul. de Adult.* book 2, *D.* 48.5.18.3).

An accusation for *adulterium* could be dropped by the accuser at any time. However, if the husband dropped the accusation he forfeited the privilege of using the right of a husband to bring a later accusation and could therefore only do so as a third party (Ulpian, *Disp.* book 8, *D.* 48.5.2.1). If the husband then went on to remarry the wife he had accused of *adulterium* then he was not permitted to bring a charge of *adulterium* against her again: “*abolevit enim prioris matrimonii delicta reducendo eam*” (“for he cancelled the offences of the previous marriage by marrying her again”; Ulpian, *de Adult.* book 2, *D.* 48.5.14.9).

### Other Charges

The *lex Iulia de adulteriis coercendis* did not punish only those who took part in the act of *adulterium* itself. There were a number of secondary offences which incurred the same punishment as *adulterium*, which included:

*si adulterii damnatam sciens uxorem duxerit, aut in adulterio deprehensam uxorem non dimiserit, quaestumve de adulterio uxoris fecerit, pretiumve pro comperto stupro acceperit, aut domum praebuerit ad stuprum adulteriumve in eam committendum.*

If he married a woman knowing that she had been condemned for *adulterium* or did not divorce a wife taken in *adulterium* or made a profit from his wife's *adulterium* or accepted

---

<sup>160</sup> Garnsey suggest that it is highly likely that Paul copied this from an earlier document and so some of the details contained within it may not have been entirely relevant to his own day (1967:56). Bauman, however, maintains that Paul is a meticulous and careful author who made efforts to avoid including obsolete details (1968:71).

money to conceal *stuprum* which he has discovered or provided a house where *stuprum* or *adulterium* might take place.

(Tryphoninus, *Disp.* book 3, *D.* 4.4.37.1)<sup>161</sup>

These secondary accusations had to be made at the same time as the main accusation of *adulterium* (Paul, *de Adult.* book 3, *D.* 48.2.3.3) and were punished with just as much severity. A husband who allowed his wife to behave in such a way was particularly liable to censure:

*lenocinii quidem crimen lege Iulia de adulteris praescriptum est, cum sit in eum maritum poena statuta, qui de adulterio uxoris suae quid ceperit, item in eum, qui in adulterio deprehensam retinuerit.*

The crime of *lenocinium* is laid down by the *lex Iulia de adulteriis*, since a penalty is appointed by the statute for the husband who acquires anything from the *adulterium* of his wife and also for him who keeps her after she has been caught in *adulterium*.

(Ulpian, *Disp.* book 8, *D.* 48.5.2.2)

The word '*lenocinium*' is derived from '*leno*', meaning a pimp or panderer.<sup>162</sup> A husband who allowed his wife to commit *adulterium* and received anything in return was effectively pimping her out and she had become nothing more than a prostitute.<sup>163</sup> The charge was brought against a husband "*cum excusare ignorantiam suam non potest vel adumbrare patientiam praetextu incredibilitatis*" ("when he cannot defend his ignorance [of the *adulterium*] or cloak his forbearance with the pretext of disbelief"; Ulpian, *de Adult.* book 4, *D.* 48.5.30.pr.). In the same passage, Ulpian records the words of the statute as "*adulterum in domo deprehensum dimiserit*"; a charge of *lenocinium* would be brought against a husband who had released an adulterer caught in his house, as he could have no recourse for claiming ignorance in this instance. If, however, the *adulterium* was only suspected and the adulterous pair had not been discovered, then a charge could not be brought against the husband (Ulpian, *de Adult.* book 4, *D.* 48.5.30.4).<sup>164</sup> The only

---

<sup>161</sup> These secondary offences were of real concern to the jurists and *lenocinium* was the part of the adultery statute that went through the greatest changes as a result of the jurists' interference (McGinn 1998a:220).

<sup>162</sup> Juvenal uses *leno* to refer to a husband who is complicit in his wife's adultery at 1.55-57 (quoted in section 4.4). The '*leno-maritus*' was a stock figure in Latin literature, who took bribes to look the other way during his wife's affairs (see Tracy 1976).

<sup>163</sup> The connection between prostitution and *adulterium* is seen within the legal texts: "*uxorem pateretur adulterari meretricio quodam genere*" ("he has allowed his wife to commit *adulterium* in the manner of a whore"; Ulpian, *de Adult.* book 4, *D.* 48.5.30.4).

<sup>164</sup> "*quod si patiatu uxorem delinquere non ob quaestum, sed negligentiam vel culpam vel quandam patientiam vel nimiam credulitatem, extra legem positus videtur*" ("if, however, he should allow his wife to go astray, not for profit but out of negligence or carelessness or a degree of forbearance or excessive



charge of *lenocinium* found within the literary sources is in Tacitus *Ann.* 2.85, where Titidius Labeo is able to escape a charge of *lenocinium* by claiming that the sixty-day period in which he could bring an accusation was not yet up.<sup>165</sup> Consequently, the *lex Iulia* left no room for forgiveness and second chances; if the *adulterium* was discovered in the house of the husband he would have no choice but to divorce his wife or face a charge of *lenocinium*. A charge of *lenocinium* could also be brought against anyone who knowingly married or remarried a woman convicted of *adulterium* or *stuprum* (Ulpian, *de Adult.* book 4, *D.* 48.5.30.1; *CJ.* 9.9.9, AD 224).<sup>166</sup>

An accusation of *lenocinium* could not be made against the husband by the adulterer once the accusation of *adulterium* had been made, for the adulterer was not allowed to alleviate his own crime by passing the focus of blame on to the husband (Ulpian, *Disp.* book 8, *D.* 48.5.2.4, 7). The judge overseeing the *adulterium* trial could bring a charge of *lenocinium* against the husband if he found in the course of the proceedings that there was evidence of such (Ulpian, *Disp.* book 8, *D.* 48.5.2.6). However, the charge of *lenocinium* against the husband would not prevent him from bringing a charge of *adulterium* against his wife (Ulpian, *Disp.* book 8, *D.* 48.5.2.5).

Other charges outside of *lenocinium* included taking a bribe to conceal an adulterous affair or a case of *stuprum* (Ulpian, *de Adult.* book 4, *D.* 48.5.30.2; *CJ.* 9.9.10, AD 225).<sup>167</sup> Furthermore, anyone who knowingly made their house available for *stuprum* or *adulterium* was to be punished (Papinian, *de Adult.* book 2, *D.* 48.5.9.pr.; Ulpian, *de Adult.* book 4, *D.* 48.5.10.pr.), just as anyone who helped facilitate adulterous relations that were committed outdoors or in the baths would be liable for prosecution (Ulpian, *de Adult.* book 4, *D.* 48.5.10.1). The legislation even went as far as to make liable anyone who had made their house available for the planning of *adulterium*, even if the act itself was not committed there (Ulpian, *de Adult.* book 4, *D.* 48.5.10.2). Women were also answerable to these secondary charges of aiding *adulterium* (Papinian, *de Adult.* book 2, *D.* 48.5.11.1), as was a woman who accepted a bribe to conceal her husband's

---

credulity, his position seems to be outside [the scope of] the statute"). See also: "*crimen lenocinii contrahunt, qui deprehensam in adulterio uxorem in matrimonio detinuerunt, non qui suspectam adulteram habuerunt*" ("the crime of *lenocinium* is committed by those who retain in marriage a wife caught in the act of *adulterium*, not by those who suspect their wife of *adulterium*"; *CJ.* 9.9.2, AD 199); Ulpian, *Disp.* book 8, *D.* 48.5.2.3; *CJ.* 9.9.17.1, AD 257.

<sup>165</sup> Quoted above.

<sup>166</sup> However, a woman who was convicted under the *lex Iulia* for any of the other charges, such as aiding *adulterium*, could remarry.

<sup>167</sup> If they had let the offenders go without payment, however, they could not be charged under the *lex Iulia*. See Daube (1972:377-380) for the provisions surrounding the adulterer paying a ransom to avoid prosecution.

*adulterium* with another married woman (Marcian, *de Pub. Iud.* book 1, *D.* 48.5.34.2).<sup>168</sup> These charges were awarded the same penalties as the act of *adulterium* (Tryphoninus, *Disp.* book 3, *D.* 4.4.37.1; Papinian, *de Adult.* book 2, *D.* 48.5.9.pr.; Marcian, *de Pub. Iud.* book 1, *D.* 48.5.34.2; *CJ.* 9.9.10, AD 225).

### Torture of Slaves

Evidence from slaves was admissible in cases of criminal law where there was already at least some evidence but there was a need for further proof that only a slave could provide.<sup>169</sup> This evidence was to be extracted through torture, despite its unreliability being acknowledged (Ulpian, *Duties* book 8, *D.* 48.18.1.23-27). However, Augustus wrote in a rescript in the consulship of Vibius Habitus and Lucius Apronianus (AD 8) that the torture of slaves should only be used when dealing with the most serious of cases:<sup>170</sup>

*quaestiones neque semper in omni causa et persona desiderari debere arbitror, et, cum capitalia et atrociora maleficia non aliter explorari et investigari possunt quam per servorum quaestiones, efficacissimas eas esse ad requirendam veritatem existimo et habendas censeo.*

I do not think that interrogations under torture ought to be requested in every case and person; but when capital or more serious crimes cannot be explored and investigated in any other way than by the torturing of slaves, then I think those [interrogations] are the most effective means of seeking out the truth and I hold that they should be conducted.

(Paul, *de Adult.* book 2, *D.* 48.18.8.pr.)

The torture of slaves was allowed in cases of *adulterium*.<sup>171</sup> Of particular note is that evidence from tortured slaves was allowed to be used against their owner in cases of *adulterium*, a measure used only in response to the severest of crimes, including treason (Papinian, *Resp.* book

---

<sup>168</sup> See Daube 1972:373-377.

<sup>169</sup> Evidence from slaves was not normally admissible in civil law, but where it was used it was taken through torture (Buckland 1970:86; Watson 1987:84).

<sup>170</sup> See Buckland 1970:86-91 and Watson 1987:84-89 for an overview of the torture of slaves. Bernstein discusses the portrayal of the ethics and reliability of torturing slaves and freeborn citizens in declamation (2012).

<sup>171</sup> The torture of slaves in trials for *adulterium* is found in both Tacitus (*Ann.* 3.23, 6.47) and Suetonius (*Dom.* 8.4).

16, *D.* 48.18.17.pr.; *CJ.* 9.41.1, AD 196). However, torture was not allowed in cases of *stuprum* (Papinian, *Resp.* book 16, *D.* 48.18.17.1), suggesting that it was seen to be a lesser offence.<sup>172</sup>

In a case of divorce or death of the husband, the slaves of the wife and her father could not be manumitted for a sixty-day period so they would be available for torture if a charge of *adulterium* was brought forward (Ulpian, *de Adult.* book 4, *D.* 40.9.12.1-5; Ulpian, *de Adult.* book 4, *D.* 40.9.14.pr.). This sixty-day suspension coincided with the sixty-day period in which the father and husband could bring accusations and within the original law it was only the husband and father who could request the torture of slaves (Papinian, *de Adult.* book 2, *D.* 48.18.6.pr.). However, this was extended by Marcus Aurelius so that an accuser from outside the family could also make this request (Papinian, *Resp.* book 16, *D.* 48.18.17.pr.).<sup>173</sup> There is confusion within the legal texts about whose slaves could be tortured; all agree that the slaves of the adulteress could be tortured but whether the slaves of the husband, the adulterer, or of the parents could be tortured is uncertain.<sup>174</sup> Then to add further confusion, Hadrian allowed slaves who did not belong to the household to be submitted for torture as well (Ulpian, *de Adult.* book 3, *D.* 48.5.28.6). Yet still, to be eligible for torture the slave had to have been present in the house at the time that the adultery took place (*CJ.* 9.9.31, AD 385).

The person making the accusation, as well as the accused and their patron, had to be present during the torture (Ulpian, *de Adult.* book 3, *D.* 48.5.28.7). Sureties of double the slave's value had to be given to the owner (Ulpian, *de Adult.* book 3, *D.* 48.5.28.pr.).<sup>175</sup> However, if the accusation of *adulterium* had been made against the slave being tortured, only a single amount had to be given (Ulpian, *de Adult.* book 3, *D.* 48.5.28.16). Once they had been tortured, the slaves, whether they belonged to the accused or to the accuser, became *publici* (public slaves), a measure which was meant to prevent slaves from lying for their masters with the hope that they

---

<sup>172</sup> Valerius Maximus records one case where the torture of slaves was used for a charge of *stuprum* (6.8.1); however, this took place before the introduction of the *lex Iulia*.

<sup>173</sup> Also *CJ.* 9.9.6, AD 223.

<sup>174</sup> *CJ.* 9.9.3 (AD 213) has the adulteress and her father's slaves, *CJ.* 9.9.31 (AD 385) the slaves of the husband and the adulteress, *CJ.* 9.9.35.pr. (AD 532) the slaves of the adulteress, her husband and their parents, Papinian (*de Adult.* book 2, *D.* 48.18.6.pr.) the slaves of the accused only, and Ulpian (*de Adult.* book 3, *D.* 48.5.28.6) the adulteress, the adulterer, and their parents. The slaves of a parent would only be tortured if they were employed in the household of the son or daughter (Ulpian, *de Adult.* book 2, *D.* 48.5.28.6). It must be assumed that if the *adulterium* had taken place within the father's house, his slaves would have been eligible for torture as well.

<sup>175</sup> "*iubent iudices eum servum aestimari, et ubi aestimaverint, tantam pecuniam et alterum tantum eum, qui nomen eius servi detulerit, ei ad quem ea res pertinet dare iubebunt.*" ("The judges [shall] order that slave to be valued, and when they have valued him, they shall order the man who has named the slave in his accusation to convey to him to whom this matter pertains as much money (as the slave is worth) and as much again.")

would be rewarded afterwards (Ulpian, *de Adult.* book 3, *D.* 48.5.28.11-14).<sup>176</sup> In cases where the accused was found not guilty, damages would be paid to the owner.<sup>177</sup>

### Prosecution

Augustus created a new *quaestio perpetua* to hear cases under the *lex Iulia de adulteriis coercendis*. The first of these standing courts, also known as *iudicia publica*, had been established in 149 BC by the *lex Calpurnia de repetundis* (Harries 2007:16-17) and the *quaestio de adulteriis* was the last to be created.<sup>178</sup> However, they were not a unified group, as each was created in response to immediate legal and political concerns rather than as a controlled and organised program of legal reform. The courts were presided over by the praetors and a jury of *iudices* deliberated each case.<sup>179</sup> The *quaestiones* would only have been effective in Rome itself and so in the provinces either the litigant had to be sent to Rome or *exercitio iudicii publici* could be given to the provincial governor to try the case.<sup>180</sup> The trials were first held in one of the three main fora of Rome.<sup>181</sup> According to Suetonius, the Forum of Augustus was built due to an increase in trials and subsequent overcrowding (*Aug.* 29.1). Bauman suggests that it was the introduction of the *quaestio de adulteriis* that led to this need for extra space as this was the only court added under

---

<sup>176</sup> At Dio 55.5.4 Augustus orders a group of slaves to be bought either by himself or by the state so that their evidence under torture can be used against their masters.

<sup>177</sup> “*si reus vel rea absoluti fuerint, aestimari per iudices lex damnum voluit, sive mortui fuerint, quantae pecuniae ante quaestionem fuerint, sive vivent, quantae pecuniae in his damnum datum fuerit factumve esset.*” (“If the person charged, male or female, is acquitted, the intention of the statute was that his or her loss should be assessed by the judges; and if [the slaves] have died, [it shall be established] how much money they were worth before the torture, or if they are alive how much money the damage done to them costs or [how much money] the gain [from them] would have been.”; Ulpian, *de Adult.* book 3, *D.* 48.5.28.15).

<sup>178</sup> The full list of *quaestiones* is based on Macer, *de Pub. Iud.* book 1, *D.* 48.1.1: “*non omnia iudicia, in quibus crimen vertitur, et publica sunt, sed ea tantum, quae ex legibus iudiciorum publicorum veniunt, ut Iulia maiestatis, Iulia de adulteriis, Cornelia de sicariis et veneficis, Pompeia parricidii, Iulia peculatus, Cornelia de testamentis, Iulia de vi privata, Iulia de vi publica, Iulia ambitus, Iulia repetundarum, Iulia de annona.*” (“Not all trials in which an offence is concerned are public criminal trials, such as the *lex Iulia* on treason, the *lex Iulia* on adultery, the *lex Cornelia* on murderers and poisoners, the *lex Pompeia* on parricide, the *lex Iulia* on embezzlement, the *lex Cornelia* on wills, the *leges Iuliae* on *vis privata* and *vis publica*, the *lex Iulia* on electoral corruption, the *lex Iulia* on extortion, and the *lex Iulia* on the corn dole.”)

<sup>179</sup> See Bablitz (2007) and Harries (2007:18-20) for discussions of the full procedure of the *quaestiones*.

<sup>180</sup> Jones 1972:99-100.

<sup>181</sup> Ovid makes three references to trials in the forum at *Ars* 1.79-88 (identified by Bablitz (2007:45-46) as the Forum of Caesar), *Ars* 3.449-450 and *Rem. Am.* 659-668. Bablitz suggests that all three could potentially refer to trials for adultery as they refer to relations between the sexes and Ovid was writing not long after the introduction of the *lex Iulia* (2007:45).

Augustus (1968:81). The *quaestio* was a very busy court<sup>182</sup> and it has been calculated that it could have completed one or two cases a day, which would see each court complete three or four hundred cases a year based on the two hundred and thirty days on which court could be held per year (Bauman 1968:80). Several sessions must then have been held concurrently in order to deal with the work load.

Almost as soon as the *quaestio de adulteriis* was set up changes in the legal and political systems introduced under the principate began to erode the control of the *quaestio perpetua* as the influence of the city prefect expanded and the senate and the emperor became the dominant courts. Indeed, by AD 8 the senatorial court was working alongside the *quaestiones*: “*nec mea decreto damnasti facta senatus,/ nec mea selecto iudice iussa fuga est*” (“you neither condemned my deeds by a decree of the senate, nor was my exile ordered by a jury court”; Ovid *Trist.* 2.131-132). The cases that were held before the senate all involved people of high rank and Talbert suggests that there would have been other associated charges as well as “delicate political overtones” involved in these cases (1984:466). These senatorial trials continued through the Julio-Claudian but after this period there is no evidence for trials before the senate. According to Paul the *quaestiones* had fallen out of use by the time he was writing in the late second and early third centuries (*de iud. Pub.* book 1, *D.* 48.1.8).<sup>183</sup> Bauman (1968), however, has argued for a later date for the end of the *quaestio de adulteriis*.<sup>184</sup> He has used statistical analysis of the material contained within the *Digest* on the *lex Iulia de adulteriis coercendis* and the number of rescripts associated with it (which demonstrates the move from *quaestiones* to the *praefectus urbi*) to show not only that the *quaestio de adulteriis* was still in use but that the *lex Iulia* was “still very much alive in its original connotation” and was attributed high importance by the later jurists (1968:72-75). Furthermore, based on the backlog of cases Dio records at 76.16, the *quaestio* still appears to be in operation during his first consulship, dated to around AD 205 (Bauman 1968:91 n.175).

We have two examples of adultery trials being held before the *quaestio de adulteriis*; Maecenas and Apuleius acted as witnesses for a trial of *μοιχεία* held before the praetor (Dio 54.30.4)<sup>185</sup> and Antistius Vetus was tried by *iudices* for *adulterium* in AD 21 (Tac. *Ann.* 3.38). The

---

<sup>182</sup> Dio records a backlog of 3000 cases whilst he was consul in AD 205 (76.16).

<sup>183</sup> Garnsey (1967) follows Paul and argues that the *quaestio* was no longer used by the early third century.

<sup>184</sup> Bauman suggests that the reason why the *quaestio de adulteriis* survived longer than the other permanent courts (such as treason) was that it had a less direct influence on matters of state and so it came under the notice of the senate and emperor with a much lesser frequency (1968:72).

<sup>185</sup> No date is given for this trial, but Dio mentions it in relation to events after Agrippa's death in 12 BC so it most likely took place between this date and Maecenas' death in 8 BC.

majority of adultery trials that come down to us in the written records are held either before the senate or the emperor.<sup>186</sup> However, this does not mean that the *quaestio* was not used. These trials are recorded because they are unusual and/or involve those close to the imperial family and it is also specifically for this reason that they would have been held either before the senate or the emperor. Unfortunately, however, very little detail is given about the processes of accusation and trial.

### Punishment

The *lex Iulia* set out a series of penalties for *adulterium* that greatly reduced the freedom of the guilty parties. The legal sources do not record the penalties for *stuprum*, though scholars agree that they were most likely the same as for *adulterium*.<sup>187</sup> The primary punishments were loss of property and *relegatio* to an island, the only legal source for which is Paul:<sup>188</sup>

*adulterii convictas mulieres dimidia parte dotis et tertia parte bonorum ac relegatione in insulam placuit coerceri: adulteris vero viris pari in insulam relegatione dimidiam bonorum partem auferri, dummodo in diversas insulas relegendur.*

It is agreed to punish women convicted of *adulterium* by the loss of half of their dowry and a third of their property and relegation to an island: likewise the male adulterer by relegation to an island and half his property will be taken away, provided that they are relegated to different islands.

(*Sent.* 2.26.14)<sup>189</sup>

<sup>186</sup> See Marshall (1990) for a survey of women on trial before the senate in the first century AD, including cases of *adulterium* and *stuprum* and Treggiari (1991, appendix two) for a list of adultery prosecutions under the Julio-Claudians.

<sup>187</sup> Originally suggested by Sehling, who argues that as the words were used interchangeably by the jurists the penalties must have been the same (1883:160). McGinn (1998a:144 n.46) agrees but he is unsure how some of the financial penalties would have had much impact on say an unmarried *filiæfamilias*.

<sup>188</sup> Although this is a postclassical source, it is still acknowledged as having originated from the Augustan statute (McGinn 1998a:142 n.23). It also heralds the beginning of the use of *relegatio* in criminal cases (Garnsey 1970:116).

<sup>189</sup> Exile: Julia the Elder was banished to the island of Pandateria (Tac. *Ann.* 1.53; 2 BC); Julia the Younger to Trimerus (Tac. *Ann.* 4.71; AD 8); a number of the lovers of the two Julias (Tac. *Ann.* 1.53, 3.24; 2 BC and AD 8 respectively); Appuleia was removed from the 200<sup>th</sup> milestone and her lover Manlius forbidden access to Italy and Africa (Tac. *Ann.* 2.50; AD 17); Vistillia is sent to the island of Seriphos (Tac. *Ann.* 2.85; AD 19); Lepida was exiled, though her property was not confiscated for the benefit of her daughter (Tac. *Ann.* 3.23; AD 20); Aquila (Tac. *Ann.* 4.42; AD 25); Julia Livilla and Agrippina exiled to the Pontian Islands (Dio 59.22.8; AD 39); Ofonius Tigellinus (Dio 59.23.9; AD 39); Julia (daughter of Drusus the Younger) was initially exiled but later executed (Dio 60.8.5; Sen. *Oct.* 944-6; AD 43); Anicetus Neronis was banished to Sardinia after being persuaded to confess to false charges of *adulterium* with Octavia (Tac. *Ann.* 14.62; AD 62) and she

The adulterer and adulteress were to be sent to separate islands and, although no indication is given in the text for how long this relegation should last for, it was to be a temporary measure<sup>190</sup> and did not involve the loss of citizenship (Garnsey 1970:116). Once convicted, they would lose the liberties which separated citizens from the other members of Roman society and suffer *infamia*.<sup>191</sup> The adulterer would lose the right to become a soldier or if he was already in the army he would be discharged (Arrius Menander, *de Re Mil.* book 1, *D.* 49.16.4.7; Ulpian, *ad Ed.* book 6, *D.* 3.2.2.3).<sup>192</sup> Furthermore, he could no longer give testimony or act as a witness for a will (Papinian, *de Adult.* book 1, *D.* 22.5.14). Similarly, the adulteress would not be able to give testimony or act as a witness (Paul, *de Adult.* book 2, *D.* 22.5.18; Ulpian, *ad Sab.* book 1, *D.* 28.1.20.6).<sup>193</sup> A woman convicted of *adulterium* was not allowed to marry a Roman citizen;<sup>194</sup> if she did so the husband would be charged with *lenocinium* (*CJ.* 9.9.9, AD 224). Ulpian also included in this restriction women who were convicted of *stuprum* (*de Adult.* book 4, *D.* 48.5.30.1). According to Modestinus, this was only during the lifetime of the husband (*Resp.* book 5, *D.* 23.2.26). However, considering the attempts that the legislation makes to associate the adulteress with the lowest ranks of society, specifically prostitutes, the punishment would work more as a deterrent if it was to be perpetual. Nevertheless, there were no restrictions on an adulteress being kept as a concubine (Ulpian, *ad Leg. Iul. et Pap.* book 2, *D.* 25.7.1.2).

---

was sent to Pandateria before being executed (14.63-64; AD 62). Loss of property is regularly not mentioned. It must be assumed that as a woman would not own property if she was still under her father's *potestas* (or if she was in a *cum manu* marriage, though this was rare in this period) that this penalty would only apply to those women who were *sui iuris*.

<sup>190</sup> The other provisions of the legislation, for example that a convicted adulteress could not remarry (Modestinus, *Resp.* book 5, *D.* 23.2.26) or that the adulterer could no longer give testimony (Papinian, *de Adult.* book 1, *D.* 22.5.14), suggest that the *relegatio* could only have been temporary, as such measures would have had little impact on a person banished to a provincial island. See Paul (*Praet. Ed.* book 15, *D.* 48.1.2) on the difference between *exilium* and *relegatio*.

<sup>191</sup> According to Ulpian, the woman did not need to be convicted to suffer *infamia* (understood here as a loss of reputation rather than the legal penalty of *infamia*), for she would suffer it if she was caught in *adulterium* and convicted, if she was convicted without being caught in the act, and also if she was caught in *adulterium* but acquitted (*ad leg. Iul. et Pap.* book 1, *D.* 23.2.43.12). Either way, the woman's reputation was damaged. For a discussion of *infamia* in its legal and non-legal sense see Crook 1967:83-85.

<sup>192</sup> The same punishment would be given to a soldier who was convicted of *lenocinium* (Papinian, *de Adult.* book 1, *D.* 48.5.12.pr.).

<sup>193</sup> Both of these sources are referring to the question of whether women could give testimony or act as a witness and were used to show that at one point this right was allowed to women, though at the time that the jurists were writing this was no longer the case.

<sup>194</sup> Paul (*ad leg. Iul. et Pap.* book 2, *D.* 23.2.47) says that a senator's daughter who was a prostitute or actress, or who had been convicted of a criminal charge such as *adulterium*, was able to marry a freedman. Therefore, the restrictions on remarriage were only in regards to marriage with freeborn Roman citizens.

The *lex Iulia* introduced the *ius occidendi* (the right of killing).<sup>195</sup> This allowed the father of the adulteress to kill both his daughter and the adulterer if he found them together in either his house (even if she did not live there) or the house of his son-in-law (Papinian, *de Adult.* book 1, *D.* 48.5.23.2; Ulpian, *de Adult.* book 1, *D.* 48.5.24.2). The reason according to Ulpian was that it was a greater insult (*maiores iniuriam*) for the adulteress to have brought her lover back to the house of her husband or father.<sup>196</sup> This had to be the house in which the husband or father lived in at the time, not just a house that they owned (Ulpian, *de Adult.* book 1, *D.* 48.5.24.3). He could be either a natural or an adoptive father (Papinian, *de Adult.* book 1, *D.* 48.5.23.pr.) but the daughter had to be under his *potestas* (Papinian, *de Adult.* book 1, *D.* 48.5.21).<sup>197</sup> Therefore, in certain families the *ius occidendi* could not be used; for a grandfather who was the *paterfamilias* could not employ this right and neither could a father who was himself a son-in-power.<sup>198</sup> The daughter and her lover had to have been caught in the act (Ulpian, *de Adult.* book 1, *D.* 48.5.24.pr.).<sup>199</sup> Moreover, the father had to kill both the adulteress and the adulterer at the same time (Ulpian, *de Adult.* book 1, *D.* 48.5.24.4; Macer, *de Pub. Iud.* book 1, *D.* 48.5.33.pr.).<sup>200</sup> If he killed only one, or if one escaped and he did not do all he could to find and kill them also, he would be charged under the

---

<sup>195</sup> Examples of such killings are very rare in the literary sources. However, there are some traces of such killings in second and third century rescripts (Macer, *de. Pub. Iud.* book 1, *D.* 48.5.33.pr., Marcus Aurelius and Commodus; Papinian, *Quaest.* book 36, *D.* 48.5.39.8, Marcus Aurelius and Commodus; *CJ.* 9.9.4, Alexander Severus, no date given). For the development of the *ius occidendi* in Italy up to the nineteenth century see Cantarella (1991).

<sup>196</sup> The wife's adultery brought dishonour to not only herself but both her husband's family and her father's (Fayer 2005:226). What is more, since the earliest period of Rome's history adultery had been felt to be a greater insult to her blood relatives than to her husband (Watson 1975:37).

<sup>197</sup> "*patri datur ius occidendi adulterum cum filia quam in potestate habet: itaque nemo alius ex patribus idem iure faciet: sed nec filius familias pater.*" ("A father is granted the right of killing an adulterer along with a daughter whom he has in power; no other [class of] father may lawfully do this, including a father who is a *filiusfamilias*.") See Fayer for a detailed discussion of the circumstances in which a father can and cannot use the *ius occidendi* (2005:222-233).

<sup>198</sup> The former is a break from tradition where the *paterfamilias* had the *vitalis necisque potestas* over anyone under his *potestas* (Fayer 2005:227). There was debate amongst the jurists as to the relationship between the *ius occidendi* and the *vitalis necisque potestas*; Papinian said that the *ius occidendi* did not provide the father with a new power over the daughter, but imposed on him the duty that he must kill both his daughter and the adulterer so that he is seen to have been motivated by higher justice ("*maiores aequitate ductus*"; *de Adult.* book 1, *Coll.* 4.8.1). Saller (1988), however, argues against the idea of the *paterfamilias* having complete and oppressive disciplinary control over his family. But he does acknowledge that the *lex Iulia*'s inclusion of strict limits to the *ius occidendi* shows that the right of a father over the life and death of his children was not taken for granted (1988:396).

<sup>199</sup> See also: *lex Rom. Burg.* 25. Both are quoted in section 1.5.

<sup>200</sup> The law only foresaw that the father would kill the adulterer and spare his daughter; there is no expectation that a father might kill his daughter and spare the adulterer (Fayer 2005:241).



*lex Cornelia*. This regulation was intended to prevent the father from making rash decisions or from covering up a murder as a case of *adulterium*.<sup>201</sup>

The right to kill both the adulteress and the adulterer was only given to the father as it was believed that the “*mariti calor et impetus*” (“heat and impetuosity of a husband”) in such a situation would make him act too hastily (Papinian, *de Adult.* book 1, *D.* 48.5.23.4). However, the husband was allowed to kill the adulterer (but never his wife) if he was of a low status:

*nam hac lege cavetur, ut liceat viro deprehensum domi suae (non etiam soceri) in adulterio uxoris occidere eum, qui leno fuerit quive artem ludicram ante fecerit in scaenam saltandi cantandive causa prodierit iudiciove publico damnatus neque in integrum restitutus erit, quive libertus eius mariti uxorisve, patris matris, filii filiae utrius eorum fuerit ... quive servus erit.*

For it is provided by this statute that a husband is permitted to kill a man whom he catches in *adulterium* with his wife in his own house (not also [in that] of his father-in-law) if the [paramour] is a pimp or if he was previously an actor or performed on the stage as a dancer or singer or if he has been condemned in criminal proceedings and is not yet restored to his former status, or if he is the freedman of the husband or wife or of the father, mother, son, or daughter of either of them ... or if he is a slave.

(Macer, *de Pub. Iud.* book 1, *D.* 48.5.25.pr.)

If the husband was to kill his wife or an adulterer who did not fall into any of these categories, he would be tried under the *lex Cornelia* for murder. However, he would not receive the usual sentence of death, but a lesser one, such as *relegatio* if he was of high status or forced labour if he was of low status (Papinian, *Quaest.* book 36, *D.* 48.5.39.8; Marcian, *Inst.* book 14, *D.* 48.8.1.5; *CJ.* 9.9.4.1, Alexander Severus, though no date given). It is clear that, at least in the eyes of the men who wrote the laws, the passion which had led the husband to act outside of the law was understandable. If the adulterer did not come under any of these categories, the husband was able to detain the adulterer for up to twenty hours for the purpose of gaining testimony (Ulpian, *ad Leg. Iul. de Adult.* book 2, *D.* 48.5.26.pr.).

---

<sup>201</sup> See Cantarella 1991:233.

### Punishment in Literature

The punishment and repression of sexual transgression were undertaken by successive emperors. Augustus was brutal in his punishment of *adulterium*, including forcing the freedman Polus to commit suicide for *adulterium* with *matronae* (Suet. *Aug.* 67.2). Involuntary suicide is not found in any of the juristic texts relating to the *lex Iulia* but Polus' status as a freedman would have meant a harsher punishment was felt necessary as his affairs with *matronae* would have been particularly outrageous. Augustus' punishment of his own daughter and granddaughter for adultery is infamous.<sup>202</sup> Suetonius briefly touches upon the scandal: "*Iulias, filiam et neptem, omnibus probris contaminatas relegavit*" ("he relegated the two Julias, his daughter and granddaughter, after they were contaminated by every disgrace"; *Aug.* 65.1). Tacitus refers to it several times and gives the punishment for the two Julias as exile and for their lovers either exile or death.<sup>203</sup>

In line with the provisions of the *lex Iulia*, the initial punishment for the adulteress was being divorced by her husband (Suet. *Tib.* 11.4; *Claud.* 26.2). Numerous accusations and punishments for adultery are recorded by Tacitus. All involve either members of the imperial family or those members of the uppermost levels of the senatorial orders who were closely related to the imperial family. The standard punishment is relegation or exile, as stipulated by the *lex Iulia*. Under Tiberius Aquilia is exiled for *adulterium*:

*Aquiliam adulterii delatam cum Vario Ligure, quamquam Lentulus Gaetulicus consul designatus lege Iulia damnasset, exilio punivit.*

He punished Aquilia with *exilium* on the charge of *adulterium* with Varius Ligus, although Lentulus Gaetulicus, as consul designate, had sentenced her under the Julian law.

(Tac. *Ann.* 4.42)

Aquilia had already been punished for her adultery by the consul under the terms of the *lex Iulia* until this was over-ruled by Tiberius. The sense of the passage is that Tiberius was inflicting a heavier punishment on her than Gaetulicus. There is no mention of what punishment Gaetulicus gave her, but under the *lex Iulia* she should have lost part of her property and been relegated.<sup>204</sup>

---

<sup>202</sup> See Dorey 1972:4-6; Ferrill 1980; Syme 1984a; Severy 2003:180-184.

<sup>203</sup> *Ann.* 1.10, 1.53, 3.24, 4.44, 4.71.

<sup>204</sup> The penalty under the *lex Iulia* was *relegatio* (see earlier discussion). *Exilium* involved the loss of citizen rights and so was a more permanent and harsher punishment (Paul, *Praet. Ed.* book 15, *D.* 48.1.2). However, Tacitus uses many different phrases to refer to exile and uses *exilium* also at *Ann.* 1.53

Seneca the Younger was also exiled for an affair with Julia Livia, the daughter of Germanicus. This scandal was recorded by Tacitus in the now lost book five of the *Annals*, though he refers to it in passing in later books (*Ann.* 12.8, 13.42). Nero, when he wanted to rid himself of his wife Octavia in order to marry Poppaea, forced Anicetus to make a false confession of *adulterium* with her (*Tac. Ann.* 14.62). The punishment for both was exile; Anicetus was sent to Sardinia (*Tac. Ann.* 14.62) and Octavia to Pandateria (*Tac. Ann.* 14.63).

Albucilla was another woman tried for *adulterium* under Tiberius:

*dein multorum amoribus famosa Albucilla, cui matrimonium cum Satrio Secundo coniurationis indice fuerat, defertur impietatis in principem; conectebantur ut conscii et adulteri eius Cn. Domitius, Vibius Marsus, L. Arruntius.*

Next Albucilla, made famous by a multitude of lovers and who had been married to Satrius Secundus, the informer of the conspiracy, was indicted of impiety toward the princeps; linked to her as her accomplices and adulterers were Cn. Domitius, Vibius Marsus and L. Arruntius.

(*Tac. Ann.* 6.47)

We are told by Tacitus that Arruntius committed suicide (*Ann.* 6.48), but the fate of the other two lovers is not given.<sup>205</sup> Albucilla at first tried to kill herself, but was then taken to prison (*Ann.* 6.48). Those who helped her in her affair ("*stuprorum eius ministri*"; *Ann.* 6.48) were either exiled or lost their senatorial rank or both. These punishments were in line with the *lex Iulia*, which imposed the same penalties on those who helped anyone in adultery as those who had taken part in it.<sup>206</sup>

There are several other examples of voluntary suicide – such as Scaurus, who by committing suicide "*damnationem anteit*" ("forestalled his sentence"; *Tac. Ann.* 3.29). Similarly, Aemilia Lepida committed suicide after the protection that her father's influence had given her stopped following his death (*Tac. Ann.* 6.40). However, not all suicides were carried out as a result of the offender's free will. In the reign of Claudius, Poppaea Sabina was accused of adultery with Asiaticus, the former lover of Messalina (*Tac. Ann.* 11.1). While Asiaticus committed suicide of his

---

(Sempronius Gracchus), 3.24 (Sılanus), 4.71 (Julia the Younger), 13.42 (Seneca the Younger) and 14.62 (Anicetus). Either the *exilium* was the common penalty in cases involving the imperial family or Tacitus uses the terms interchangeably. Cf. Livy 25.2.9 – a group of *matronae* punished with *exilium* for *stuprum* during the republic.

<sup>205</sup> We are instead told that they extended their lives instead of acting rashly like Arruntius (*Tac. Ann.* 6.48).

<sup>206</sup> Messalina also had several equestrians executed because they provided the house in which her lover Mnester met with her rival Poppaea for their own affair, though this is not the official reason given for their prosecution (*Tac. Ann.* 11.4).

own accord (Tac. *Ann.* 11.3),<sup>207</sup> Poppaea, was forced to take her own life: “*ipsa ad perniciem Poppaeae festinat, subditis qui terrore carceris ad voluntariam mortem propellerent*” (“[Messalina] hastens for the destruction of Poppaea, by putting her into the hand of men who through the fear of prison drove her to a voluntary death”; Tac. *Ann.* 11.2).

Book eleven of Tacitus’ *Annals* is full of the *adulteria* of Messalina<sup>208</sup> until Claudius determines that he must punish his wife: “*isque illi finis inscitiae erga domum suam fuit: haud multo post flagitia uxoris noscere ac punire adactus*” (“and now came the end of ignorance towards his home: soon after he was forced to know much about his wife’s disgraces and to punish her”; *Ann.* 11.25). Once she was cornered, Messalina tried to commit suicide but was killed by the tribune (*Ann.* 11.38). The majority of her lovers were executed, most notably Silius (*Ann.* 11.35) and Mnester (*Ann.* 11.36). However, two were saved from death, Suillius Caesoninus and Plautius Lateranus (*Ann.* 11.36), though no detail is given about the punishment that they were given instead. However, in AD 55 Lateranus was restored to the senate by Nero (*Ann.* 13.11), therefore loss of his senatorial rank must have been included. This episode also demonstrates that certain punishments for *adulterium*, such as loss of senatorial status and *relegatio*, could be rescinded.

Suetonius also records how Nero, in his attempt to remove his wife Claudia Octavia, accused her of *adulterium* and then killed her (*Nero* 35.2). As we have seen, under the *lex Iulia* the *ius occidendi* applied to fathers only (Papinian, *de Adult.* book 1, *D.* 48.5.21). A husband was allowed to kill an adulterer who was of a base status (Macer, *de Pub. Iud.* book 1, *D.* 48.5.25.pr.). Yet, he was not to kill the adulteress under any circumstance. Nero, however, as emperor, could act outside the boundaries of the *lex Iulia*. A further provision of the *lex Iulia* that is found within Suetonius is *lenocinium* and the prohibition of taking back an ex-wife previously convicted for *adulterium*: “*equitem R. ob reductam in matrimonium uxorem, cui dimissae adulterii crimen intenderat, erasit iudicum albo*” (“he erased from the list of jurors a Roman *equites* who had taken back in marriage his wife, whom he had previously divorced and made a charge of *adulterium* against”; *Dom.* 8.3).

However, the punishments found within verse texts do not relate to those laid down by the *lex Iulia*. Physical punishment is found in the mythical tales of adultery in Ovid: “*utque novum*

<sup>207</sup> Several people suggested Asiaticus should starve himself, but instead he preferred a quick death and cut his veins.

<sup>208</sup> References to Messalina’s adultery: *Ann.* 11.1, 11.12, 11.26, 11.30. See Joshel (1997) for a discussion of Tacitus’ construction of Messalina; she argues that sexuality and politics cling together within the Messalina narrative and “[Claudius’] wife’s adultery frames Claudius’ censorship so that his official acts appear trivial” (1997:226-227). Dorey sets out the political background to this episode (1961:2-4).

*passa genus Hippomeneide poenae/ tractus in Actaea fertur adulter humo* ("and as the daughter of Hippomenes suffered a new type of punishment, the *adulter* was dragged over Athenian soil"; *Ibis* 335-336). The retribution that Vulcan takes on Venus and Mars for their affair does not involve physical punishment, but the adulterous pair are caught in the act and held captive by the husband so that their crime and shame could be displayed to others (Ovid *Met.* 4.182-184).<sup>209</sup>

The presence of danger and the threat of punishment and revenge on the adulterer are also evident throughout Martial's epigrams. However, the punishments are not those determined by the *lex Iulia*, but instead take the form of the physical and sexual retribution that Valerius Maximus and Horace refer to as being prevalent in the republic:

*subdola famosae moneo fuge retia moechae,  
levior o conchis, Galle, Cytheriacis.  
confidis natibus? non est pedico maritus;  
quae faciat duo sunt: irrumat aut futuit.*<sup>210</sup>

Gallus, smoother than Cytheria's shells, I warn you to avoid the sly nets of the infamous *moecha*. Do you trust your buttocks? The husband is no buttfucker. There are two things which he will do: he will fuck mouths or cunts.

(Mart. 2.47)

The *moecha* is shown to be a crafty seductress who will lure Gallus into adultery and the potential punishments at the hand of the husband. However, the husband does not go in for the conventional punishment, the anal rape of the adulterer (Hor. *Sat.* 1.2.44, quoted in section 2.1).<sup>211</sup> Instead, he favours either oral or vaginal sex and so will force the adulterer into a more shameful punishment, forced fellatio (Williams 2010:187, 218-224). Later in book two another *moechus* is punished:

*foedasti miserum, marite, moechum,  
et se, qui fuerant prius, requirunt*

<sup>209</sup> "ut venere torum coniunx et adulter in unum,/ arte viri vinclisque nova ratione paratis/ in mediis ambo deprenti amplexibus haerent." ("When the wife and *adulter* had come together onto one bed, by the art of the husband and by chains prepared in a new way they were both caught and stuck together in their close embrace.")

<sup>210</sup> See Watson (2002a) for Martial's use of obscenities such as *irrumare* and *future*; she finds that it is the epigrams which are directed against characters who engage in sexual practices that diverge from the norm (such as adultery, oral sex or passive homosexuality) that contain the greatest obscenity (2002:228)

<sup>211</sup> Anal penetration could also be made with radishes (in Athens) and mullets (in Rome) as a punishment (Cat. 15.19; Juv. 10.317). For the punishment of adultery in Greece, particularly in Athenian law, see Cole (1984), Harris (1990), Carey (1995), Scafuro (1997).

*trunci naribus auribusque vultus.  
credis te satis esse vindicatum?  
erras: iste potest et irrumare.*

Husband, you defiled the miserable *moechus*, and his face, with ears and nose maimed, searches in vain for what it was before. Do you think you are vindicated enough? You are wrong: he is still able to fuck in the mouth.

(Mart. 2.83)

The punishment here is violent rather than sexual and acts as a visual marker to others that this man has committed a wrong. However, Martial ends the poem by saying that this is not sufficient as the adulterer is still left with the ability to engage in sexual liaisons, particularly that he can still *irrumare*. It has been suggested by Richlin that we should instead read *irrumari* (1981a:45) and so the translation would be “he can still be fucked in the mouth”. This suggestion is based on an understanding of *irrumari* as a standard punishment for men and for adulterers in particular (*Priap.* 22;<sup>212</sup> *Cat.* 37.6-8;<sup>213</sup> *Mart.* 2.47.4). However, Adams argues that after the facial mutilation already inflicted on the adulterer this secondary punishment would seem insignificant (1983a:313).<sup>214</sup> Moreover, the term is most insulting when used against a male. The force of the line then should be understood as though the husband has inflicted these physical punishments, the adulterer still retains the use of his *mentula* and so can inflict the greater shame of *irrumare* back on the husband (Adams 1983a:314). Similarly, in book three, the husband who maims the face of the adulterer is shown to be a short-sighted fool:

*quis tibi persuasit naris abscidere moecho?  
non hac peccatum est parte, marite, tibi.  
stulte, quid egisti? nihil hic tibi perdidit uxor,  
cum sit salva tui mentula Deiphobi.*

Who persuaded you to cut off the nose of the *moechus*? No sin has been made against you, husband, from this part. Stupid man, why did you do this? Your wife lost nothing here, since your Deiphobus’ cock is safe.

(Mart. 3.85)

---

<sup>212</sup> “*femina si furtum faciet mihi virve puerve,/ haec cunnum, caput hic praebeat, ille nates.*” (“If a woman, a man, or a boy steals from me, she will offer her cunt, this one his head and the last his buttocks.”)

<sup>213</sup> “*an, continenter quod sedetis insulsi/ centum an ducenti, non putatis ausurum/ me una ducentos irrumare sessores?*” (“Or, because a hundred or two hundred of you stupidly sit in a row, you think that I would not dare to fuck in the mouth all two hundred of you spectators together?”)

<sup>214</sup> Agreed by Williams (2004:254).

The sexual nature of the crime is clear; it is the *mentula* that is to blame and it is this part of the body that should be punished to prevent the adulterer from seducing the wife again. We also see threats of tearing out the eyes of the adulterer (Mart. 3.92)<sup>215</sup> and of silencing the adulterer (Mart. 3.96.3).<sup>216</sup>

Juvenal includes the same forms of physical and sexual punishments:

*exigit autem  
interdum ille dolor plus quam lex ulla dolori  
concessit: necat hic ferro, secat ille cruentis  
verberibus, quosdam moechos et mugilis intrat.*

But occasionally the husband's anger demands more pain than the law concedes as punishment: this husband kills him with the sword, that one flays him with bloody lashes, he penetrates certain adulterers with a mullet.

(10.314-317)

However, in comparison with Martial, Juvenal pays little attention to the punishments due as a result of adultery and this is the only direct reference to punishment of adultery that he makes. That the *lex Iulia* was thought to be an insufficient deterrent and an ineffectual process for punishing adultery is clear from the episodes of physical punishment that are found in our authors.

### Punishment of the Adulteress

As we have seen, the prose authors (on the whole) show that punishment for the adulterous pair followed the provisions of the *lex Iulia*. However, the verse authors relate episodes where punishment is taken outside of the scope of the law. Moreover, they do not discuss the punishment of the adulteress. Martial says that she is stigmatised (*notare*, 6.22.3) by the *lex Iulia* and that she can be convicted (*damnatum dicere*, 10.52.2) but no further details about the trial or the penalty are given. One of the penalties of the *lex Iulia* stipulated that a convicted adulteress could not remarry a Roman citizen whilst her husband lived.<sup>217</sup> In epigram 2.49 one of Martial's speakers says he will not marry Telesina as she is a *moecha*: "*uxorem nolo Telesinam ducere: 'quare?'/ moecha est. 'sed pueris dat Telesina.' volo*" ("I do not want to make Telesina my wife.

<sup>215</sup> "*ut patiar moechum rogat uxor, Galle, sed unum./ huic ego non oculos eruo, Galle, duos?*" ("My wife asks me to suffer a *moechus*, Gallus, only one. Shall I not, Gallus, tear out both his eyes?")

<sup>216</sup> "*si te prendero, Gargili, tacebis*" ("If I catch you, Gargilus, you will be silent").

<sup>217</sup> Modestinus, *Resp.* book 5, D. 23.2.26.

‘Why?’ She is a *moecha*. ‘But Telesina gives herself to boys.’ I will’).<sup>218</sup> The choice to marry her or not is his to make and is not restricted by the law. The *lex Iulia*, in this case at least, is not enforced. One further consequence for the adulteress was that neither the husband nor the adulterer would claim paternity of her child (10.95).<sup>219</sup> Not all men, however, seemed to have paid such attention to the paternity of their children, for at 6.39 Martial ridicules Cinna by saying that the varied appearances of his seven children clearly show that they were all fathered by different slaves.<sup>220</sup>

Martial twice suggests that an adulteress deserved to wear the toga as a sign of her sexual transgression and loss of feminine virtue (2.39 and 10.52). Likewise, the only discussion of punishment of the adulteress in Juvenal is a vague reference to the toga (2.68-70).<sup>221</sup> Scholarly debate has recently centred on whether Augustus’ attempts at social control actually compelled prostitutes and adulteresses to wear the toga or whether it was instead a social norm and a choice on their part. Thomas McGinn has argued that the *lex Iulia de adulteriis coercendis* did impose a dress code onto the adulteress and that this was the toga (1998a:171).<sup>222</sup> That there were distinct ideas about the appropriate dress for both chaste and moral women and also for prostitutes and slaves is clear from the praetor’s edict as discussed by Ulpian:

*si quis virgines appellasset, si tamen ancillari veste vestitas, minus peccare videtur: multo minus, si meretrice veste feminae, non matrum familiarum vestitae fuissententiarum si igitur non matronali habitu femina fuerit et quis eam appellavit vel ei comitem abduxit, iniuriarum tenetur.*

If someone accost maidens, even those in slave’s garb, his offence is regarded as venial, even more so if the women be in prostitute’s dress and not that of a matron. Still if the

<sup>218</sup> The speaker’s decision to marry Telesina only after hearing that her lovers are boys is a joke based on the practice whereby the husband exacts punishment by raping the adulterer – the husband will therefore take particular pleasure in his revenge (Williams 2004:176).

<sup>219</sup> “*infantem tibi vir, tibi, Galla, remisit adulter./ hi, puto, non dubie se fuisse negant.*” (“Your husband, Galla, has sent back to you the infant, your *adulter* has too. They deny, I think, without doubt that they did the fucking.”) See Dixon (1988:72, 94) for the importance of female chastity in determining paternity.

<sup>220</sup> “*pater ex Marulla, Cinna, factus es septem/ non liberorum: namque nec tuus quisquam/ nec est amici filiusve vicini,/ sed in grabatis tegetibusque concepti/ materna produnt capitibus suis furta.*” (“You have been made a father seven times by Marulla, Cinna, but not to children: for not one is a son of yours, nor is he a son of a friend or neighbour. But conceived on couches and mats, they betray by their looks their mother’s intrigues”; 6.39.1-5). Juvenal also shows the unease surrounding the paternity of children and the exposure of affairs through their appearance (6.76-81, 592-601).

<sup>221</sup> All three passages are quoted below.

<sup>222</sup> See further the extensive article by Olson for the symbolism of dress and its use in the differentiation between *matrona* and whore (2002). She also disagrees with McGinn that the law compelled the adulteress to wear the toga (2002:394-395).



woman be not in the dress of a matron and someone accost her or abduct her attendant, he will be liable to the action for insult.

(Ulpian, *ad Ed.* book 57, *D.* 47.10.15.15)<sup>223</sup>

Moreover, Tertullian makes reference to attempts to make *matronae* wear the *stola*, which have been dated to the end of Tiberius' reign (*de Pall.* 4.9).<sup>224</sup> However, there is no reference within the juristic texts on the *lex Iulia* that the legislation made the toga the appropriate dress for the adulteress. Nor is there any legal evidence that any other law or statute did so.

The association of the toga with feminine immorality and particularly prostitution is evident in Cicero:

*sumpsisti virilem, quam statim muliebrem togam reddidisti. primo vulgare scortum, certa flagitii merces, nec ea parva; sed cito Curio intervenit, qui te a meretricio quaestu abduxit et, tamquam stolam dedisset, in matrimonio stabili et certo collocavit.*

You assumed the toga *virilis*, which you immediately made a *toga muliebris*. At first you prostituted yourself as a whore, there was a fixed price for your disgrace and it was not small. But soon Curio came along, who led you from the profession of a *meretrix* and, as he had given you the *stola*, led you into stable and unerring matrimony.

(*Phil.* 2.44)

Accusations of men wearing women's clothing are a well attested form of invective and there are repeated examples of this within Cicero's speeches.<sup>225</sup> In this passage, however, it is not that Antony has made himself effeminate by wearing women's clothes; he has instead worn the *toga muliebris* and so has become a *scortum*, a prostitute. A woman wearing a toga, therefore, is identified by Cicero as a prostitute and is also associated with *flagitium* (disgrace). Three further

---

<sup>223</sup> Augustus was also aware of the significance of clothing: "*etiam habitum vestitumque pristinum reducere studuit, ac visa quondam pro contione pullatorum turba indignabundus et clamitans: 'en Romanos, rerum dominos, gentemque togatam!' negotium aedilibus dedit, ne quem posthac paterentur in Foro circave nisi positus lacernis togatum consistere.*" ("He was also keen to restore the former habit of dress, for when he saw one day a crowd wearing dark clothing in public he was enraged and shouted: 'Behold the Romans, masters of the world and a toga clad people!' He gave orders to the aediles that hereafter no-one was to be seen in the Forum or near it unless they were wearing the toga and had taken off their cloaks."); Suet. *Aug.* 40.5).

<sup>224</sup> The speech of Caecina in this passage has been associated with a speech he made on wives accompanying husbands on military and administrative service in AD 21 (Tac. *Ann.* 3.33-34; McGinn 1998a:161). The subsequent decree of Lentulus is dated to the end of Tiberius' reign from the use of '*denique*' and Lentulus's age (consul 14 BC; McGinn 1998a:161, esp. n.171).

<sup>225</sup> For example Clodius at the Bona Dea dressed in women's clothes (*De Har. Res.* 4, 44, quoted in section 3.4).

references to women in togas can be dated before the introduction of the *lex Iulia*.<sup>226</sup> The togate female is associated with the *scortum*<sup>227</sup> and at the same time opposed to the *matron*.<sup>228</sup> Moreover, they are sexually available. That feminine sexual immorality was associated with the wearing of the masculine toga is clear to see. However, we are not told whether this was a personal choice on the part of the prostitute or whether they were made to wear it. For one the toga was a bulky and uncomfortable garment to wear and so does not easily make sense when viewed as the dress of a prostitute, who needed to advertise herself and be accessible.<sup>229</sup> Furthermore, there are numerous references to other types of clothing worn by prostitutes within the ancient sources (from Coan silks and luxurious dresses down to nothing) but they do not mention the toga (Olson 2002:396). Moreover, there is no association within these sources between the adulteress and the toga.

Three passages from Martial and Juvenal form the ancient evidence that adulteresses also wore the toga:<sup>230</sup>

*coccina famosae donas et ianthina moechae:  
vis dare quae meruit munera? mitte togam.*

---

<sup>226</sup> “*sit tibi cura togae potior pressumque quasillo/ scortum quam Servi filia Sulpicia*” (“the girls in togas and the whore pressed down by the wool basket are more of a concern for you than Sulpicia, the daughter of Servius”; Tibullus 3.16.3-4); “*bonam deperdere famam,/ rem patris oblimare, malum est ubicumque. quid inter-/ est in matrona, ancilla peccesne togata?*” (“To throw away a good reputation, to muddy your father’s affairs is always a bad thing. What does it matter whether you sin with a *matrona* or with a togate slave-girl?”; Hor. Sat. 1.2.61-63); “*nec magis huic inter niveos viridisque lapillos/ (sit licet, hoc, Cerinthe, tuum) tenerum est femur aut crus/ rectius, atque etiam melius persaepe togatae est*” (“however it seems to you, Cerinthus, her thigh is not softer nor her calf straighter amongst white pearls and emeralds, and it is more often better with a girl in a toga”; Hor. Sat. 1.2.80-82).

<sup>227</sup> There is also another, much later 4<sup>th</sup>/5<sup>th</sup> century reference from Nonius Marcellus, who (quoting the comic writer Titinius, early 2<sup>nd</sup> century BC) also associates the *scortum* with the toga (653L): “*dicitur et tectum [sc. toga]. Titinius Gemina: ‘si rus cum scorto constituit ire, clavis ilico abstrudi iubeo rusticae togae nec sit copia,’ id est, tecti.*” (“Thus shelter can be described as a toga. Titinius in his *Gemina*: ‘if he decides to go to the countryside with a prostitute, I order the keys to be hidden immediately so that there is no means for undercover business in the country.’ That is, of shelter.”) See McGinn 1998a:158.

<sup>228</sup> Cf. discussion of Horace’s *Satire* 1.2 in section 4.4, in which he claims that relationships with both types of women are equally as damaging and instead suggests that freedwomen are the best sort of sexual partner.

<sup>229</sup> Croom 2000:93. Cf. Horace *Sat.* 1.2.101-102, where the speaker recommends prostitutes for they wear clothes that allow you to see their body so there are no surprises.

<sup>230</sup> Another epigram by Martial refers to a *mater togata*; “*sed patris ad speculum tonsi matrisque togatae/ filius et possit sponsam te sponsa vocare*” (“but you are the son of a father shaved in front of the mirror and of a togate mother, and your wife is able to call you wife”; 6.64.4-5). We are not told her status or circumstances but as she is the mother of someone who has written scathingly about Martial’s poems it must be assumed that she belongs to the educated classes and so would have been married and then potentially an adulteress.

You give scarlet and blue [clothes] to the infamous *moecha*. Do you wish to give a gift which she deserves? Give her the toga.

(Mart. 2.39)

*Thelyn viderat in toga spadonem,  
damnatam Numa dixit esse moecham.*

Numa saw the eunuch Thelyn in a toga and he convicted him as a *moecha*.

(Mart. 10.52)

*est moecha Fabulla,  
damnetur, si vis, etiam Carfinia: talem  
non sumet damnata togam.*

Fabulla is a *moecha*; condemn Carfinia also, if you wish: however, once condemned she will not assume the same toga.

(Juv. 2.68-70)

The term used to describe the woman in these passages is *moecha* rather than *adultera* and there is no reference to an *adulter* or to *adulterium*. However, *moecha* is found much more frequently than *adultera* in both Martial and Juvenal and so their choice of this term in these passages is not unusual in itself.<sup>231</sup> Nevertheless, both Martial and Juvenal associate the togate woman with being *damnata* (condemned). There is, therefore, a criminal association with these women and the only known legislation that punished *moechae* is the *lex Iulia*.

Further evidence that adulteresses wore the toga is taken from two scholiasts writing about Horace *Sat.* 1.2.63 in the third century AD:

*togatae autem in publicum procedere cogeantur feminae adulterii admissi convictae.*

But women convicted of committing *adulterium* were forced to go out in public wearing the toga.

(Porphyrio *schol. Hor. Sat.* 1.2.63)<sup>232</sup>

*matronae, quae ob adulterium a maritis repudiabantur, togam accipiebant sublata stola propter ignominiam; toga autem meretrici apta. ita enim solebant prostare cum solis pullis togis, ut discernerentur a matronis; et ideo quae adulterii damnatae fuerant, hac*

---

<sup>231</sup> See section 4.2.

<sup>232</sup> Edition: Holder, A., 1894, *Pomponi Porphyronis: Commentum in Horatium Flaccum*. Ad Aeni Pontem, Sumptibus et Typis Wagneri.

*veste utebantur. aliter: togatae dicebantur in publicum procedere feminae adulterii admissi <causa>. alii togatam dicunt libertinam, quia antea libertinae toga utebantur, stola vero matronae.*

*Matronae*, who have been divorced by their husbands for *adulterium*, take up the toga since the *stola* is refused them on account of their disgrace; indeed the toga of the prostitute is apt. Thus in fact they are accustomed to prostitute themselves in dark togas only, in order to be distinguished from *matronae*. For this reason those who are convicted of committing *adulterium*, wear this garment. In other words, women convicted <on a charge> of *adulterium* are said to go out in public *togatae*. Others call a freedwoman *togata*, because the toga used to be worn by freedwomen but the *stola* was worn by *matronae*.

(ps-Acro schol. Hor. Sat. 1.2.63)<sup>233</sup>

Porphyrion is the only source that specifically says that adulteresses were forced (*cogere*) to wear the toga. Pseudo-Acro instead says that the *stola* was refused to the adulteress (*tollere*) and so they took on the toga of the prostitute. But both scholiasts agree that the woman had to have been convicted of *adulterium* to be forced to wear the toga.<sup>234</sup> However, these scholia are much later works and so the reliability of their understanding of the social and legal norms surrounding the wearing of the toga in the first and second centuries must be questioned. With these two texts as the only extant sources that specifically discuss a legal requirement for adulteresses to wear the toga, this claim becomes increasingly uncertain. It is also interesting that these two passages are discussing Horace Sat. 1.2.63, which in fact does not talk about adulteresses at all. The togate woman is instead an *ancilla* and so their discussions of whether the adulteress wore the toga bear no relation to Horace's text.

It is clear to see that there was an association between women who had crossed the boundaries of acceptable sexual behaviour and the toga. Prostitutes had been connected with the toga since the late republic and the term was used as a metonymy for prostitute (Adams 1983b:340). However, the association of the toga with the adulteress happens only after the *lex Iulia*. Yet still, there is no evidence that the *lex Iulia* itself forced adulteresses to wear the toga.<sup>235</sup> Moreover, the late date of the scholastic evidence must be considered and this evidence treated with greater caution.

---

<sup>233</sup> Edition: Keller, O., 1967, *Pseudacronis: Scholia in Horatium Vetustoria Volume II*. Teubner, Stuttgart.

<sup>234</sup> McGinn 1998a:166.

<sup>235</sup> The lack of visual evidence for women wearing the toga may also be telling (Olson 2002:396); one statue from Carlisle appears to show a woman wearing a toga, but it remains problematic as it may represent a goddess or be a female head that has been placed onto a male body (Goette 1989:80-82; plate 70, n.6).

The increased focus on female sexuality and adultery would have brought the status distinctions between the *matrona* and the *meretrix* and adulteress to the forefront. It is unsurprising then if a greater emphasis on distinguishing these two groups through outward appearance developed. And so, though the *lex Iulia* may not have included in its statutes a requirement for adulteresses to wear the toga, its public vituperation of adulterous women and its close association of them with prostitutes meant that adulteresses now also became linked to the image of the sexually immoral togate female. As a result, to call a woman *togata* becomes an easy way to refer to an adulteress and a prostitute, regardless of whether that individual wore the toga or not.

### Scope

The rhetoric surrounding moral reform and the *lex Iulia* does not limit the regulation of sexual morality to any one section of Roman society; all Roman citizens who did not fall into the exempt categories of prostitute, pimp, gladiator, or actress, were expected to be chaste.<sup>236</sup> However, in practical terms the penalties of *relegatio* and loss of property and dowry would have only affected the propertied upper classes, within which the majority of wealth was accumulated.<sup>237</sup> This focus on the upper classes of Roman society has led some scholars to believe that the legislation was only ever intended to apply to the senate and equestrians (Field 1945:399; Galinsky 1981:132, 1996:132). According to Horace, Augustus was concerned with the population as a whole: “*Romulae genti date remque prolemque/ et decus omne*” (“give to the people of Romulus wealth and children and all glory”; Hor. *Carm. Saec.* 47-8). Moreover, Pliny advises Trajan that he must look after the poor, for there is no point in strengthening the upper classes of society if the bottom is to fall into ruin (*Pan.* 26.6). In practical terms, however, though the intended audience of the legislation was the whole of the population, Augustus may have only been able to implement sanctions that would affect the upper classes (Nörr 1981:352-353; McGinn 1998a:72;

---

<sup>236</sup> Cf. Cicero *Parad.* 23: “*quae vis est enim quae magis arceat homines ab improbitate omni quam si senserint nullum in delictis esse discrimen, aequae peccare se si privatis ac si magistratibus manus adferant, quamcumque in domum stuprum intulerint eadem esse labem libidinis?*” (“What power is there which keeps men away from all depravity better than the conviction that there is no difference between offences, that there is equal fault if they lay hands on a private citizen and on a magistrate, that the stain of licentiousness is the same whatever home they introduce *stuprum* into?”)

<sup>237</sup> However, this may reflect the fact that the jurists showed the greatest interest in the elite and so the legal penalties that they record were those that affected the upper classes. It also appears that by the second century AD a distinction between the punishments for *honestiores* and *humiliores* had developed (Richlin 1981b:402 n.13; Garnsey 1970:103-104).

Brunt 1971:561-562). Yet still, McGinn suggests that as the upper classes were seen as role models for those lower down in society,<sup>238</sup> the legislation would have had an impact on the poor without necessarily having any direct incentives for them (1998a:72).

The penalties of *infamia* and loss of rights to remarry may have had a wider application, but these depend on how many cases from the lower levels of society were brought to trial. In theory, the lower classes had the right to bring accusations to court<sup>239</sup> and the patron-client relationship that was at the heart of Roman society meant that lower class citizens were often championed in the courts by a wealthier patron (Crook 1967:93). Nevertheless, the practicalities and costs incurred by bringing a case to court went beyond just finding someone to represent you in court.<sup>240</sup> At the same time, it would not be worth an outsider's while to pursue humbler adulterers as the amount they would receive if the accusation was successful would be minimal in proportion to that gained from accusations amongst the upper classes (Treggiari 1996:892).

Furthermore, it is unsurprising that the cases that we hear about only involve the elite, particularly the imperial family, and as a result it is near impossible to quantify how many cases were brought from the varying levels of society. However, if we take Bauman to be correct that the *quaestio de adulteriis* could deal with three or four hundred cases a year (1968:81) then the number of cases brought each year was exceptionally large. It is not, therefore, realistic to argue that the senatorial and equestrian classes alone could supply these instances of adultery. It therefore appears that at least some accusations of adultery from lower down the social scale were brought to court. However, it is impossible to determine how far down the social hierarchy this would have reached and how many cases the lower classes would have been involved in.

### Purpose

At the most basic level the moral legislation introduced by Augustus in 18 BC and AD 9 was designed to deal with the social and moral issues that have already been discussed. However, there has been debate amongst both ancient commentators and modern scholars about the

---

<sup>238</sup> At Dio 56.4.4-5, Augustus admonishes the unmarried equestrians as they are the leaders of society and so it is expected that others will follow their example; they must therefore set a good example in respect of marriage and children.

<sup>239</sup> See discussion by Crook 1967:92-97. Cf. *Inst.* 4.18.4 (quoted below) where two separate penalties were provided for cases of rape involving *honestiores* and *humiliores*, showing that the lower classes were liable for some penalties relating to sexual transgression.

<sup>240</sup> For example the payments of fines, bail and legal sureties, as well as the costs of coming to Rome for people from outside the city or from the provinces (Crook 1967:95-96).

specific aims and motivations of Augustus when he brought in these highly controversial and innovative laws. Opinions have varied with the changing trends in scholarship; moral, demographic,<sup>241</sup> imperial, fiscal and social motivations have all been suggested for the marriage legislation. Yet, the aims of the *lex Iulia de adulteriis coercendis* have not been as widely discussed because it has been readily accepted that the intended aim of this piece of legislation was purely moralistic in nature and so little debate has followed. Nevertheless, both pieces of legislation can be seen as working alongside each other and imperial, fiscal, and social factors were involved in both.

As we have seen, the call for improved morality that led to the introduction of the moral reforms was not Augustus' alone and in the *Res Gestae* he claims that he was urged by the senate and people three times<sup>242</sup> to take up the office of censor (*Res. Ges.* 6.1).<sup>243</sup> Instead, Augustus claimed to have completed the measures that the senate and people had wished for through his tribunician power (*Res. Ges.* 6.2). Moreover, there was a tradition that founders and constitution makers would try to regulate social behaviour<sup>244</sup> and there would evidently have been the expectation that Augustus would do the same (Treggiari 1996:885). At the same time, however, Augustus' sincerity has been called into question.<sup>245</sup> Particularly as neither Marcus Papius Mutilus nor Quintus Poppaeus Secundus, the consuls after whom the alterations of the marriage legislation were named in AD 9, were married and Augustus was known to have had adulterous relations himself (Suet. *Aug.* 69.1; Dio 56.10.3).

---

<sup>241</sup> The demographic motivations behind the *lex Iulia de maritandis ordinibus* are discussed by Last 1934:443; Syme 1939:443; Field 1945:398-399; Brunt 1971:559; Raditsa 1980:290; and are rejected by Galinsky 1981:129-130, 1996:128. However, they bear little relevance to the adultery law and so will not be discussed here.

<sup>242</sup> In 19, 18 and 11 BC.

<sup>243</sup> "*Consulibus M. Vinicio et Q. Lucretio et postea P. Lentulo et Cn. Lentulo et tertium Paullio Fabio Maximo et Q. Tubero senatu populoque Romano consentientibus ut curator legum et morum summa potestate solus crearetur, nullum magistratum contra morem maiorum delatum recepi.*" ("In the consulship of M. Vinicius and Q. Lucretius, and afterwards in that of P. and Cn. Lentulus, and thirdly in that of Paullus Fabius Maximus and Q. Tubero, the senate and the people of Rome agreed that I should be created the sole guardian of laws and morals with the highest power, but I would not accept any office inconsistent with the customs of our ancestors.") According to Dio (54.10.5) and Suetonius (*Aug.* 27.5) Augustus did accept this position. It has been suggested that Augustus was first offered the *cura legum et morum* in 19 BC at which time he made a refusal and so was able to make this claim in the *Res Gestae*, but he then later accepted it in 18 BC, which he decided not to mention (Raditsa 1980:302). For further discussion see Brunt and Moore, who conclude that Augustus' statement does not necessarily contradict Dio as he claims only to have not taken powers that went against custom, such as a position with *summa potestate* (1967:45-46).

<sup>244</sup> There was a legendary law at Locri that a woman was not to leave the city at night unless to commit adultery and was not to wear gold or purple unless she was a courtesan (Dio. Sic. 12.21.1); Charondas at Thurii was said to have regulated against adultery and remarriage for men (Stob. *Flor.* 4.2.24).

<sup>245</sup> Galinsky 1981:127.

There can be little doubt, however, that Augustus was “the prime mover” behind the reforms (Galinsky 1996:128). The legislation was a risk<sup>246</sup> and the marriage law met with repeated opposition from the equestrians who thought the provisions were too stringent (Suet. *Aug.* 34.1-2; Dio 56.1-10). Yet, Augustus repeatedly defended his legislation and he had to make several alterations to the *lex Iulia de maritandis ordinibus*, in particular, in order to gain the people’s acceptance of it. Furthermore, he tied the reforms to his own identity, and to that of his family, by setting an example of morality and family virtue.<sup>247</sup> This was not the move of a man who lacked sincerity and who was not at the forefront of the drive for reform.<sup>248</sup>

Within the *Res Gestae* Augustus does not provide any explicit information about what his aims were in introducing the social legislation.<sup>249</sup> The only evidence that we have for his aims and motivations is taken from later historians, particularly Tacitus and Dio. Following Tacitus,<sup>250</sup> scholars have viewed the financial penalties that formed the basis of both the marriage and adultery legislation as an indicator of the fiscal motivation behind the legislation (Nörr 1981:354). However, whether this can be said to be an aim that Augustus originally set out with when he created the legislation is doubtful.<sup>251</sup> Moreover, as a method of increasing public revenue the legislation would have little success if the Roman people took it upon themselves to follow the word of the law. Therefore, as a purely fiscal policy it was a risky venture. Increased revenue certainly could have been a motivating factor in how the legislation and the contents of its provisions were designed, for the benefit to the state did not go unnoticed. Indeed, Brunt suggests that one of the reasons why the legislation lasted throughout the centuries was the fiscal benefits that it created (1971:566).

---

<sup>246</sup> The legislation intruded into private family matters in a way that had never been done before; moreover, it went against the traditional ideals of the *univira* and of *patria potestas*. Cf. Parkin (2007:5), who suggests that the interference in private family life was not as exceptional as it appears; for it had always been the role of the censor to control these matters and the crimes of *adulterium* and *stuprum* had been treated with public scrutiny and investigation in the past.

<sup>247</sup> Augustus did this through the use of imagery, especially on the *Ara Pacis* (Kleiner 1978:772-776). He also brought attention to his attempt to act as a role model in the *Res Gestae* (8.5): “*ipse multarum rerum exempla imitanda posteris tradidi*” (“I myself handed down to posterity examples of many things to be imitated”).

<sup>248</sup> Syme believed that Augustus’ dedication to the improvement of morality was “deep-seated and genuine” (1939:454).

<sup>249</sup> At 8.5, he merely says that through new laws he brought back the exemplary customs of their ancestors that were no longer practised.

<sup>250</sup> “*Augustus...incitandis caelibum poenis et augendo aerario sanxerat*” (“Augustus decreed [the *lex Iulia et Papia*] in order to increase punishments of the celibate and to increase the treasury”; *Ann.* 3.25).

<sup>251</sup> Field (1945:416) and Brunt (1971:566) question Tacitus’ reliability on this matter.



One theory, proposed by Karl Galinsky, is that Augustus attempted to improve the morals of the Roman people so that their conquest over the rest of the empire could be justified (1981:133, 1996:70).<sup>252</sup> Justification for conquest and empire was found in the belief that it was right for the strong to rule over the weak: “*an non cernimus optimo cuique dominatum ab ipsa natura cum summa utilitate infirmorum datum?*” (“For do we not distinguish that mastery has been given by nature itself to those who are the best, with the great advantage of the weak?”; Cic. *De Re Pub.* 3.37).<sup>253</sup> Conquest was undoubtedly important to Augustus; he brought large areas under the Roman empire through both military intervention and diplomacy and he dedicated a large section of the *Res Gestae* to his foreign successes (*Res. Ges.* 26-33). However, the superiority that was needed for a just rule was not based on sexual morality. Instead, the governing people needed to be fair and honest. In a letter to his brother Quintus, Cicero advises him on how to be successful in his governorship of Asia (1.1.32): he must be abstinent (*abstinentem*), restrain avarice (“*continere omnis cupiditates*”), and maintain a fair system of justice (“*iuris aequabilem tenere rationem*”). Moral virtue does not play a part; nor did it in his discussion of the right to rule in the *De Re Publica*.

The protection of private property was one of the main functions of the *res publica* (Galinsky 1996:7). The main penalty of the *lex Iulia et Papia* prevented anyone who was unmarried from inheriting outside the sixth degree of relation.<sup>254</sup> This has been seen as an attempt to stabilise the transmission of property and so strengthen the family (Galinsky 1996:134; Wallace-Hadrill 1981:59). The *lex Iulia de adulteriis coercendis* also served to regulate inheritance by safeguarding the paternity of any children the wife conceived. However, in AD 6 Augustus introduced legislation that dealt with the problem directly,<sup>255</sup> making it unlikely that the moral legislation was intended for this purpose.

---

<sup>252</sup> His argument is rejected by Bauman (1992:244 n.18) and des Bouvrie (1984:98). Fayer agrees that Augustus aimed to improve the morality and social dignity of Rome but does not link this to imperial motivations (2005:213).

<sup>253</sup> It is for this reason that Livy believed that Alexander the Great would have been defeated if he had fought against Rome; for though he was a good fighter and soldier, he was morally weaker than the Romans and favoured a debased life of wine and adoration (9.17-18).

<sup>254</sup> Wallace-Hadrill 1981; McGinn 1998a:72-73.

<sup>255</sup> Augustus introduced an inheritance tax that charged five percent on inheritance unless it was to close relatives or to very poor people (Dio 55.25.5). According to Dio, the purpose of this legislation was to supplement the heavily depleted public treasury funds. The exemption for bequests to close family members, however, suggests Augustus still wanted to protect the transmission of property within the family and Nicolet sees this as another attempt to prevent the breaking up of private property (1984:110).

The *lex Iulia de adulteriis coercendis* and the *lex Iulia et Papia* both worked to reinvigorate the distinct social hierarchy and identity that Roman society was based upon.<sup>256</sup> They can therefore be seen as an attempt by Augustus to maintain political control over Rome through social engineering. As has been mentioned previously, the strength of the native Roman stock was seen to be in decline after the republic and successive years of civil war. However, this was not purely in population size; the moral strength of Rome, especially of the Senate, were being undermined and forgotten. Raditsa suggests that the legislation was intended not only to restore moral feeling to the senatorial classes after the civil wars, but also their self-respect (1980:282).<sup>257</sup> This went alongside a reorganisation of the senate and equestrian orders that included stricter entrance qualifications (McGinn 1998a:208). This would elevate the status that was gained from being a member of the senate and make it more of an honour. Moreover, it would ensure that those who moved into the ranks of the upper classes were obliged to take on this new sense of dignity and renewed identity that Augustus was creating. He thus ensured that the traditional virtues and values that he wanted Rome to emulate were carried on, regardless of any changes within the make-up of the elite.

A hierarchy of social status was also created by the legislation. The *lex Iulia* idealised the chaste matron and set her firmly apart from the prostitute and adulteress, who were now closely assimilated with one other. The result was a clear scale of virtue and shame and it can be imagined that the threat of being classed alongside prostitutes would have convinced many of the benefits of aspiring to virtue. Furthermore, the *lex Iulia et Papia* created restrictions on marriage between certain social groups.<sup>258</sup> This served to create a highly stratified society with Augustus confirmed as the “apex of the social and political pyramid” (McGinn 1998a:84); he would lead Rome into moral purity and he had the power to grant exemptions to the legislation as rewards to those who were loyal to him.

---

<sup>256</sup> Levick identifies a series of *leges* and *senatus consulti* brought in under Augustus and in the early first century AD that sought to reinforce the values and behaviours that were expected of members of the senatorial and equestrian orders (1983:114-115).

<sup>257</sup> Treggiari, however, sees this attempt to control the senate’s behaviour not so much as fatherly encouragement but as a “backlash against the *mores* of the fiercely individualistic aristocrats, whose conspiracies were allegedly cemented by homosexual bonds formed in adolescence and by collusion in heterosexual intrigue” (1996:891).

<sup>258</sup> See section 1.2. Raditsa suggests that if Augustus had simply wanted to increase the population numbers he would not have included these restrictions (1980:327). Similarly, Field believes that these regulations show that he was more concerned with maintaining the racial purity of the senate than increasing the population numbers (1945:403).

### 2.3) After the *lex Iulia*

The greatest paradox of Augustus' moral legislation is that whilst he claimed to be restoring traditional morality and the values of a past age, the way in which he did this broke with tradition and weakened the power of the family and of the *paterfamilias*, which were the bedrock of Roman society. We are told that the *lex Iulia de maritandis ordinibus* met with open opposition (Suet. *Aug.* 34.1-2; Dio 56.1-10) and that this forced him to make amendments through the introduction of the *lex Papia et Poppaea* in AD 9.<sup>259</sup> Yet, no such open and organised rebellion against the *lex Iulia de adulteriis coercendis* is found in any of our sources; which is perhaps surprising considering the unconventional nature of the legislation. The subversion of Ovid's *Ars Amatoria* can be read as opposition to the legislation, which in part led to his exile in AD 8.<sup>260</sup> Nevertheless, it is surprising that this intrusive and unforgiving piece of legislation did not meet with greater opposition. In fact, the legislation was praised by Horace and others towing the party line.<sup>261</sup> Moreover, considering the lengths to which Augustus went to punish sexual immorality within his own family there was little doubt as to how far Augustus was willing to support this piece of legislation. Whether Ovid's exile was due to his poetry or to his involvement in the scandal of Julia the Elder (or both), his references within the exile poetry to the reasons for his exile would have served to discourage any other potentially rebellious writers.<sup>262</sup>

Nonetheless, the *lex Iulia* did not stop the concerns of the moral elite. One of the most striking elements of Tacitus' depiction of *adulterium* and *stuprum* is their inevitability.<sup>263</sup> Moreover, under the empire, charges of *adulterium* began to be used as part of the imperial power play.<sup>264</sup> As a result, they were often also linked to trials for *maiestas*: "*quo facilius eas in causa Aemili Lepidi condemnavit quasi adulteras et insidiarum adversus se conscias ei*" ("so that it was easy for [Caligula] to condemn them at the trial of Aemilius Lepidus as adulteresses and as

---

<sup>259</sup> Tacitus also criticises the *lex Papia et Poppaea* because of the restrictions which it placed on Rome and because it encouraged informers (*Ann.* 3.28).

<sup>260</sup> Wallace-Hadrill suggests that Ovid (and the other poets) did not cause friction by attacking specific pieces of legislation, but his attitudes towards sex and sexual morality were a rejection of the order that Augustus was trying to impose on Roman society, which in turn would bring order to Roman politics (1985:183).

<sup>261</sup> Hor. *Od.* 4.5.22; see Wallace-Hadrill 1982:25-26.

<sup>262</sup> For the reasons for Ovid's exile see Rudd (1976, chapter 1), Goold (1983b) and White (1993:152-154).

<sup>263</sup> See section 3.4.

<sup>264</sup> See Dixon (2001:151-152) for the relationship between sex and politics.

partners in a plot against him"; Suet. *Gaius* 24.3).<sup>265</sup> The *lex Iulia* inadvertently created an atmosphere in which accusations of adultery could be used as a device to remove a political enemy<sup>266</sup> and outside of the imperial circle *delatores* were enticed to bring accusations through the monetary award following a guilty verdict. The danger of false accusations is also shown by Statius (*Silv.* 5.2.99-106).

If the length of time in which the *lex Iulia* was an active piece of legislation is taken into consideration then it appears to be a triumph for moral reform; the vast quantity of juristic commentary on the legislation and the fact that it was the only special criminal *lex* on which the jurists wrote monographs attest to its importance.<sup>267</sup> However, the legislation did not remain static and successive emperors made several alterations and renewals. In fact, as early as AD 19 Tiberius had to close a loophole that allowed women to register as prostitutes and so avoid prosecution for adultery.<sup>268</sup> This shows not only that there were attempts to circumvent the law, but also that Tiberius continued to support Augustus' legislation.<sup>269</sup>

Domitian sought to encourage morality after he was made perpetual censor in AD 85.<sup>270</sup> A restoration of the *lex Iulia* followed a few years later, as referred to by Martial in book six of his *Epigrams*.<sup>271</sup> The fact that the *lex Iulia* needed to be revived suggests that by this time it had fallen into disuse.<sup>272</sup> To publicise and sustain his moral reforms Domitian made deliberate use of public punishment, particularly as regards episodes involving the Vestal Virgins (Bauman 1996:92).<sup>273</sup> He

---

<sup>265</sup> Appuleia Varilla was charged with both *maiestas* and *adulterium* (Tac. *Ann.* 2.50), as was Domitius, the father of Nero (Suet. *Nero* 5.2). Messalina and her *adulter* Silius were also said to be embroiled in a plot against Claudius (Suet. *Claud.* 29.3, 36.1; Tac. *Ann.* 11.26).

<sup>266</sup> See Dorey 1972.

<sup>267</sup> See McGinn 1998a:246.

<sup>268</sup> The granddaughters, daughters and wives of men of equestrian or senatorial status were now not able to register as prostitutes after the case of Vistilia (Tac. *Ann.* 2.85). See McGinn 1998a:217-219.

<sup>269</sup> At Tacitus *Ann.* 3.54, Tiberius laments that the ancient customs and the laws of Augustus are ignored. He is talking here about sumptuary legislation but McGinn suggests that we can also infer that the same was felt about the adultery legislation (1998a:219 n.17).

<sup>270</sup> For the dating of the censorship see Carradice (1983:27, 29). His acceptance of the position of perpetual censor showed a concern with morality on Domitian's part, but he did not introduce the renewal of the *lex Iulia* in his capacity of censor as censors could not introduce laws (McGinn 1998a:115). Grelle suggests that it was introduced as an imperial edict (1980:346).

<sup>271</sup> See discussion in section 4.4.

<sup>272</sup> Cf. Juv. 2.37 (quoted earlier), where the *lex Iulia* is said to be sleeping.

<sup>273</sup> Several Vestals were condemned in AD 83, a senior Vestal Cornelia was accused alongside them and acquitted but then later tried again sometime in AD 89-91 and sentenced to burying alive (Bauman 1996:92-97; Pliny *Epist.* 4.11; Suet. *Dom.* 8.4; Dio 67.3.3-4).

also revived the *lex Scantinia* (Suet. *Dom.* 8.3) and the *lex Voconia* (Pliny *Pan.* 42.1).<sup>274</sup> According to Suetonius, Domitian “*probrosis feminis lecticae usum ademit iusque capiendi legata hereditatesque*” (“took away from disgraced women the use of litters and the right of receiving legacies and inheritances”; *Dom.* 8.3).<sup>275</sup> However, Domitian’s renewal of the adultery legislation was treated with derision by later authors, particular when viewed alongside his reported indiscretions:

*qualis erat nuper tragico pollutus adulter  
concubitu, qui tunc leges revocabat amaras  
omnibus atque ipsis Veneri Martique timendas,  
cum tot abortivis fecundam Iulia vuluam  
solveret et patruo similes effunderet offas.*

Such a man was that adulterer, who after polluting himself in a tragic-style affair, then recalled the bitter laws, feared by all and also by Venus and Mars, at the same time that Julia had emptied her fertile womb with premature births and produced offspring similar to her uncle.

(Juv. 2.29-33)<sup>276</sup>

The point of these comparisons was to condemn Domitian’s reign and to enhance the stature of his successors (Vinson 1989:433).<sup>277</sup> A further piece of court slander surrounded Domitian’s treatment of his wife Domitia, who Dio claims he had wanted to kill for her adultery with the actor Paris (67.3.1).<sup>278</sup> Such action would have contradicted the provisions of the *lex Iulia*. The death of Paris, however, was permissible as he was of base status.

<sup>274</sup> Pliny accuses Domitian of instigating this renewal of the laws in order to supplement the treasury.

<sup>275</sup> McGinn argues that *feminae probosae* can only refer to adulteresses rather than actresses, prostitutes, or other forms of sexually disgraced women (1998a:106ff.). This passage is further discussed by McGinn (1998b); he concludes that the behaviour of adulteresses, prostitutes, and actresses was not always lumped together and thought to be deserving of the same condemnation (1998b:250).

<sup>276</sup> See also: Dio 67.12.1; Suet. *Dom.* 3.1.

<sup>277</sup> See Vinson (1989) for a discussion of the validity of the reports of Domitian’s incest with his niece Julia; he concludes that they were nothing more than invective (supported by Jones 1992:29).

<sup>278</sup> This detail is not found in Suetonius’ account: “*eandem Paridis histrionis amore deperditam repudiavit intraque breve tempus impatiens discidii quasi efflagitante populo reduxit*” (“because she was ruined through love for the actor Paris, he divorced her, but after a short time being impatient at the separation, he took her back, as if it were the demand of the people”; *Dom.* 3.1).

Another revival of the *lex Iulia* occurred under the Severans.<sup>279</sup> Septimius Severus and Caracalla allowed a *sponsus* to bring an accusation of *adulterium* against his betrothed (Ulpian, *de Adult.* book 2, *D.* 48.5.14.3);<sup>280</sup> but only in the capacity of a third party, not a husband.<sup>281</sup> The right to judge cases under the *lex Iulia* was also extended by Caracalla to procurators, who were not currently governing a province (Ulpian, *de Off. Procon.* book 9, *Coll.* 14.3.3).

Amendments continued to be made in the later empire.<sup>282</sup> The right to bring an accusation against the adulteress was restricted to close relations by Constantine in AD 326,<sup>283</sup> a demonstration of the aversion felt towards the provisions of the *lex Iulia* that allowed outsiders to disturb a marriage and for opportunistic *delatores* to make a profit or seek retribution by bringing an accusation.<sup>284</sup> The main change to the provisions of the *lex Iulia* was the introduction of the death penalty. Examples of execution or forced suicide can be found within the historical sources as early as Augustus.<sup>285</sup> Caracalla was also said to have killed adulterers “παρά τὰ νενομισμένα” (“against all that is lawful”; Dio 78.16.4). Indeed, it did not become law until the fourth century in an edict of Constans and Constantius who ordered that this was to be done by sewing the

---

<sup>279</sup> McGinn describes their repression of adultery and *stuprum* as “aggressive” (1991:370) and suggests that the backlog of cases described by Dio (76.16) is a result of Septimius Severus’ encouragement of the adultery law (1998a:247).

<sup>280</sup> “*divi Severus et Antoninus rescripserunt etiam in sponsa hoc idem vindicandum, quia neque matrimonium qualecumque nec spem matrimonii violare permittitur.*” (“The deified Severus and Antoninus wrote in a rescript that this same [offence] is punishable even in the case of a fiancée, because it is not permissible to violate either a marriage, of whatever sort, nor [yet] an expectation of marriage.”)

<sup>281</sup> Paul, *de Adult.* book 1, *Coll.* 4.6. Thomas suggests that this change to the legislation was in recognition of the greater importance being placed on betrothal due to influence from the eastern empire (1961:74).

<sup>282</sup> See Arjava 1996:193-205.

<sup>283</sup> *CJ.* 9.9.29.1, AD 326: “*quamvis adulterii crimen inter publica referatur, quorum delatio in commune omnibus sine aliqua legis interpretatione conceditur, tamen ne volentibus temere liceat foedare conubia, proximis necessariisque personis solummodo placet deferri copiam accusandi, hoc est patri fratri nec non patruo et avunculo, quos verus dolor ad accusationem impellit.*” (“Although adultery is considered a public crime, the accusation for which is granted to everyone alike, without any limitation of law, still, in order that marriages may not be disgraced at pleasure, only the nearest relatives shall have the right to bring such accusation, that is to say, father, brother, paternal and maternal uncle, who are incited to do so by reason of true grief.”) The same restriction is found at *CTh.* 3.7.2, AD 388. See Evans Grubbs (1993) for an overview of Constantine’s legislation on the family.

<sup>284</sup> Evans Grubbs sees the same disapproval in the classical jurists (1995:211).

<sup>285</sup> Forced Suicide: Iullus Antonius, the lover of Julia the Elder (Tac. *Ann.* 1.10, 3.24); the freedman Polus, (Suet. *Aug.* 67.2). Executions under Claudius: two equestrians for providing a house for *adulterium* (Tac. *Ann.* 11.4); Messalina and Silius (Tac. *Ann.* 11.35-38). Domitian’s desire to execute Paris for his affair with Domitia can also be included, although he did not go through with it (Dio 67.3.1). All of the accused in these cases were either of low status or the involvement of members of the imperial family meant that their indiscretions were treated with the same severity as treason. Outside of the imperial family, Achilles Tatius in the late 2<sup>nd</sup> century novel *Leucippe and Clitophon* says that the law gave the penalty for the adulteress as loss of her dowry, which went to the husband, and death for the adulterer (8.8.13). However, Evans Grubbs suggests that this reflects local law in the Greek east (1995:216).

“*sacrilegos*<sup>286</sup> *nuptiarum*” (“profaners of marriage”) into a leather sack and burning them alive (CTh. 11.36.4, AD 339). This change in the law is also reflected in Justinian’s *Institutes*, where the death penalty is given to “*temeratores alienarum nuptiarum*” (“those who disgrace another’s marriage”; 4.18.4). The penalty for those who committed *stuprum* with respectable virgins or widows more closely followed the original provisions of the *lex Iulia*; confiscation of half their property for *honestiores* and flogging or *relegatio* for *humiliores*.<sup>287</sup> Earlier examples of the death penalty are found within the *Codex Justinianus* and attributed to Constantine;<sup>288</sup> however, these have been shown to be interpolations.<sup>289</sup> Furthermore, by the end of the fourth century the death penalty was also being applied in cases of *stuprum*, which had never previously been punished with death.<sup>290</sup>

## 2.4) Conclusions

This survey of adultery in both the republic and the empire has shown that many changes were made to how adultery was controlled throughout this period, whilst at the same time many assumptions and ideals surrounding sexual transgression stayed the same. As regards the prosecution and punishment of *adulterium*, we have seen that in the republic public prosecutions were only made in unusual circumstances: either a large number of offenders were involved or the accused was in a position of power. The punishments were invariably violent, either death, voluntary suicide, or a beating. Moreover, the punishments that are mentioned are for the male adulterer and little attention is made to the punishment of the adulteress. It seems therefore that

<sup>286</sup> Cohen suggests that the use of the term ‘*sacrilegos*’ should be seen as an indication of the shift in emphasis that Christianity was beginning to bring to the prosecution of adultery (1991:125).

<sup>287</sup> “*sed eadem lege Iulia etiam stupri flagitium punitur, cum quis sine vi vel virginem vel viduam honeste viventem stupraverit. poenam autem eadem lex irrogat peccatoribus, si honesti sunt, publicationem partis dimidia, bonorum, si humiles, corporis coercionem cum relegatione*” (“[the *lex Iulia*] inflicts penalties on any who without using violence seduce virgins or widows of respectable character. If the seducer be of reputable condition, the punishment is confiscation of half his fortune; if a mean person, flogging and relegation”; *Inst.* 4.18.4).

<sup>288</sup> “*poenam capitale*” (9.9.9, AD 224); “*sanguinis poenam*” (2.4.18, AD 293); “*sacrilegos autem nuptiarum gladio puniri oportet*” (“sacrilegous violators of marriage ought to be punished with the sword”; 9.9.29.4, AD 326). This last rescript is also found at CTh. 9.7.2 (AD 326), where no mention of the death penalty is made.

<sup>289</sup> McGinn 1998a:143; Evans Grubbs 1995:216-217; Arjava 1996:195.

<sup>290</sup> “*nec minus feminae quoque calamitatum participes fuere similia. nam ex hoc quoque sexu, peremptae sunt originis altae complures, adulteriorum flagitiis obnoxiae, vel stuprorum*” (“even women were also sharing in similar calamities. For many of noble birth from this sex were put to death for being guilty of the disgraces of *adulteria* or *stupra*”; Ammianus Marcellinus, 28.1.28); see also 28.1.16 and 28.1.44-46 for death penalty for *adulterium*.

even in cases where the adulterer was tried publically the adulteress' punishment remained the responsibility of the family. Similarly, whilst divorce must invariably have been a consequence of adultery, it received little attention within the male orientated sources for this period.

There is great change from the pre-*lex Iulia* depiction of prosecution and punishment to descriptions by those authors writing afterwards; *adulterium* can clearly be seen as having become criminalised. The focus is now on the prosecution and punishment of the members of the imperial family and of the elite who engage in adultery. For Tacitus, sexual transgression and immorality are standard behaviour for those in power. What is more, he sees them as indicative of the degeneration of the time; in this respect little has changed since the introduction of the *lex Iulia*. Both Tacitus and Suetonius recognise the dangers of such behaviour within the imperial elite and their association with *maiestas* and plots to overthrow the emperor are repeatedly highlighted. Prosecution and punishment are at times made according to the *lex Iulia* – the two Julias are relegated and we are told of a number of divorces for adultery. But at the same time, sentences are also dealt out to those found guilty according to the whim of the current emperor. Indeed, less than fifty years after the introduction of the *lex Iulia* Tiberius preferred to revert to private family sentencing and Nero ordered the death of Claudia Octavia for adultery. The prevalence of physical punishment in Martial also suggests that the tradition of a husband seeking his own revenge continued, at least in the world of his epigrams.

Beyond a basic desire for an improvement in morality for its own sake, the legislation set up distinct boundaries within society. The *lex Iulia et Papia* prevented prostitutes and pimps from climbing the social hierarchy through marriage and the *lex Iulia de adulteriis coercendis* heavily discouraged women at the upper levels of society from behaving like prostitutes. These two sections of society were to be kept well apart. At the same time, virtue was rewarded and the *nobilitas* of the senatorial class was revived. In effect, Augustus placed himself at the apex of a highly stratified moral and social hierarchy, in which everyone knew his or her place and where social reform was to act as a guide for how to behave within the new principate. As far as it is possible to tell from the extant sources, Augustus never stated outright his aims and motivations. However, the social legislation was carefully conceived so that it had a number of effects within Roman society; most significantly, perhaps, it attempted to bring social and political stability and increased control to Augustus. The importance of the legislation, however, comes not in what it was intended for, but in the fact that it continued to be used for the following six centuries.



## Chapter Three: *adulterium* and *stuprum* in Latin Prose

The prose authors that are the focus of this chapter – Cicero, Sallust, Livy, Valerius Maximus, Tacitus, and Suetonius – represent some of the most celebrated and influential extant Latin prose. The picture of *adulterium* and *stuprum* gained from these texts can therefore be seen as representative of the attitudes of the male political and literary elite in the late republic and early empire. It will be shown that there are variations in how each author uses the terms and in how they conceive of their meaning. Moreover, the time at which these changes occurred and their relationship to the introduction of the adultery legislation will prove significant.

### 3.1) The Authors

Most of the material covered in this chapter can be clearly contextualised and dated in comparison to the introduction of the *lex Iulia*: Cicero and Sallust were writing half a century before the legislation was introduced; Valerius Maximus half a century later in the reign of Tiberius, though the exact date of composition and publication is unknown;<sup>291</sup> Tacitus and Suetonius both more than a hundred years later.<sup>292</sup> It is therefore possible to determine the relationship of these texts to the *lex Iulia* and they can be labelled as either pre- or post- *lex Iulia*.

Livy, however, began to write his history in the late 30s BC and continued until his death in AD 17.<sup>293</sup> The composition of the *ab Urbe Condita* is therefore contemporary to the rule of

---

<sup>291</sup> Several references are made to Tiberius and as no allusions are made to suggest that he has passed away it is believed that the *Memorable Deeds* was published before his death in AD 37. Several internal references are used to date the work. For example, a reference at 9.11.ext.4 to an unnamed usurper is thought to refer to Sejanus, who was killed in AD 31 (Skidmore 1996:xv). However, the evidence is at best uncertain and so Wardle remains pessimistic that a date can ever be determined (1998:6).

<sup>292</sup> Tacitus' early works (the *Agricola* and the *Germania*) were written in the last few years of the first century AD. From Pliny's letters recounting the events of the eruption of Vesuvius, it is evident that Tacitus was working on the *Histories* in AD 106 (6.16, 6.20). It is assumed that Tacitus finished the *Histories* before starting the *Annals*, which were begun under Trajan and completed after Hadrian became emperor in AD 117 (Pagán 2012:3). Suetonius published his *de Vita Caesarum* in the 120s and 130s AD and it is thought that the *de Viris Illustribus* may have been written before this (Hurley 2001:3-7). The *de Grammaticis et Rhetoribus* was probably published in the last decade of Trajan's reign (Kaster 1995:xxi).

<sup>293</sup> The dating of Livy's birth and death relies on Jerome, but scholars are sceptical about the reliability of his dating. Jerome placed the date of Livy's birth in 59 BC and recorded it alongside the birth of Messalla (*ad Euseb. Chron.* p.154.19-20, edited by Helm). This date has been amended by modern scholars to 64 BC as it is thought to be too late for Messalla's birth and the consuls of 59 BC, Caesar and Marcus Calpurnius Bibulus, could easily have been confused with those of 64 BC, L. Julius Caesar and Gaius Marcius Figulus

Augustus over Rome. Moreover, the dating of individual books remains problematic as Livy avoided making references to contemporary events that would hint at a date of composition and publication. This makes it difficult to determine which of the extant books were written at the time that the *lex Iulia* was introduced. The only book that can be dated with any confidence is book one to 27 to 25 BC (Luce 1965:209).<sup>294</sup> However, this passage, along with another in book four that refers to Augustus, has been shown by Luce to be a later addition (1965:210).<sup>295</sup> The original date of publication for books 1-4 is then pushed back to either just before or just after the civil wars, around 30 BC,<sup>296</sup> with a revised publication made in 27 to 25 BC.

At the end of the Alexander digression in book nine Livy prays that the peace that followed the end of the civil war continues: “*modo sit perpetuus huius qua vivimus pacis amor et civilis cura concordiae*” (“if only the love of peace and the care for civil concord in which we now live are continued”; 9.19.17).<sup>297</sup> Based on this passage, it has been suggested that the second pentad was written not long after the end of the civil wars when this dark period was still fresh in Livy’s mind, for “the later the passage is dated, the more peculiar the passionate vehemence

---

(Luce 1965:231 n.61; Syme 1979:414). Jerome dates Livy’s death to AD 17 (*ad Euseb. Chron.* p.177.22, edited by Helm) and this is supported by Luce (1965:231-232 n.61). Syme, however, has no faith in the dating of Jerome and does not think it is possible to determine a reliable date for Livy’s death (1979:415). He concedes that Livy could have died before AD 17 or even after this date, either of which would have altered the dating of the last few decades of Livy’s work but neither can be proved. Livy is thought to have started writing his history when he came to Rome in 30 BC (Walsh 1989:4).

<sup>294</sup> This rests on a passage that refers to the closing of the gates of Janus by Augustus (1.19.2-3), for as the name Augustus was used only from 27 BC and Livy makes no reference to the closing of the gates of Janus for the second time in 25 BC this passage must have been written between 27 and 25 BC.

<sup>295</sup> The second passage in question is 4.20.5-11 and the events that brought about this insertion are dated to 28 BC (Syme 1979:417-421). Luce’s argument is supported by Badian (1993:18), Oakley (1997:110) and Burton (2000:432). Luce does not think the additions were added as part of a complete reediting of the first pentad, as the passages do not fit smoothly into the books in which they are placed. Instead, he suggests that the additions were made upon the request of Augustus at a time when it was possible to alter the few copies already published (1965:217-8).

<sup>296</sup> Woodman suggests that references to the present time in the preface (*‘iam’* and *‘haec nova’* pr.4; “*quae [mala] nostra tot per annos vidit aetas*” pr.5; “*haec tempora quibus nec vitia nostra nec remedia pati possumus*” pr.9) refer to the civil war period and so the preface at least must have been written before Actium in 31 BC (1988:132). Luce agrees that a date before Actium for the first pentad may be possible (1965:210) and an early date for the publication and recitation of the first book is proposed by Burton, who places it in 33 BC (2000:440-441). Badian is in agreement that book one was written and published no later than 30 BC, before the first closing of the gate of Janus by Octavian in 29 BC. However, he would place the rest of the pentad, books 2-5, as being published all together in 27 to 25 BC when the later additions were made (1993:18). Syme agrees that this earlier dating is most plausible, but he also suggests that the sentiments of insecurity and anxiety found in the preface could also have been made in the atmosphere of 23 BC (1979:424).

<sup>297</sup> Luce dates this passage to before 20 BC as no mention is made of the return of the standards from Parthia in that year and he also suggests that it is likely to date before 23 BC, when the negotiations to begin the return of the standards began (1965:228).

becomes" (Luce 1965:231).<sup>298</sup> A date for the second pentad is, therefore, given between 26 and 25 BC.<sup>299</sup> Moreover, Luce sees books 6-15 as a single unit and suggests that all of these books were published before 23 BC (1965:229).

It is not possible to date the second decade from internal evidence (Syme 1979:425) and so an approximate date of composition must be determined by looking forward to the dating of the third. The third decade is dated from a reference to the pacification of Spain "*ductu auspicioque Augusti Caesaris*" ("through the command and auspices of Augustus Caesar"; 28.12.12), which was finally achieved in 19 BC and so the dating of this decade is pushed back to this period. However, Syme suggests that this reference fits more neatly with the earlier subjugation of Spain in 26-25 BC, which Augustus conducted in person (1979:425). The third decade could therefore be seen as having been composed in the late 20s rather than after 19 BC.<sup>300</sup> The possibility of this earlier dating of the third decade would in turn bring forward the dating of the fourth decade, for which there are no firm indications of date. However, Syme avoids offering a definite opinion on this problem and maintains that the dating of the third decade is open to debate.<sup>301</sup>

Book 112 is the last book that is known to have been read by Augustus (Walsh 1989:8); in this book a eulogy is given for Pompey and Tacitus relates that despite his pro-Pompeian stance Livy did not lose his favour with Augustus (*Ann.* 4.34). The dating of this book is thought to be AD 8 or 9.<sup>302</sup> Badian suggests that book 120 was the last book to be published under Augustus, at some time in AD 10 or 11 (1993:25).<sup>303</sup> The remaining twenty-two books were written by Livy in retirement in Patavium and were published after Augustus' death in AD 14<sup>304</sup> either by Livy himself or posthumously.

It is estimated that Livy must have written at a pace of three books a year.<sup>305</sup> From this, it is possible to estimate dates for those books for which we have no evidence to determine a chronology. If Luce is correct that book fifteen was published by 23 BC then book 39, which

---

<sup>298</sup> Woodman (1988:135) agrees with Luce.

<sup>299</sup> Walsh 1989:8; Badian 1993:19; Oakley 1997:109; Burton 2000:445.

<sup>300</sup> Burton's suggestion that the first decade was completed by 27-26 BC (2000:445) supports this earlier schema for the second and third.

<sup>301</sup> "It is perfectly open for anyone to assert that the third decade was written before 19 BC – and to deny it, if reason be shown" (Syme 1979:425).

<sup>302</sup> See Badian 1993:25.

<sup>303</sup> If this book was published any later than AD 11 it would have left very little time for the ageing Livy to write the remaining books.

<sup>304</sup> The *Periocha* for book 121 states it was published after Augustus' death (Walsh 1989:8 n.1).

<sup>305</sup> Luce 1965:230; Oakley 1997:109.

contains the Bacchanalia episode, can be dated to around 15 BC and the final extant book, book 45, can be dated to around 13 BC. However, if Syme's suggestion that the third decade was completed in the late 20 BCs is correct, then the date of composition for book 39 is brought forward to any time between 19 and 17 BC, exactly when the *lex Iulia* was being introduced.<sup>306</sup> Either way, the moral legislation is in the background at the time Livy is writing about the Bacchanalian affair. The extant books of Livy were all written either before the introduction of the *lex Iulia de adulteriis coercendis* or in the three or four years following it. The level of impact that the legislation would therefore have had on the use of the terms *adulterium* and *stuprum* is likely to be minimal, although the theme of adultery and of morality in general would have been very topical.

It is also important to consider the varied styles of the authors and how this may influence their writing, for although each was writing 'prose', they were doing so for different reasons and in different ways. The histories of Sallust, Livy, and Tacitus are ostensibly the most straightforward, seeking to give a reliable and factual account of events and characters. Nonetheless, history cannot be written without bias, whatever the intention of the author, and cultural values and assumptions colour the author's portrayal of both the distant and recent past.<sup>307</sup>

The vast scale of Cicero's output and the fact that so much of it has survived means he is our greatest source for the late republican period. Furthermore, the fact that this work – covering the period from the 80s BC until his death in 43 BC – includes oratorical, philosophical, and epistolary works makes it an extremely varied collection both in terms of style and focus. The portrayal of sexual transgression and the opinions that Cicero puts forth about such behaviour is likely to vary between a private letter and a speech in front of the senate. However, at the same time, Cicero's speeches are filled with invective, and sexual transgression was one way in which to undermine the opposition. Indeed, invective was such an important tactic in the law courts that Cicero could claim that the prosecution's failure to use invective in the trial of Fonteius proved his innocence of the crime (*Font.* 37). There were several categories of invective. The three basic categories as understood by Cicero were external circumstances (birth, wealth, etc.), physical

---

<sup>306</sup> Scafuro, on the other hand, argues that book 53 had been completed by 18 BC (1989:142 n.50). She also suggests that if book 39 was written before the introduction of the Augustan moral legislation then the Bacchanalia episode might have a "certain relevance for a contemporary audience whose loyalties may have been divided between personal affection and the dictates of status" resulting from the provisions of the *lex Iulia de maritandis ordinibus* (1989:136).

<sup>307</sup> For the social and political background to writing history and biography in the early empire see Rutledge (2009).

attributes, and qualities of character (Cic. *Part. Ort.* 82; Arena 2007:149). Craig has gone further to define 17 *loci* from which invective could be developed, including sexual misconduct (2004:190-191).<sup>308</sup> The audience would be familiar with these *loci* and their use would invoke certain expectations and preconceptions (Craig 2004:192). As a result, references to sexually transgressive behaviour are likely to conform to these expectations and will include stock charges of deviance that would have been heard throughout the law courts.<sup>309</sup> Moreover, as the aim of this invective was to cast the target out of the community (Arena 2007:153) the accusations of sexual immorality made by Cicero will demonstrate the degree to which sexual transgression was acceptable to the Roman male elite.<sup>310</sup> Nevertheless, although Cicero's invective cannot be used to reliably recreate the actual sexual habits of the men he vituperates, there still needed to be a level of plausibility surrounding the accusations he made in order for them to be effective.<sup>311</sup>

Valerius Maximus differs from the other authors as he does not write history but instead:

*urbis Romae exterarumque gentium facta simul ac dicta memoratu digna, quae apud alios latius diffusa sunt quam ut breviter cognosci possint, ab inlustribus electa auctoribus digerere constitui, ut documenta sumere volentibus longae inquisitionis labor absit.*

I have determined to set out from famous authors and arrange the deeds and sayings worthy of the memory of the City of Rome and foreign nations, which are too widely spread in other sources to be able to be concisely learnt, so that the labour of a long inquiry is taken from those wishing to identify examples.

(1.pr.)

Despite such statements of intent that he provides in the preface to his work, Valerius' purpose in collecting these *exempla* has long been debated. The traditional view is that Valerius was composing a handbook for declamation (Bloomer 1992:1). Skidmore has since argued that it was

<sup>308</sup> The full list: embarrassing family origin; unworthy of one's family; physical appearance; eccentricity of dress; gluttony and drunkenness (possibly leading to acts of *crudelitas* and *libido*); hypocrisy for appearing virtuous; avarice (possibly linked with prodigality); taking bribes; pretentiousness; sexual misconduct; hostility to family; cowardice in war; squandering one's patrimony/financial embarrassment; aspiring to *regnum* or tyranny (associated with *vis*, *libido*, *superbia*, and *crudelitas*); cruelty to citizens and allies; plunder of private and public property; oratorical ineptitude.

<sup>309</sup> Powell, however, is cautious about using evidence from Cicero to generalise about the conventions of invective whilst we do not know enough about the "iceberg of which Cicero's extant and published speeches may be a far-from-typical tip" (2007:20).

<sup>310</sup> Invective also worked as a moral guide for the types of behaviour that were acceptable and this is something Cicero was aware of (Corbeill 1996:19, 2002:211).

<sup>311</sup> It is this plausibility, even if the accusations are not true, that gives the invective its power (Craig 2004:195-196).

instead a moral guide intended for private study by the elite and to be read during dinner (1996:108-109).<sup>312</sup> Valerius is known to have taken certain phrases from his republican sources either verbatim or with minimal alteration (Wardle 1998:17).<sup>313</sup> This is of great importance when considering Valerius' use of the terms *adulterium* and *stuprum* and the influence that the *lex Iulia* may have had. If Valerius is copying phrases and terminology from his republican sources then any changes in language contemporary to Valerius may be lost. It is impossible to know, however, how great an impact this borrowing from his sources would actually have had on Valerius' work.

Furthermore, the nature of Valerius' *exempla*, as a collection of snapshots and anecdotes collected together to fulfil a moral purpose, means that it gives a distorted historical picture. Even so it still "offers a glimpse into what was actually said about, and thought of, the republican past in a particular social and cultural milieu in Rome in the 20s and 30s AD" (Bloomer 1992:8). Langlands is dubious, however, as to how far these *exempla* can be used to recreate the actual practices of early Rome:

Valerius' utopian vision of an age where these dangers were not yet at issue is designed itself to highlight these contemporary dangers and to suggest how they might be managed. Were the Romans expected to believe in such an age at all, or rather to accept its integrity as an indispensable moral tool? After all, ancient writers themselves acknowledged that when it came to *exempla* it was the moral force that was paramount and not historical accuracy.

(2006:132)

Nevertheless, despite these problems Valerius' collection of *exempla* still provides us with both invaluable evidence of the use of *adulterium* and *stuprum* in the years immediately following the introduction of the *lex Iulia* and with an insight into the practices surrounding the punishment of sexual transgression in the republic.

As biographical works, Suetonius' *Lives* differ in their style and focus to traditional history. In the *de vitae Caesarum* great attention is paid to the character of the emperors and this serves as the primary tool with which he recounts their reign. Their virtues and vices, therefore, are at

---

<sup>312</sup> Langlands agrees with Skidmore that it was a moralising text (2006:124). Wardle, though sceptical about whether such a text would be the right sort of material to be read out at dinner, agrees that it did have a moral purpose (1998:14).

<sup>313</sup> Wardle compared two passages from book one with the passages of Cicero and Livy that they were based on (Val. Max. 1.1.1 and Cic. *Har. Res.* 18; Val. Max. 1.1.11 and Livy 5.46.2-3). He found that Valerius varied the texts of Cicero and Livy by use of synonyms, changes to the word order, and the exchange of adjective for noun etc. so that the two passages remain strikingly similar. Indeed, despite these changes "the verbatim repetition of some phrases is obvious" (Wardle 1998:17).

the centre of the work. However, Suetonius differs from the panegyrist and the writer of invective as he treats these virtues and vices “with characteristic scholarly impartiality” (Wallace-Hadrill 1983:149). Consequently, the imperial *libido* is featured throughout the *Lives*, though in varying degrees and form (Wardle 1994:275). The erotic elements are given greater prominence by Suetonius than his contemporary Tacitus, for whom sex was not a concern for its own sake (Syme 1958:543). For the genre of biography allowed for and also demanded more detailed discussion of the subject’s private life and behaviour. This attention paid to sexual behaviour helps characterise the emperors; their sexual transgressions and infidelities help demonstrate the extent of their degeneracy and ability to rule. This is not to say, however, that Tacitus was not interested in the social legislation and in *Annals* book three he shows his contempt for the use of law to control morality (3.24- 28).<sup>314</sup> Moreover, the focus in book three on women and their role in public life works alongside his discussion of Augustus’ moral legislation as Tacitus questions how and why women became a part of public life under the empire (Milnor 2005:149).

### 3.2) The Terms

The terms *adulterium* and *stuprum* and their derivatives are found in varying degrees within the texts that have formed this investigation (fig. 1).<sup>315</sup> The most dominant term is *stuprum*; the fact that it can be used to refer to varying types and degrees of sexual immorality makes this no surprise. *Adulterium* is not used on the same scale and whilst *stuprum* is found in all six texts, *adulterium* is not found at all in Sallust and only once in Livy.<sup>316</sup> The term *moechus* is only found in colloquial contexts. It is employed twice by Suetonius while quoting informal couplets (*Jul.* 51.1; *Otho* 3.2) and once in a letter from Caelius to Cicero (*ad Fam.* 8.7.2). This suggests that whilst *moechus* was not considered suitable for use by the prose authors in their published works, the Roman male elite did use this term in their everyday language.

---

<sup>314</sup> See Milnor 2005:143-145.

<sup>315</sup> See appendix 2 (i) for individual frequency tables for each prose author, including references for all occurrences.

<sup>316</sup> Livy 1.58.4.

Figure 1: individual word frequency of the prose authors

Author Word	Cicero	Sallust	Livy	Valerius Maximus	Tacitus	Suetonius	Total
<b>adulterium</b>	16		1	4	25	14	60
<b>adulter</b>	10	1	1		21	3	36
<b>adultera</b>					2	1	3
<b>adulterinus</b>		1	3				4
<b>adulterare</b>	5					3	8
<b>stuprum</b>	63	5	20	16	26	9	139
<b>stuprator</b>						1	1
<b>stuprosus</b>				1			1
<b>stuprare</b>	4		4	2		2	12
<b>constuprare</b>	2		2			2	6
<b>moechus</b>	1					2	3
<b>Total</b>	101	7	31	23	74	37	

The verbal forms *adulterare*, *stuprare*, and *constuprare* are found in Cicero, Livy, Valerius Maximus, and Suetonius, whilst Sallust and Tacitus do not use them at all. This difference must be explained by the author's personal taste, for this pattern does not indicate a change in usage over time. A passive verbal form is only found in Cicero, who uses *stuprari* to mean rape: "*qui filiam interficeret ne stupraretur*" ("the man who killed his daughter to prevent her being debauched"; *de Fin.* 5.64).<sup>317</sup> The adjective *adulterinus* is found in both Sallust and Livy.<sup>318</sup> However, it is only used in a non-sexual sense to mean 'false' or 'altered'.

The feminine form *adultera* is only used by Tacitus and Suetonius, suggesting that either the earlier authors are less concerned with the female's role in the sexual affair or she is referred to solely by her name or just as 'the woman'.<sup>319</sup> Moreover, even in these later authors the masculine form occurs with much greater frequency; in Tacitus the term *adulter* is found twenty-one times, whilst the feminine form *adultera* occurs only twice.<sup>320</sup> The difference in the occurrence of the masculine and feminine forms of this noun may be explained by the fact that it

<sup>317</sup> At *Pro. Caec.* 73 Cicero uses the passive infinitive '*adulterari*' but without a sexual meaning: "*quod enim est ius civile? quod neque inflecti gratia, neque perfringi potentia, neque adulterari pecunia possit.*" ("Indeed what is the law? The law is something which cannot be bent by charm, nor broken by power, nor corrupted by money.")

<sup>318</sup> Sall. *Bel. Iug.* 12.3; Livy 39.18.4, 40.23.7, 40.55.1. Cf. its use in the verse authors, where it is only used by Plautus, again with a non-sexual meaning (*Bacch.* 266).

<sup>319</sup> Cf. ancient Greek, which does not have a word for the adulteress. Instead, a woman with whom *μοιχεία* has been committed is usually described by a passive feminine participle ("she who has been 'adulterated'"), examples of which are found at Dem. 59.110 and Aristoph. *Peace* 980 (Todd 2007:48 n.5).

<sup>320</sup> *Ann.* 11.26, 14.1.



is the woman and her status which qualifies the relationship as *adulterium*. For this reason we are in most cases given the woman's name and a reference to her husband. If she was referred to solely as 'the adulteress' there would not be enough information for the charge of *adulterium* to be justified.

When the terms are grouped together with their derivatives (fig. 2) the difference is striking.

**Figure 2: frequency of *adulterium* and *stuprum* (including their derivatives) in the prose authors**

Author \ Word	Cicero		Sallust		Livy		Valerius Maximus		Tacitus		Suetonius	
<b>adulterium</b>	31	31%	2	29%	5	16%	4	17%	48	65%	21	60%
<b>stuprum</b>	69	69%	5	71%	26	84%	19	83%	26	35%	14	40%
<b>Total</b>	100		7		31		23		74		35	

The balance between *adulterium* and *stuprum* remains constant between the first four authors at roughly between a 30/70 and 15/85 percent split. In Suetonius and Tacitus this switches round so that the split in word frequency is now 65/35 percent. The use of *adulterium* and *stuprum* has clearly changed over time so that where once *stuprum* was most frequent it has, by the beginning of the second century AD, been superseded by *adulterium*. The *lex Iulia de adulteriis coercendis* appears to have had an impact. However, it does not seem to have filtered through to literature immediately. Indeed, Valerius Maximus, though he was writing nearly fifty years after the introduction of the *lex Iulia*, seems little affected by the change in usage and meaning of these terms. It may be taking a step too far to explain all occurrences of *adulterium* and *stuprum* that do not follow the use of the terms within the *lex Iulia* as a result of Valerius' absorption of the phraseology of his republican sources.<sup>321</sup> Nevertheless, the complete absence of any reference to the *lex Iulia*, either by name or by allusion to a law regarding *adulterium* or *stuprum*, and the scale to which the use of the terms does not follow the terms of the legislation suggests that the *lex Iulia* had had little impact by this point.<sup>322</sup>

<sup>321</sup> See discussion of Valerius' use of sources in section 3.1.

<sup>322</sup> We also know from Suetonius that Tiberius made efforts to revert to the old system of family jurisdiction at this time (*Tib.* 35.1, quoted in section 2.1).

### 3.3) Status

As we have seen, the *lex Iulia* introduced distinct definitions and associations for *adulterium* and *stuprum*. *Adulterium* was a sexual encounter between a married woman and a man who was not her husband, whilst *stuprum* was a sexual encounter with a virgin, widow, or boy of respectable status. Determining the marital status of the woman involved is therefore a key part in gaining an understanding of the use of the terms.

An extra-marital relationship can only be determined when the status of the woman involved is known. As it is often not the woman concerned who is of interest to the author – she is either not mentioned at all or is not discussed in any detail. This makes it almost impossible to determine her status. Where it has not been possible to determine the marital status of the woman involved it has been recorded as ‘uncertain’ in figure 3. Classification as married has been made for all women who are described within the text as being married (*uxor*, *nupta*, etc.), where reference is made within the text to a *maritus* or the husband is specifically named, or when we know from another source that the woman was married even if this is not mentioned by the text in question. If a reference has been made to anyone who was not a married woman then they have been included under the unmarried classification, regardless of age or sex. A fourth classification ‘general’ contains unspecific references to *adulterium* and *stuprum*, where we are not told who was involved.<sup>323</sup> Once the status of the partners in the sexual transgression is determined the differences in how *adulterium* and *stuprum* were used become clearer.

Although *adulterium* and *stuprum* were separate terms and had different nuances and associations, they were often used interchangeably, even within the *lex Iulia* itself: “*lex stuprum et adulterium promiscui et καταχρηστικώτερον appellat*” (“the law refers to *stuprum* and *adulterium* indiscriminately and with rather a misuse of terms”; Papinian, *de Adult.* book 1, *D.* 48.5.6.1). This exchange seems to have been one way only; *stuprum* was often used to refer to a sexual relationship with a married woman, particular within the earlier authors. However, it did not carry a legal meaning and was used to refer to the act of the sexual affair itself, rather than the offence that such an affair constituted. Moreover, the further use of *stuprum* to mean rape, especially when used in association with phrases such as ‘*per vim*’<sup>324</sup> and ‘*pati coacta*’,<sup>325</sup> was often used in relation to married women. *Adulterium*, on the other hand, was only used once by our authors to

---

<sup>323</sup> For example, Cic. *In Verr.* 2.5.26, quoted in section 3.4.

<sup>324</sup> Cic. *De Fin.* 2.66, 5.64; Livy 1.57.10, 1.59.8, 38.24.3, 39.10.7; Val. Max. 6.1.1, 9.1.ext.5. The influence of *vis* is also found at Tac. *Hist.* 2.56, 3.33.

<sup>325</sup> Val. Max. 6.1.1, 6.1.ext.2.

refer to a sexual relationship with a woman who was known to be unmarried – Tacitus refers to a charge of *adulterium* with Livia, who was a widow at this time (*Ann.* 6.29; AD 34).

**Figure 3: status of the passive partner in the sexual affair in the prose authors**

	Status of the passive partner?	Cicero	Sallust	Livy	Valerius Maximus	Tacitus	Suetonius	Total
<b>adulterium</b>	Married	2	0	1	2	13	5	23
	Unmarried	0	0	0	0	1	0	1
	Uncertain	1	0	0	2	6	5	14
	General	13	0	0	0	5	4	22
<b>adulter</b>	Married	0	0	1	0	15	3	19
	Unmarried	3	0	0	0	2	0	5
	Uncertain	7	0	0	0	3	0	10
	General	0	1	0	0	1	0	2
<b>adultera</b>	Married	0	0	0	0	2	1	3
	Unmarried	0	0	0	0	0	0	0
	Uncertain	0	0	0	0	0	0	0
	General	0	0	0	0	0	0	0
<b>adulterare</b>	Married	0	0	0	0	0	3	3
	Unmarried	0	0	0	0	0	0	0
	Uncertain	0	0	0	0	0	0	0
	General	5	0	0	0	0	0	5
<b>stuprum</b>	Married	6	1	4	4	4	3	22
	Unmarried	5	3	7	8	8	3	34
	Uncertain	4	0	2	3	3	2	14
	General	48	1	7	1	11	1	69
<b>stuprare</b>	Married	2	0	2	0	0	1	5
	Unmarried	1	0	1	2	0	1	5
	Uncertain	0	0	0	0	0	0	0
	General	1	0	1	0	0	0	2
<b>constuprare</b>	Married	0	0	1	0	0	0	1
	Unmarried	1	0	0	0	0	2	3
	Uncertain	0	0	0	0	0	0	0
	General	1	0	1	0	0	0	2

*Adulter* was used predominantly in relation to an adulterous relationship but it was also used by Cicero and Tacitus to refer to a man who was involved with an unmarried woman. The

varied meaning of this term, to be both ‘adulterer’ and ‘lover’, means that it was often used in contexts that did not involve a married woman. Another problem with determining whether the relationship should be classed as adultery is that the term *adulter* was often used in relation to widows. Under the *lex Iulia* a sexual affair with a widow was *stuprum*, not *adulterium*. However, the term was used in relation to widows before the introduction of the *lex Iulia* (Cic. *Pro Cael.* 38, 49; *Pro Sest.* 39) and it seems to have retained this use afterwards (Tac. *Ann.* 4.52, 6.25). The feminine form *adultera* was used by Suetonius and Tacitus to refer to married women only (Suet. *Gaius* 24.3; Tac. *Ann.* 11.26, 14.1).

The verbal form *adulterare* is only found in Cicero and Suetonius. It is used by Cicero to mean ‘the action of committing adultery’ without any reference to who is involved (*De Off.* 1.128; *De Leg.* 1.43) and also in a non-sexual sense to mean ‘alter’ or ‘corrupt’ (*Pro Caec.* 73; *De Part. Orat.* 90; *De Amic.* 92). Suetonius, however, only uses the term in relation to married women (*Jul.* 6.2, 48.1; *Aug.* 67.2). *Stuprare* was used by the authors to mean the act of sexual transgression in general,<sup>326</sup> but also with a married woman<sup>327</sup> or with a man.<sup>328</sup> *Constuprare* was used in the same ways.<sup>329</sup> In addition, *stuprare* was often used to mean rape and this could involve married women,<sup>330</sup> virgins,<sup>331</sup> or men.<sup>332</sup>

The use of *adulterium* and *stuprum* does vary between the authors. Whether this was due to change over time through the influence of the *lex Iulia* or because of other factors will become clearer through an in-depth analysis of each of the six primary authors.

---

<sup>326</sup> Cicero: “*sin ille ludus fuit, quid te impurius, qui religiones omnes pollueris aut ementiundo aut stuprando?*” (“But if it was a farce, what could be viler than you, who have defiled all sanctity either by falsehood or by committing *stuprum*?”; *De Dom.* 125); “*quo pulvinari? quod stupparas.*” (“Where is the sacred couch? Which you used for *stuprum*.”; *De Har. Res.* 33). Livy: “*deinde simillimi feminis mares, stuprati et constupratores*” (“then there are men like women, the debauched and the debauchers”; 39.15.9).

<sup>327</sup> Livy: “*die dicta ab aedilibus crimine stupratae matrisfamiliae*” (“he was accused by the aediles on a charge of *stuprum* with a married woman”; 8.22.3). Suetonius: *Nero* 35.2.

<sup>328</sup> Suet. *Gaius* 36.1: “*Valerius Catullus, consulari familia iuvenis, stupratum a se ac latera sibi contubernio eius defessa etiam vociferatus est.*” (“Valerius Catullus, a youth from a consular family, even shouted out in public that he had had *stuprum* with [the emperor] and his flanks were tired in his service.”)

<sup>329</sup> Sexual transgression in general (Cic. *Ad Att.* 1.18), with a married woman (Livy 29.17.15), with children (Cic. *Comm. Pet.* 10), and with a man (Suet. *Tib.* 44.2; *Vit.* 12.1).

<sup>330</sup> Cicero: “*stuprata per vim Lucretia*” (“Lucretia was *stuprare* through force”; *De Fin.* 2.66); *De Fin.* 5.64, quoted in section 3.2. Livy: 1.57.10, quoted below.

<sup>331</sup> Livy: “*Ap. Claudium virginis plebeiae stuprandae libido cepit*” (“lust seized Appius Claudius into committing *stuprum* with a plebeian virgin”; 3.44.2). Valerius Maximus: “*postea deinde filia eius per vim stuprata ipsam dimisit, ut vacuum locum nuptiis puellae faceret*” (“then after having *stuprum* with her daughter through force he divorced the wife so as to make space to marry the girl”; 9.1.ext.5).

<sup>332</sup> Valerius Maximus: “*Cn. etiam Furium Brocchum qui deprehenderat familiae stuprandum obiecit*” (“besides the man who caught Cn. Furius Brocchus offered him to his slaves to be subjected to *stuprum*”; 6.1.13).

## Cicero

Cicero refers to numerous sexual affairs that do not involve married women. In the *Pro Caelio* he defends Caelius by discrediting the witnesses against him; the main force of his attack is portraying Clodia to be a disgraceful woman of questionable morals and little integrity. Cicero does not deny Caelius' affair with Clodia, but in order to downplay any accusation of depravity on Caelius' side for engaging in a sexual affair with a respectable high-born matron, Cicero reduces Clodia to the level of a prostitute who has lost all sense of morality by making herself sexually available to men.<sup>333</sup> Moreover, Cicero claims that it is acceptable for young men to have minor lapses in judgement and morality, for in fact most men do so in their youth but then became stable and moral citizens in later years (*Pro Cael.* 43). He therefore absolves Caelius of any wrong doing in having sexual relations with Clodia; it is Clodia who faces censure for her sexual encounters and for whom sexual freedom is forbidden. However, as we have seen, the *lex Iulia* would go on to punish both parties in the affair and both would become marked with *infamia*.

To portray Clodia as a prostitute Cicero starts by asking whether a man who has relations with such a woman should be seen as an adulterer:

*si quae non nupta*<sup>334</sup> *mulier domum suam patefecerit omnium cupiditati palamque sese in meretricia vita collocarti...*<sup>335</sup> *cum hac si qui adulescens forte fuerit, utrum hic tibi, L. Herenni, adulter an amator, expugnare pudicitiam*<sup>336</sup> *an explere libidinem voluisse videatur?*

If a woman who is not married opens up her house to all men's desires and publicly leads the life of a prostitute... if a young man happened to be found with this woman, would he be to you, L. Herennius, an adulterer or a lover, would he be seen to have wanted to ravaged her *pudicitia* or to have satisfied his passion?

(*Pro Cael.* 49)<sup>337</sup>

---

<sup>333</sup> Cicero's attack on Clodia is also a clear indication of the fear felt by Roman men over unrestrained female sexual behaviour (Ormand 2009:171).

<sup>334</sup> *non nupta* here means 'a widow' (*vidua*). See also Apul. *Apol.* 27: *non nupserit* (Austin 1960:110).

<sup>335</sup> *collocare* also has the sense of to give in marriage – she has given herself not to the respectable life of a married woman but to being a prostitute.

<sup>336</sup> The same phrase is used to describe Verres at *In Verr.* 2.1.9: "*non enim furem sed ereptorem, non adulterum sed expugnatorem pudicitiae*" ("for he is no common thief but a violent robber, no common adulterer but the violator of all chastity").

<sup>337</sup> See also: "*si vidua libere, proterva petulanter, dives effuse, libidinosa meretricio more viveret, adulterum ego putarem, si quis hanc paulo liberius salutasset?*" ("If a widow were casting off restraints, an impudent widow living wantonly, a rich widow living extravagantly, a lustful widow living in the ways of a prostitute, should I regard any man as an adulterer if he called on her somewhat too openly?"; *Pro Cael.* 38). Ormand highlights the social and economic freedom that Clodia evidently had to be able to provide such

Clodia has no *pudicitia*; she gave up any claim to modesty and chastity when she opened up her bedroom to the men of Rome. Cicero, therefore, argues that any man who has enjoyed her company should not be called *adulter* but merely *amator*, a lover who has come to see his mistress. Cicero's insistence that Caelius is not to be seen as an *adulter* suggests that there is something damaging to a man's reputation and *dignitas* if he is labelled as such.<sup>338</sup> However, the most intriguing aspect of these two passages is not how Cicero defines Caelius but how he defines Clodia. She is *non nupta* and a *vidua* and so the relationship between her and Caelius would not be *adulterium* but *stuprum* under the *lex Iulia*. Nevertheless, the male lover is described as an *adulter*. Cicero is either using the word *adulter* as there is no equivalent for a man who commits *stuprum* or his definition of the two terms does not meet with what we would expect.

*Stuprum* was not used by Cicero to refer only to sexual relations between a man and a woman. At *Pro Sest.* 18 Cicero scathingly rebukes the appearance and conduct of Gabinius:

*alter unguentis adfluens, calamistrata coma, despiciens*<sup>339</sup> *conscios stuprorum ac veteres vexatores aetatae suae.*

Here is another one, dripping with unguents, with curled hair, looking down upon the partners of his *stuprum* and the old abusers of his delicate youth.<sup>340</sup>

The meaning of "*conscios stuprorum*" could either be "those aware of his *stupra*" or "the partners of his *stupra*". Following Kaster's argument that the latter sense is correct (2006:156-157), the use of *stuprum* here would then refer to a sexual relationship between a young male and an older male.<sup>341</sup>

At *De Har. Res.* 42 Cicero accused Clodius of "*domesticis germanitatis stupris*" roughly translatable as "*stupra* at home with his siblings" and these accusations of incest were a recurring theme in Cicero's ill-treatment of Clodius. However, the identities and lives of his three sisters are

---

entertainments and how Cicero "links this kind of economic and social freedom with an assumption of wild and profligate sexual freedom" (2009:172).

<sup>338</sup> Accusations of *adulterium* and *stuprum* were also damaging to the reputation of the woman and her family.

<sup>339</sup> Kaster believes *despiciens* is preferable to Shackleton-Bailey's *respiciens* as Cicero does not use the verb with the required nuance anywhere else (Kaster 2006:157; Shackleton-Bailey 1985:148).

<sup>340</sup> This description matches that at *In Cat.* 2.22-23 and Cicero describes Gabinius in a similar way at *In Pis.* 25.

<sup>341</sup> See also *De Re Pub.* 4.4, where *stuprum* is used with *iuvenes*.

often confused within the sources, though it is known that they were all married by around 73 BC.<sup>342</sup> There are also three occasions where *adulterium* or *stuprum* are brought into the home:

*et si puella nata biceps esset, seditionem in populo fore, corruptelam et adulterium domi.*

And when a girl was born with two heads, this foretold sedition among the people and seduction and *adulterium* in the home.

(*De Div.* 1.121)<sup>343</sup>

In these examples *stuprum* and *adulterium* could be used interchangeably as both refer to illicit sexual relations that are brought into the home by an outsider. It can only be assumed that this would be with either the wife or daughters of the family. Without further information about who the female partner in the affair was, the two terms can only carry the same basic meaning: illicit sexual relations with a female member of the family.

There are several occasions where Cicero uses *stuprum* to refer to a sexual relationship between a man and a married woman: “*noctu stupri causa lectica in urbem introferri solitus est ad mulierem nuptam uni, propositam omnibus*” (“he was accustomed to be carried back into the city after nightfall on a litter for the purpose of *stuprum* with a woman who was one man’s wife but was exposed to all”; *In Verr.* 2.5.34).<sup>344</sup> Moreover, at *In Verr.* 1.14 Cicero says that he will not relate in detail Verres’ “*stupris et flagitiis*” in order that he does not add to the pain of those who were not able to save their “*liberos coniugesque*” (“wives and children”) from the *petulantia* (wantonness) created by Verres. The use of *stuprum* over *adulterium* here in *In Verr.* 1.14 and in *Phil.* 2.99<sup>345</sup> can be explained by the presence of a third party – children and sister respectively. As it was not just the wife who was involved in the sexual misconduct then *adulterium* may not have been the most appropriate term to use and *stuprum*, with a more general sense of sexual disgrace, may have been more appropriate.

---

<sup>342</sup> It is often difficult to distinguish the sisters as they are all referred to as Clodia. Tertia was married to Marcius Rex by 76 BC, and by 73 BC Quarta had married Metellus Celer and Quinta had married Lucius Lucullus (McDermott 1970:41). Tertia and Quarta would later be widowed and Quinta was divorced by Lucullus. For a detailed examination of the lives of the three sisters see McDermott (1970).

<sup>343</sup> Also: “*quo in oppido multas familias totas in perpetuum infamis tuis stupris flagitiisque fecisti*” (“in which town you have brought lasting shame on many whole families by your *stupra* and disgraces”; *In Verr.* 2.4.20); *Parad.* 23, quoted in section 2.3.

<sup>344</sup> See also *Phil.* 2.99, *In Cat.* 1.26.

<sup>345</sup> “*frequentissimo senatu Kalendis Ianuariis sedente patruo hanc tibi esse cum Dolabella causam odii ausus es, quod ab eo sorori et uxori tuae stuprum oblatum esse comperisses*.” (“At a crowded sitting of the senate on the Kalends of January, in the presence of your uncle, you dared to give as your reason for hating Dolabella that you had discovered his attempted *stuprum* with your sister and wife.”)

Further examples of *stuprum* with a married woman are found in the philosophical works: “*reginae stuprum intulit*” (“he introduced *stuprum* to the queen”; *De Off.* 3.38) and quoting Atreus “*qui non sat habuit coniugem inlexe in stuprum*” (“who was not content to tempt my wife to *stuprum*”; *De Nat. Deo.* 3.68). The word which Cicero repeatedly uses to refer to extra-marital sexual relations between a wife and another man is *stuprum*. In fact, there is only one occasion within the whole corpus in which Cicero uses the term *adulterium* to refer to a sexual relationship where the woman is identifiable as being married: “*qui regnum adulterio quaereret*” (“who sought the throne through *adulterium*”; *De Nat. Deo.* 3.68). It therefore seems that Cicero’s use of the terms and the understanding which we have of their meaning do not correspond.

Nonetheless, they are still two separate terms and concepts and Cicero uses them as such: “*cuius omnis vigilias in stupris constat adulteriisque esse consumptas*” (“all his night watches were invariably spent in *stupra* and *adulteria*”; *In Verr.* 2.4.144).<sup>346</sup> Their use together as two related but yet still different concepts suggests that they were not entirely interchangeable; that they did have separate meanings and connotations to Cicero.

### Sallust

Sallust only divulges the sex and status of the female partner taking part in the *stuprum* on four occasions. We find *stuprum* with a *virgo nobilis* and a Vestal Virgin (*Bel. Cat.* 15.1), with *homines* and *mulieres* (*Bel. Cat.* 24.3), and with *virgines* and *matrona* (*Hist.* 3.66). Catiline is also accused of having a “*stupri vetus consuetudo*” (“a long affair of *stuprum*”) with Fulvia, a *mulier nobilis* (*Bel. Cat.* 23.3). Fulvia only married in 62 BC and so she would have been unmarried at the time of her affair with Catiline even though Sallust calls her *mulier*. Where *stuprum* and *adulter* are used elsewhere they are done so in general with no information about the identity of the partner. *Stuprum* was also used by Sallust to refer to prostitution: “*ingentis sumptus stupro corporis toleraverant*” (they sustained their enormous expenses through *stuprum* of their bodies”; *Bel. Cat.* 24.3).

---

<sup>346</sup> See also: *In Piso.* 70; *De Fin.* 2.73; *Pro Flacc.* 34; *Pro Sest.* 20.



## Livy

The term *adulterium* is only found once in Livy and it is used to refer to a sexual relationship with a married woman. Tarquinius threatens Lucretia that he will kill her and make it look like she had been “*in sordido adulterio necata*” (“killed in sordid *adulterium*”; 1.58.4) and that her partner in this affair was a slave.<sup>347</sup> We are told that Lucretia has a *vir* (husband)<sup>348</sup> and the legendary status of this story would ensure that many already knew of Lucretia’s marital status. However, the actual act of the rape of Lucretia is described as *stuprum* even though she is married; at 1.57.10 Tarquinius is seized with the *mala libido* to *stuprare* Lucretia,<sup>349</sup> and references are made to the *stuprum* of Lucretia at 1.59.8<sup>350</sup> and 3.44.1.<sup>351</sup> Rape, whatever the marital status of the victim, was therefore called *stuprum*. However, the rape is also depicted in terms of *adulterium*. The term *adulter* is later used to describe Tarquinius after he has raped Lucretia: “*sed date dexteras fidemque haud impune adultero fore*” (“but give your right hands and your assurance that the adulterer will not go unpunished”; 1.58.7).<sup>352</sup> Tarquinius is an *adulter* and not a *corruptor*, *raptor*, *violator* or any other word that would suitably denote a person who commits such violent sexual acts. Moreover, Lucretia, who will not absolve herself of the blame even though she wanted no part of it, delivers punishment upon herself and commits suicide (1.58.7-11).<sup>353</sup> It is only in cases of adultery that guilt and shame are expected of both parties.

On three occasions *stuprum* is used to describe sexual transgression that involves both married women and other groups. *Stuprum* is used in relation to *matronae* and *virgines*<sup>354</sup> and both *stuprum* and *stuprare* are used for sexual transgression involving *matronae*, *virgines* and

---

<sup>347</sup> Ovid also refers to this threat by Tarquinius to incriminate Lucretia in *adulterium* with a slave: “*falsus adulterii testis adulter ero:/ interimam famulum, cum quo deprensa fereris*” (“I, the adulterer, will give false witness of *adulterium*: I will kill a slave, with whom you will be caught”; *Fast.* 2.808-809). For Livy’s portrayal of women, particularly Lucretia and Verginia, and the relationship between female chastity and male honour see Joshel (1992).

<sup>348</sup> 1.57.10, 1.58.5, 1.58.7, 1.58.12.

<sup>349</sup> “*ibi Sex. Tarquinius mala libido Lucretiae per vim stuprandae capit*” (“it was there that an evil desire took hold of Sex. Tarquinius to have *stuprum* with Lucretia by force”).

<sup>350</sup> “*de stupro infando Lucretiae*” (“about the atrocious *stuprum* of Lucretia”).

<sup>351</sup> “*quod per stuprum caedemque Lucretiae urbe regnoque Tarquinius expulerat*” (“[the outrage] which expelled Tarquinius from the city and from the kingship because of the *stuprum* and death of Lucretia”).

<sup>352</sup> See also Ovid *Fasti* 2.808, quoted above.

<sup>353</sup> In Ulpian’s opinion the *lex Iulia* absolved women who have been raped from any blame (Ulpian, *de Adult.* book 2, *D.* 48.5.14.7, quoted in section 1.5). This suggests that there was debate about whether a woman who had been raped and therefore had not consented to the sexual act held any share of the blame.

<sup>354</sup> “*cetera stupra virginum matronarumque oblivioni dentur*” (“let all the other *stupra* of virgins and *matrona* be given to oblivion”; 32.21.24).

*ingenui pueri*.<sup>355</sup> *Stuprum* is also repeatedly used when the sexual transgression does not involve married women at all. The attempted violation of Verginia by Appius Claudius is referred to both by *stuprum*<sup>356</sup> and the verb *stuprare*<sup>357</sup> after we are repeatedly told by Livy that she is a *virgo* (3.44).<sup>358</sup> It is also used in relation to the Vestal Virgins<sup>359</sup> and to youths.<sup>360</sup> *Stuprum* did not refer solely to the sexual transgression of women, but could be used for both male and female participants: “*supra promiscua ingenuorum feminarumque erant*” (“there was the indiscriminate *supra* of freeborn boys and women”; 39.8.7).<sup>361</sup> The term can also be used in general, without referring to the status or gender of the people engaging in the *stuprum*.<sup>362</sup>

### Valerius Maximus

Half of the occurrences of *stuprum* in Valerius Maximus are not in relation to consensual relationships between a man and a woman; more often the term refers to relationships between two men<sup>363</sup> or to rape, either of a virgin<sup>364</sup> or married women.<sup>365</sup> In fact, rape, sexual violence, and the avenging of these acts dominate the text in relation to *stuprum*. Moreover, the verbal form *stuprare* is only used to mean rape, both of a man<sup>366</sup> and of a girl.<sup>367</sup> Valerius refers to consensual sexual relationships with married women on three occasions; in two he uses *adulterium*<sup>368</sup> and in

<sup>355</sup> “*nec dirui incendique patriam videbo, nec rapi ad stuprum matres Campanas virginesque et ingenuos pueros*” (“nor shall I see my fatherland destroyed and burned, nor Campanian mothers and virgins and freeborn boys carried off to *stuprum*”; 26.13.15); “*constuprant matronas, virgines, ingenuos raptos ex complexu parentum*” (“they debauch *matronae*, virgins, and freeborn boys dragged from the embraces of their parents”; 29.17.15).

<sup>356</sup> 3.47.7, 3.50.6, 3.57.4.

<sup>357</sup> 3.44.2.

<sup>358</sup> At 3.44 Livy calls Verginia a *virgo* six times, emphasising her virginal status.

<sup>359</sup> Twice at 22.57.2-3.

<sup>360</sup> 39.13.14.

<sup>361</sup> See also 39.13.10, quoted in section 2.2. However, it is *flagitium* which is used to describe the attempt by Lucius Papirius to seduce his young debtor Gaius Publilius (8.28.2-4). Furthermore, it is not possible to distinguish what type of woman is indicated by the term *femina* as this can be used to refer to both married and unmarried women.

<sup>362</sup> 39.8.8, 39.10.7, 39.13.14, 39.14.8, 39.15.14, 39.18.4.

<sup>363</sup> 6.1.7, 6.1.10, 6.1.11, 6.1.12, 6.1.13.

<sup>364</sup> 6.1.2, 9.1.ext.5.

<sup>365</sup> 5.9.1, 6.1.ext.2, 6.1.1.

<sup>366</sup> “*familiae stuprandum*” (“violated by his slaves”; 6.1.13).

<sup>367</sup> “*filia eius per vim stuprata*” (“after the daughter was violated through force”; 9.1.ext.5).

<sup>368</sup> “*Calidius Bononiensis in cubiculo mariti noctu deprehensus, cum ob id causam adulterii diceret*” (“Calidius of Bononia was caught at night in the bedroom of a married man and called up on a charge of *adulterium* by him”; 8.1.absol.12). See also 8.2.2.

the third *stuprum*.<sup>369</sup> *Stuprum* is also used in relation to *viduae* and *nuptae*,<sup>370</sup> and also for consensual relations with a *filia*, though no further information was given as to her marital status (1.8.ext.3, 6.1.6).<sup>371</sup>

At two points *adulterium* is used without reference to the status of the women involved (6.1.13 and 6.5.ext.3). However, *adulterium* is only employed by Valerius when he is referring to the criminal charge of adultery: “*deprehensum in adulterio*” (6.1.13); “*adulterii crimine*” (6.5.ext.3); “*causam adulterii*” (8.1.absol.12); “*adulterii crimen*” (8.2.2). Therefore, it can be supposed that these two episodes of *adulterium* also involved married women for the accused to be brought up on a criminal charge. Where references are made to sexual transgression in general *stuprum* is used (2.6.7, 6.8.1, 9.1.7).

### Tacitus

On the whole, Tacitus uses *adulterium*, *adulter* and *adultera* as one would expect; they are used in connection to sexual relationships with married women. Where *adulterium* and *adulter* have been used with an unmarried woman, the reference is being made to a widow.<sup>372</sup> This suggests that in these instances, though under the *lex Iulia stuprum* is the appropriate charge,<sup>373</sup> a widow is still conceived of as a married woman and charged with the more severe *adulterium*.

At Ann. 2.50, Tacitus refers to the *adulterium* of Appuleia Varilla and her *adulter* Manlius. They are both charged under the *lex Iulia* and are exiled, yet Tacitus makes no mention of a husband or of her marital status and we do not have any other sources that mention Appuleia.<sup>374</sup> This makes it impossible to tell whether the use of *adulterium* here is in keeping with the

<sup>369</sup> “*in novercam commissum stuprum*” (“being guilty of *stuprum* with his stepmother”; 5.9.1).

<sup>370</sup> “*postremo lege sanxerunt ut stupra sua in viduis pariter atque nuptis impunita essent*” (“finally they ratified a law that their *stupra* with widows and wives alike were to go unpunished”; 9.1.ext.2).

<sup>371</sup> “*cum fili ac filiae suae stupro intervenisset*” (“she found her son and daughter in *stuprum*”; 1.8.ext.3); “*filiam enim suam, quia stupri se crimine coinquinaverat, interemit*” (“for he killed his daughter, because she had polluted herself with the crime of *stuprum*”; 6.1.6).

<sup>372</sup> *adulterium*: Ann. 6.29 (Livia, widowed in AD 23 and accused of *adulterium* in AD 33); *adulter*: Ann. 4.52 (Claudia Pulchra, widowed in AD 9 and accused in AD 26), Ann. 6.25 (Agrippina the Elder, widowed in AD 19 and accused in AD 33).

<sup>373</sup> Papinian, *de Adult.* book 1, D. 48.5.6.1; Modestinus, *Reg.* book 1, D. 48.5.35.1 and *Diff.* book 9, D. 50.16.101.pr.

<sup>374</sup> Goodyear (1981:346) does not see her as the same Appuleia that in Pliny *Nat. Hist.* 7.122 was married to M. Lepidus: “*M. Lepidus Appuleiae uxoris caritate post repudium obiit*” (“M. Lepidus died of regret for his wife Appuleia after divorcing her”). Appuleia is not included within Syme’s discussion of marriages within the Roman aristocracy (1991).

language of the *lex Iulia*. However, the most likely suggestion is that Appuleia was a married woman as the full charge and punishment for *adulterium* were enacted against her.<sup>375</sup> Moreover, when reference is only made to the man who is charged with *adulterium*, and no mention is made of the female involved, it is not possible to determine the accuracy of the term: “*Antistium Veterem e primoribus Macedoniae, absolutum adulterii*” (“Antistius Vetus, one of the foremost men of Macedon, has been acquitted of *adulterium*”; *Ann.* 3.38). However, it is rare for only the male to be mentioned in relation to a charge of *adulterium* for it is the status of the female partner which qualifies the affair as *adulterium* and Antistius Vetus is the only example in Tacitus of this. It is significant therefore that he was acquitted of the charge (and that this is also the only episode within Tacitus where we are told of a case of *adulterium* which was not successfully prosecuted) and so perhaps it was not considered necessary to know anything about the woman he was accused of committing *adulterium* with.

Tacitus’ use of *stuprum* is not so clearly in line with the meaning set out by the *lex Iulia*. At *Ann.* 2.85 *stuprum* is used for the actions of Vistilia: “*nam Vistilia praetoria familia genita licentiam stupri apud aedilis vulgaverat*” (“for Vistilia, the daughter of a praetorian family, published her freedom of *stuprum* on the aediles’ list”). She is married to Titidius Labeo and has registered herself as a prostitute, which is forbidden to the daughters and granddaughters of senators. However, she is not committing the criminal charge of *stuprum* here; rather she is showing her *licentiam stupri* (freedom of *stuprum*). Tacitus uses *stuprum* to describe a sexual relationship with a married woman three more times (*Hist.* 1.48, 4.44; *Ann.* 6.48). *Adulterium* would be the appropriate legal charge for these women. However, they are not charged with *stuprum* but are said to take part in *stuprum*. Similarly, the use of *stuprum* for a sexual relationship between two adult males at *Ann.* 4.1 and *Ann.* 4.10 is unexpected in the context of the *lex Iulia*, for such a relationship is not covered by the statute.<sup>376</sup> These irregularities can be explained by attributing *stuprum* with a secondary meaning. Tacitus shows us that *stuprum* is an action that could be exchanged between two people<sup>377</sup> and that it is something pleasurable, for Ofonius Tigellinus chose to die “*inter stupra concubinarum et oscula*” (“among the *stupra* and kisses of his mistresses”; *Hist.* 1.72). Therefore, this secondary meaning is the act of illicit sexual intercourse itself.

---

<sup>375</sup> The same is true of Aquilia at *Ann.* 4.42 who is charged with *adulterium*.

<sup>376</sup> However, it was the term used by the *lex Scantinia*, see discussion in section 2.1.

<sup>377</sup> “*non sine rumore Apicio diviti et prodigo stuprum veno dedisse*” (“not without the rumour that he had sold *stuprum* to Apicius a rich and lavish man”; *Ann.* 4.1).

Furthermore, *stuprum*,<sup>378</sup> *adulter*<sup>379</sup> and *adulterium*<sup>380</sup> were all used by Tacitus in a general sense, with no reference to specific people or actions and without any legal connotations. *Stuprum* is used most frequently in this way, a reflection of the use of the term to mean the act of illicit sex.

### Suetonius

Where it is possible to determine that the partner involved in the sexual transgression is not a married woman – either they are a virgin,<sup>381</sup> widow,<sup>382</sup> or a male<sup>383</sup> – *stuprum* is used exclusively. However, when it can be established that the partner is a married woman the terms *adulterium*, *adulter*, and *adulterare*, are more commonly found.<sup>384</sup> *Stuprum* is used three times in relation to an *uxor* (*Tib.* 35.1; *Gaius* 12.1; *Gram.* 14) and in his false accusation of adultery with Claudia Octavia, Anicetus claimed he had had *stuprum* with her (*Nero* 35.2). However, the use of *stuprare* here in relation to a married woman has no legal sense, but instead it refers to the act of having sexual relations with her.

*Adulterium* is used several times in a general sense, without reference to particular incidents or people: “*at ne cui dubium omnino sit et impudicitiae et adulteriorum flagrasse infamia*” (“but so there was no doubt at all that he burned with the disgrace of lewdness and *adulterium*”; *Jul.* 52.3).<sup>385</sup> There are also a number of occasions where we are not told the status of the woman involved in the *adulterium* (*Aug.* 5.1; *Claud.* 43.1), whereas the details of who was involved are given for every instance of *stuprum*. A noticeable contrast to Tacitus, where the status of the women involved in *adulterium* is regularly given and that of those engaging in *stuprum* is less important.

---

<sup>378</sup> *Hist.* 1.30, 1.66, 1.74, 2.56, 3.33, 3.41, 4.2; *Ann.* 6.4, 11.2, 16.19.

<sup>379</sup> *Ann.* 13.21.

<sup>380</sup> *Hist.* 1.2, 1.22, 1.66, 3.41, 4.2.

<sup>381</sup> *Dom.* 8.4.

<sup>382</sup> *Jul.* 7.2.

<sup>383</sup> *Aug.* 68.1; *Tib.* 44.2; *Gaius* 36.1; *Otho* 2.2; *Vit.* 12.1.

<sup>384</sup> They are known to be married (*Jul.* 6.2, 74.2; *Aug.* 69.1; *Tib.* 62.3; *Claud.* 1.1, 29.3, 36.1; *Nero* 5.2, 35.2); they are called an *uxor* (*Jul.* 48.1; *Dom.* 8.3) or *matrona* (*Aug.* 67.2).

<sup>385</sup> See also *Gaius* 11.1 and *Claud.* 16.1.

### 3.4) Associations

An investigation will now be made into the associations that the authors make with *adulterium* and *stuprum*. For the adjectives and verbs that an author uses to describe the terms, as well as the other nouns which are placed in close connection with these concepts, reveal how he conceived of their meaning and the context surrounding their occurrence.

#### Cicero

Cicero saw *stuprum* as a pollutant, repeatedly using it with the verbs *polluere*, *maculare*, and *violare*<sup>386</sup> as the agent which created the pollution. This pollution or contamination could be made of people, places and, most notably, *religiones*. A recurring theme within the speeches in which Cicero mentions Clodius is his infiltration of the Bona Dea and how his *stuprum* on that day polluted the sacred rights: “*polluerat stupro sanctissimas religiones*” (“he had polluted by *stuprum* the most hallowed sanctities”; *Pro Mil.* 87).

The most common adjective which Cicero uses to describe both *stuprum* and *adulterium* is *nefarius* (abominable, impious); occurring seven times with *stuprum*<sup>387</sup> and once with *adulterium*.<sup>388</sup> *Stuprum* is described as *incestum* on two occasions in connection with Clodius and the Bona Dea.<sup>389</sup> The use of *incestus* here relates not to an incestuous relationship between Clodius and his sisters, but carries the meaning of impure or impious after this infiltration of the sacred rites.<sup>390</sup> Moreover, *stuprum* is often connected with *domesticus* and the *domus*,<sup>391</sup> whilst *adulterium* is only found once in connection to the *domus*.<sup>392</sup>

The men that Cicero accuses of committing *stuprum* and *adulterium* are shown to be of the basest and most immoral sort of Roman. *Adulterium* and *stuprum* are continually included as

---

<sup>386</sup> “*stupro violarit*” (“he violated through *stuprum*”; *De Har. Res.* 8); “*sacra... per istius stuprum ac flagitium esse violata*” (“that the sacred... should have been violated by his *stuprum* and disgrace”; *In Verr.* 2.4.102). See also *De Dom.* 105, 125; *Pro Mil.* 85, 87.

<sup>387</sup> *In Cat.* 2.7; *Pro Planc.* 86; *Pro Cael.* 71; *Pro Mil.* 73, 85; *In Piso.* 9, 21.

<sup>388</sup> *Pro Mil.* 72.

<sup>389</sup> *Pro Mil.* 13; *De Har. Res.* 4.

<sup>390</sup> *Incestus* was contrary to religious piety and as such is a concept similar to *nefas* (Lenaghan 1969:61). It gains the secondary meaning of incestuous sexual relations as this was primarily an offence against the gods. Cornell (1981) discusses the *incestus* of Vestal Virgins; Harries (2007:90-95) looks at both forms of the charge of *incestus*.

<sup>391</sup> *De Har. Res.* 42; *Phil.* 6.4; *In Verr.* 2.4.71; *Parad.* 23.

<sup>392</sup> *De Div.* 1.121.

part of the lifestyle of a decadent libertine, who spends his time with wine, women and sleep: “*sagum sumit, lucebat iam fere, procedit in medium vini, somni, stupri plenus*” (“putting on his cloak, he proceeded into the middle full of wine, sleep and *stuprum* as daylight was breaking”; *In Verr.* 2.5.94).<sup>393</sup> The *adulter* is associated with the *impurus*<sup>394</sup> (immoral) and the *impudicus*<sup>395</sup> (unchaste). Moreover, the accusation of being an *adulter* should not be made lightly: “‘*adulter, impudicus, sequester*’ *convicium est, non accusatio; nullum est enim fundamentum horum criminum, nulla sedes*” (“[to call Caelius] an adulterer, shameless, and a dealer in bribes is abuse, not accusation; there is no foundation for these charges, no ground”; *Pro Cael.* 30).

Cicero conceived of *adulterium* and *stuprum* as two different types of *flagitium*: “*stupra vero et adulteria et omne tale flagitium nullis excitari aliis inlecebris nisi voluptatis*” (“indeed *stupra* and *adulteria* and all such disgrace are provoked by no other enticements except pleasure”; *De Sen.* 40). In fact, the most common word used with *stuprum* is *flagitium* and the two are closely associated within Cicero’s writing: “*ita diei brevitatis conviviis, noctis longitudo stupris et flagitiis continebatur*” (“the short days were passed in feasting and the long nights in *stupra* and disgraces”; *In Verr.* 2.5.26).<sup>396</sup> In opposition were the virtues of *pudicitia* and *pudor*: “*ex hac enim parte pudor pugnat, illinc petulantia; hinc pudicitia, illinc stuprum*” (“on our side fights decency, on theirs wantonness; on ours modesty, on theirs *stuprum*”; *In Cat.* 2.25).<sup>397</sup> Moreover, *stuprum* damaged *integritas*<sup>398</sup> and created *infamia*.<sup>399</sup> It was also associated with *libido*,<sup>400</sup> *cupiditas*,<sup>401</sup> and *impudicitia*.<sup>402</sup> Likewise, *adulterium* was also associated *libido*.<sup>403</sup> However, the treatment of the

<sup>393</sup> See also: *In Verr.* 2.3.23; *Pro Sest.* 20; *De Har. Res.* 55; *Post Red.* 13; *In Piso.* 42, 70.

<sup>394</sup> *In Cat.* 2.23.

<sup>395</sup> *In Cat.* 2.23; *Pro Cael.* 30.

<sup>396</sup> See also: “*stuprorum flagitiorumque suorum*” (*In Verr.* 2.1.62); “*stupris flagitiisque*” (*In Verr.* 2.4.20); “*stupris flagitiisque*” (*In Verr.* 2.4.71); “*stuprum ac flagitium*” (*In Verr.* 2.4.102); “*flagitio et stupro*” (*De Dom.* 105); “*flagitio stuproque*” (*De Har. Res.* 8); “*stupra et flagitia*” (*Phil.* 2.47); as well as *In Verr.* 1.14, 2.4.83; *Pro Sest.* 16; *Pro Sull.* 70; *De Har. Res.* 44.

<sup>397</sup> See also “*pudorem ac pudicitiam qui colit, potest animo aequo istius cotidiana adulteria, meretriciam disciplinam, domesticum lenocinium videre?*” (“Can a man who honours modesty and chastity patiently see that man’s daily adulteries, his school of mistresses, and his household of panders?”; *In Verr.* 2.3.6).

<sup>398</sup> *In Verr.* 1.14: “*in stupris vero et flagitiis nefarias eius libidines commemorare pudore deterreor; simul illorum calamitatem commemorando augere nolo quibus liberos coniugesque suas integras ab istius petulantia conservare non licitum est.*” (“As to his *stupra* and disgraces, I am discouraged by a sense of decency from recounting his abominable lust; at the same time, I would not want, by repeating it, to increase the calamities of those who have not been allowed to save the integrities of their children and wives from such wantonness.”)

<sup>399</sup> *De Leg.* 1.51, quoted in section 2.1.

<sup>400</sup> *Pro Font.* 38; *In Piso.* 70; *De Fin.* 2.73; *In Clod. et Cur. frag.* 22.

<sup>401</sup> *In Verr.* 2.2.82.

<sup>402</sup> *Phil.* 3.15.

<sup>403</sup> *Pro Cael.* 35; *In Piso.* 70; *De Fin.* 2.73.

two words differs in that *stuprum* is often mentioned alongside *scelus*<sup>404</sup> and *facinus*,<sup>405</sup> suggesting that there is a danger and criminality associated with it, whereas *adulterium* appears to have no such association. Where *stuprum* is used by Cicero to mean rape it is often used alongside *vis*.<sup>406</sup>

The figure that stands out from Cicero's writing in relation to *adulterium* and *stuprum* is that of Publius Clodius Pulcher. During Clodius' trial for the infiltration of the *Bona Dea* in 61 BC Cicero came forward to give testimony that placed Clodius in Rome at the time, thus invalidating his alibi. Despite this testimony Clodius was acquitted and in Cicero's view this was not a result of his innocence: "*adflcta res publica est empto constupratoque iudicio*" ("with the jury being corrupted by bribery and debauchery, the republic has been given a hard blow"; *Ad Att.* 1.18.3).<sup>407</sup> What followed was a ceaseless battle between the two men to undermine and damage the other, which continued even after Clodius' death. A theme that underpins Cicero's invective against Clodius is his immoral and corrupt lifestyle, particularly his infiltration of the *Bona Dea* and the *stuprum* which he committed that day and throughout his life.

The first mention Cicero makes of Clodius and the *Bona Dea* is in a letter to Atticus from January 61 BC, in which he briefly mentions the scandal as he relays the latest news to him:

*P. Clodium, Appi f., credo te audisse cum veste muliebri deprehensum domi C. Caesaris, cum pro populo fieret, eumque per manus servulae servatum et eductum; rem esse insigni infamia.*

I expect that you have heard that P. Clodius, son of Appius, was caught in women's clothes in the home of C. Caesar, when [the sacrifice] for the people was taking place, though he was rescued and escaped through the help of a young slave girl. It is an extraordinary scandal.

(*Ad Att.* 1.12.3)

The scandal has *infamia* but there is no suggestion of a sexual desire to his actions and Cicero's tone does not show any particularly strong disgust or feelings towards Clodius. Instead, when he writes to Atticus a few weeks later to tell him that the action has been pronounced *nefas* by the

---

<sup>404</sup> *In Cat.* 2.9; *Pro Mil.* 85; *In Verr.* 2.2.110; *In Clod. et Cur.* frag. 22; *In Piso.* 21.

<sup>405</sup> *De Dom.* 50.

<sup>406</sup> "*nec, si regnante L. Tarquinio nulla erat Romae scripta lex de stupris, idcirco non contra illam legem sempiternam Sex. Tarquinius vim Lucretiae, Tricipitini filiae, attulit*" ("even if there was no written law against *stupra* in Rome in the reign of L. Tarquinius, we cannot say on that account that Sextus Tarquinius did not break that eternal law by violating Lucretia, the daughter of Tricipitinius"; *De Leg.* 2.10); *De Fin.* 2.66, quoted in section 3.3.

<sup>407</sup> Cicero replays the trial for Atticus at *Ad Att.* 1.16.



college of the Pontiffs and the Vestal Virgins he does not mention Clodius by name, calling him only *vir* (*Ad Att.* 1.13.3). Then a few lines later Cicero informs Atticus that Caesar had divorced his wife. Cicero mentions this as part of the fallout from Clodius' infiltration of the *Bona Dea*. Nevertheless, there is still no mention of a sexual relationship or the intention of one between Clodius and Pompeia. Cicero claims in the *De Haruspicum Responso* that his hatred for Clodius has always been the same: "*in Clodium vero non est hodie meum maius odium quam illo die fuit, cum... cognovi*" ("but for Clodius my hatred is no greater today than it was on that day when I discovered that..."; 4). However, as Cicero's portrayal of Clodius and of his actions at the *Bona Dea* continues through his speeches, so the way in which he describes them changes. The language that Cicero uses to describe Clodius and his offence at the *Bona Dea* develops a much more brutal and damning attitude.

The next time that we hear Cicero speak of the *Bona Dea* incident is in *De Domo Sua* (57 BC), where Cicero defends his right to take back his house on the Palatine, which Clodius has partly destroyed and tried to make uninhabitable by consecrating a shrine to *Libertas* on the site. The tone has changed and *stuprum* becomes part of the charge of which Cicero accuses Clodius: "*qui non solum aspectu, sed etiam incesto flagitio et stupro caerimonias polluit*" ("[this man] who not only violated the religious rights by looking upon them, but by sinful disgrace and *stuprum*"; *De Dom.* 105).<sup>408</sup>

The abuse then continued in the *Pro Sestio*, delivered in 56 BC:

*sed cum scurrarum locupletium scorto, cum sororis adultero, cum stuprorum sacerdote, cum venefico, cum testamentario, cum sicario, cum latrone.*

But [I had to deal] with a man who whores himself with wealthy rakes, who is a lover of his own sister, a priest of *stupra*, a poisoner, a forger of wills, a murder and a thief.

(39)<sup>409</sup>

Cicero continues to suggest sexual associations between Clodius and his siblings in later speeches.<sup>410</sup> In the same year Cicero has to defend the rebuilding of his house after Clodius claims that the divination of underground noises in the *Ager Latiensis* gave a warning about the profanation of sacred rites and dissention amongst Roman leaders. In the *De Haruspicum Responso* Cicero argues that these warnings are in fact referring to Clodius who has repeatedly

---

<sup>408</sup> See also *De Dom.* 125.

<sup>409</sup> See also *Pro Sest.* 16.

<sup>410</sup> *Pro Mil.* 73; *De Har. Res.* 42; *In Piso.* 28.

committed crimes against *religiones*, including his infiltration of the *Bona Dea*. And so Cicero's abuse of Clodius as a debauched character<sup>411</sup> and his portrayal of the events of the *Bona Dea* intensify:

*qui pulvinaribus Bonae deae stuprum intulerit, eaque sacra, quae viri oculis ne imprudentis quidem aspici fas est, non solum aspectu virili, sed flagitio stuproque violarit.*

He who had brought in *stuprum* on the couches of the Bona Dea, and who had polluted the sacred rights, which cannot lawfully be looked at, even inadvertently, by the eyes of a man, not only by his male presence but also by disgrace and *stuprum*.

(*De Har. Res.* 8)

References to the Vestal Virgins,<sup>412</sup> the *pulvinar* (couch) of the *Bona Dea*<sup>413</sup> and the fact that the incident took place in the house of the Pontifex Maximus<sup>414</sup> all serve to heighten the sacrilegious nature of the offence. The offence is *stuprum*, which Cicero portrays as harming not only the individuals involved but the whole populace through the *iniuria* that it creates (*De Har. Res.* 38).

In the *De Haruspicum Responso* we also find the first description of Clodius dressed up in the feminine attire he used as a disguise: "*muliebri ornatu*" ("while dressed in the clothes of a woman"; *De Har. Res.* 4).<sup>415</sup> In the *In Pisonem* in 55 BC Cicero makes reference again to a sexual relationship between Clodius and his sisters, calling him "*sororius adulter*" (28). And in the *Pro Plancio*, Clodius is ridiculed by Cicero: "*nefariis stupris, religiosis altaribus effeminata*" ("having been made effeminate by nefarious *stupra* at hallowed altars"; *Pro Planc.* 86). Clodius has lost his *virtus*, his manly virtue, both by dressing up as a woman and by bringing disgrace, in both a religious and a sexual sense, on to Rome.

The final speech in which we see Cicero refer to the *stuprum* of Clodius is in the *Pro Milone*, delivered in 52 BC to defend his friend Titus Annius Milo, who was accused of murdering Clodius. As part of his defensive strategy, which sought to show that the act was committed in self-defence,

---

<sup>411</sup> "*est quidem ille plenus vini, stupri, somni plenusque inconsideratissimae ac dementissimae temeritatis*" ("indeed his life is full of wine, *stupra*, slumber, and the most thoughtless and senseless rashness"; *De Har. Res.* 55).

<sup>412</sup> The Vestal Virgins are represented by *ambustum*: "*illum ambustum religiosissimis ignibus*" ("he had scorched himself in the fires of the strictest rights"; *De Har. Res.* 4).

<sup>413</sup> *De Har. Res.* 33; *In Pis.* 95.

<sup>414</sup> "*ex incesto stupro atque ex domo pontificis maximi emissum*" ("had been dismissed from the house of the Pontifex Maximus in which he had committed impure *stuprum*"; *De Har. Res.* 4).

<sup>415</sup> See also "*P. Clodius a crocata, a mitra, a muliebribus soleis purpureisque fasceolis, a strophio, a psalterio, a flagitio, a stupro est factus repente popularis*" ("P. Clodius suddenly appeared out of his saffron robe, his headdress, his womanish slippers and his purple girdle, his breast-band, his lute, his shame and his *stuprum* as a demagogue"; *De Har. Res.* 44).

Cicero continues with the defamation of Clodius' character over the *Bona Dea* incident.<sup>416</sup> Moreover, Clodius is said to have now been rightfully punished for his *nefarium stuprum*.<sup>417</sup>

Cicero only refers to Clodius' actions during the *Bona Dea* as *adulterium* once: "*cuius nefandum adulterium in pulvinaribus sanctissimis nobilissimae feminae comprehenderunt*" ("a man whose monstrous *adulterium* upon the holy couches was detected by high-born ladies"; *Pro Mil.* 72). The charge is more commonly referred to by Cicero as *stuprum*. However, at no point in the whole corpus does Cicero use the term *adulterium* to refer to a sexual relationship with a woman who was not married; we are either told the status of the woman or the term is used in general. So though *stuprum* was the preferred term, *adulterium* was not used to refer to an affair where the woman could be identified as unmarried. Cicero must therefore have had an adulterous relationship in mind when he used this term over *stuprum*.

However, there is some ambiguity over the assumption that Clodius' aim in infiltrating the *Bona Dea* had been to meet with Caesar's wife for an illicit sexual relationship. In a letter to Atticus, Cicero says that Caesar has divorced Pompeia but he makes no suggestion that there was a sexual relationship between her and Clodius.<sup>418</sup> Valerius Maximus describes Clodius' crime as *sacrilegum flagitium* (8.5.5) and *incesti crimine* (9.1.7), which is similar language to Cicero but he utilises neither *adulterium* nor *stuprum*. However, it is repeatedly called *adulterium* by Seneca the Younger (*Mor. Ep.* 97.2, 97.3, 97.7, 97.9). It is only in Plutarch's account that the two are first romantically linked, and we are told that Clodius infiltrated the *Bona Dea* because he was in love (ἐρᾶν) with Pompeia (*Cic.* 28.1).<sup>419</sup> In Dio, Clodius is described as debauching Caesar's wife (αἰσχύνειν; 37.45.1) but also that Caesar divorced Pompeia because she was suspected of committing adultery (μοιχεύειν; 37.45.2) and that Clodius was charged with adultery (μοιχεία; 37.46.2). For any authors writing after the introduction of the *lex Iulia*, which gave this terminology added significance and cemented its meaning, Cicero's use of *adulterium* and *stuprum* to describe the events of the *Bona Dea* would clearly refer to an adulterous relationship.

---

<sup>416</sup> "*illo incesto stupro*" ("that impure *stuprum*"; *Pro Mil.* 13); "*cuius nefandum adulterium in pulvinaribus sanctissimis nobilissimae feminae comprehenderunt*" ("our highest-born women detected this man's monstrous *adulterium* upon the holiest couches"; *Pro Mil.* 72); "*polluerat stupro sanctissimas religiones*" ("he had polluted by *stuprum* the most hallowed sanctities"; *Pro Mil.* 87).

<sup>417</sup> "*tuque ex tuo edito monte, Latiaris sancte Iuppiter, cuius ille lacus, nemora finisque saepe omni nefario stupro et scelere macularat, aliquando ad eum poeniendum oculos aperuisti*" ("and it was you from your lofty mount, holy Jupiter Latiaris, whose lakes, woods and enclosures he would often pollute with every foul *stuprum* and crime, who at last opened your eyes to punish him"; *Pro Mil.* 85).

<sup>418</sup> *Ad Att.* 1.13.3: "*uxori Caesarem nuntium remisisse*" ("Caesar has sent a notice of divorce to his wife").

<sup>419</sup> Clodius is again said to be in love (ἐρᾶν) with Pompeia at Plut. *Caes.* 9.2.

Moreover, Caesar's divorce from Pompeia immediately after the scandal could be seen as proof of whom Clodius was conducting an affair with.<sup>420</sup>

However, if Cicero was not using *adulterium* and *stuprum* to refer to the affair between Pompeia and Clodius, can the use of this vocabulary in relation to the infiltration of the Bona Dea be explained in any other way? According to Cicero, Clodius had lived a life full of *stuprum* (*De Har. Res.* 55). Therefore, was Clodius' offence that he had brought his *stuprum* – the sexual disgrace that clung to him after his life of debauchery – into a sacred space and polluted it by association? The language that Cicero uses suggests not; Clodius has committed *stuprum* on the couches of the *Bona Dea*<sup>421</sup> and in the house of the Pontifex Maximus<sup>422</sup> and it is the *stuprum* which he perpetrated at that time which has brought upon them *iniuria*.<sup>423</sup> The use of *stuprum* to describe his infiltration of the Bona Dea could also be explained by the term's original meaning of *turpitudine* (disgrace) as given in Festus (418.8-18, Lindsay edition) Clodius had brought disgrace into the Bona Dea and polluted both the religious sanctity of the festival and also the female space in which it was held.

### Sallust

The use of these terms comes as part of Sallust's depiction of the character of Catiline and his followers:

*in tanta tamque corrupta civitate Catilina, id quod factu facillimum erat, omnium flagitiorum atque facinorum circum se tamquam stipatorum catervas habebat. Nam quicumque inpudicus, adulter, ganeo,<sup>424</sup> manu, ventre, pene bona patria laceraverat quique alienum aes grande conflaverat, quo flagitium aut facinus redimeret, praeterea omnes undique parricidae, sacrilegi, convicti iudiciis aut pro factis iudicium timentes, ad hoc quos manus atque lingua periurio aut sanguine civili alebat, postremo omnes quos flagitium, egestas, conscius animus exagitabat, ei Catilinae proximi familiaresque erant.*

---

<sup>420</sup> Tatum argues that Caesar's divorce of Pompeia did not signify any guilt and was a way for Caesar to dissociate himself from the scandal (1999:67-68).

<sup>421</sup> *De Har. Res.* 33.

<sup>422</sup> *De Har. Res.* 4.

<sup>423</sup> *De Har. Res.* 38.

<sup>424</sup> There is confusion in the manuscripts over this line. Ramsey suggests that *adulter* should be seen as a gloss on *inpudicus* and *aleo*, which is found in some MSS after *ganea*, should be expanded to *aleator*, so the line reads *inpudicus [adulter] ganeo alea<tor>* (1984:97). This is rejected by Paul who instead sees *inpudicus* as a gloss on *adulter* to balance the line after *aleo* was lost, reading *adulter ganeo aleo manu ventre pene* (1985:161).

In a city so great and so corrupt Catiline found it easy to have around him men of every disgraceful and criminal kind as if they were a band of bodyguards. For whatever profligate, adulterer, or glutton, who had wasted his patrimony by his hand, his belly, or his penis, and he who had procured a large debt from another, through which he redeemed disgrace and crime; besides all who had been convicted of parricide or sacrilege or who feared judgement for their crimes; those, also, who hand and tongue supported by perjury and citizen blood; and finally all, who disgrace, poverty or a guilty mind harassed – these were the kin and intimates of Catiline.

(*Bel. Cat.* 14.1-3)

Like Cicero, Sallust shows the men who engage in *adulterium* and *stuprum* to be base and criminal. Moreover, in this passage the *adulter* is included amongst men “*omnium flagitiorum atque facinorum*” (“of every disgrace and crime”) and associated with gluttons, murderers and the destitute.<sup>425</sup> Similar descriptions are found in Cicero, who also uses the terms *ganeo* and *aleator* (*In Cat.* 2.7, 2.22-23). *Stuprum* is also described by Sallust as *nefandum* (abominable, *Bel. Cat.* 15.1).

Sallust repeatedly associates Catiline with sexual transgression:

*iam primum adulescens Catilina multa nefanda stupra fecerat, cum virgine nobili, cum sacerdote Vestae, alia huiuscemodi contra ius fasque.*

Now first as a youth Catiline took part in many nefarious *stupra*, with a noble virgin, with a priestess of Vesta, and with others equally against human law and divine law.

(*Bel. Cat.* 15.1)<sup>426</sup>

Sallust claims that these illicit relationships are “*contra ius fasque*”, against human law and custom as well as divine law.<sup>427</sup> He also reports Catiline’s affair with Fulvia, who he describes as a *mulier nobilis* (*Bel. Cat.* 23.3). By repeatedly highlighting the *nobilis* nature of the women

---

<sup>425</sup> See also Sall. *Bel. Cat.* 13.3, quoted in section 2.1.

<sup>426</sup> Nothing is known of the *virgo nobilis*. The priestess of Vesta is identified by Asconius as Fabia, the half-sister of Cicero’s wife Terentia, who was tried and acquitted for *incestus* in 73 BC: “*Fabia virgo Vestalis causam incesti dixerat, cum ei Catilina obiceretur, eratque absoluta. haec Fabia, quia soror erat Terentiae Ciceronis, ideo sic dixit: 'etiam si culpa nulla subesset'.*” (“The Vestal virgin Fabia was pleading on a case of *incestus*, with her Catiline was accused, and she was acquitted. This Fabia, because she was the sister of Cicero’s Terentia, said thus: ‘There is no fault at hand’”; Asc. 91.19-23). See Cadoux (2005) for a reconstruction of Fabia’s trial and its relationship to Catiline.

<sup>427</sup> It is notable that Sallust was himself accused of *adulterium* (Aul. Gel. 17.18); see discussion in section 4.3 of the character Sallustius in Horace’s *Sat.* 1.2.

involved, Sallust is adding to the scandal of the affair as Catiline's debauchery threatens the highest social orders.

### Livy

There is little repetition in the verbs that Livy uses with *stuprum* and only three verbs are found more than once, all with *stuprum*.<sup>428</sup> Verbs associated with prosecution are used in relation to *stuprum* (*damnare*, 10.31.9; *comperire*, 22.57.2). *Stuprum* could be actively taken part in (*facere*, 22.57.3) but it could also be inflicted on others, suggested by *rapere* (3.50.6, 26.13.15) and is something that a person with *pudicitia* will shrink from.<sup>429</sup> In the Bacchanalia episodes in book 39 *stuprum* is repeatedly used with *esse*: "*stupra... erant*" ("there were *stupra*"; 39.8.7); "*esse stupra*" ("there were *stupra*"; 39.13.10). The verb *inferre* (to introduce, cause) is used twice in the passive form to refer to those on whom *stuprum* is inflicted.<sup>430</sup> Moreover, the participants in the Bacchanalia suffer (*pati*) *stuprum*,<sup>431</sup> they are overwhelmed (*cooperire*)<sup>432</sup> and are violated (*violare*)<sup>433</sup> by it.

Livy's use of *constuprator* at 39.15.9 is a hapax. He uses *constuprare* at 29.17.15 and the verb is also found in Cicero *Rhet. Her.* 4.12 and *Comm. Pet.* 10 but nowhere else in classical Latin (Briscoe 2008:274). The 'con-' in all three cases is only intensive, as Briscoe suggests it is here. As Livy does not have much opportunity to discuss consensual sex, Briscoe finds it unsurprising that he therefore uses variants that are outside his normal usage or uses words in new ways (2008:250).

*Adulterium* is described by Livy as *sordidus* (dirty, base, vile, 1.58.4). *Stuprum* is found with the adjectives *infandus* (atrocious, 1.59.8), *voluntarius* (voluntary, 38.24.3) and *promiscuus* (indiscriminate, 39.8.7). The use of *stuprum* to describe rape and sexual violence is also often indicated by the application of *vis* to carry out the act: "*per vim stuprum inferatur*" ("*stuprum* was

---

<sup>428</sup> *rapere* (3.50.6, 26.13.15); *inferre* (39.10.7, 39.14.8); *pati* (39.13.13, 39.13.14).

<sup>429</sup> The wife of Orgiogo has *pudicitia* and conducts her life with *sanctitas* (integrity) and *gravitas* (dignity) and when a centurion makes advances on her she shrinks (*abhorre*) from this *stuprum* (38.24.3-10).

<sup>430</sup> "*ante omnia ut quaestio de iis habeatur, qui coierint coniuraverintve, quo stuprum flagitiumve inferretur*" ("before all, it was decreed that an investigation should be made about those who either came together or conspired, and through whom *stuprum* or *flagitium* were introduced"); 39.10.7, quoted below.

<sup>431</sup> "*qui aut coniurare aut sociari facinoribus aut stuprum pati noluerint*" ("they were those who had not wanted to conspire or be associated with crimes or suffer *stuprum*"; 39.13.13); "*captari aetates et erroris et stupri patientes*" ("youths of this age were courted for they suffer vices and *stupra*"; 39.13.14).

<sup>432</sup> "*hi cooperti stupris*" ("those overwhelmed by *stupra*"; 39.15.14).

<sup>433</sup> "*qui stupris aut caedibus violati erant*" ("those who had been violated by *stupra* and murders"; 39.18.4).

introduced by force"; 39.10.7).<sup>434</sup> *Stuprum* is also closely associated with *caedes* (murder) at the Bacchanalia: "*nulla vox quiritantium inter stupra et caedes exaudiri poterat*" ("no sound of those crying out could be heard among the *stupra* and murders"; 39.8.8).<sup>435</sup>

It is from the Bacchanalia episode that we can derive the fullest picture of *stuprum*. It is given as an example of *noxa* (harm, guilt)<sup>436</sup> and was associated with *facinus* (crime).<sup>437</sup> The Bacchic rites are described as being full of noise and commotion, terror and excitement:

*eos deducere in locum, qui circumsonet ululatibus cantuque symphoniae et cymbalorum et tympanorum pulsu, ne vox quiritantis, cum per vim stuprum inferatur, exaudiri possit.*

They would lead him into a place, which resounded with howls and the music of the choir and the beat of the cymbals and drums, so that it was not possible to hear the sound of those suffering when *stuprum* was introduced by force.

(39.10.7)<sup>438</sup>

The participants were *fanatici* (frenzied) and "*vigiliis, vino, strepitibus clamoribusque nocturnis attoniti*" ("they are stupefied by sleeplessness, wine, and the noise and shouts of night"; 39.15.9).

The whole Bacchanalia is described as *malus* (evil): "*numquam tantum malum in re publica fuit, nec ad plures nec ad plura pertinens*" ("never has there been so much evil in the republic, neither reaching so many people nor so many things"; 39.16.2).<sup>439</sup> Moreover, we are told that it is a *mala libido* which encourages Tarquinius in his attack on Lucretia (1.57.10) and that a *tantus malus* has befallen her (1.58.5).<sup>440</sup> Again it is *libido* that makes Appius Claudius want

---

<sup>434</sup> See also the use of *vis* with *stuprum* at 1.59.8 and 38.24.3 and with *stuprare* at 1.57.10.

<sup>435</sup> See also 39.18.4: "*qui stupris aut caedibus violati erant*" ("those who were violated by *stupra* and murder"). Furthermore, the death of Lucretia is described as an act of *caedes*, carried out alongside *stuprum*: "*stuprum caedemque Lucretiae*" ("the *stuprum* and killing of Lucretia"; 3.44.1).

<sup>436</sup> "*nec unum genus noxae, stupra promiscua ingenuorum feminarumque erant, sed falsi testes, falsa signa testamentaque et indicia ex eadem officina exibant*" ("nor was there one type of offence, there was the indiscriminate *stupra* of freeborn boys and women, but also false testimony, forged seals and wills, and evidence were produced from this same workshop"; 39.8.7).

<sup>437</sup> 39.13.13, quoted above. *Facinus* is also associated with *flagitium* at 39.13.10, 39.16.1, 39.16.5, 39.17.7.

<sup>438</sup> A similar description is given at 39.8.8: "*occulebat vim quod prae ululatibus tympanorumque et cymbalorum strepitu nulla vox quiritantium inter stupra et caedes exaudiri poterat*." ("The violence was concealed because over the howls of the drums and the rattling of the cymbals no sound of those crying out amongst the *stupra* and murders could be heard."). The use of masculine forms does not preclude the involvement of women in these activities, as the feminine can be contained within the masculine form (Briscoe 2008:258).

<sup>439</sup> See also: "*primum igitur mulierum magna pars est, et is fons mali huiusce fuit*" ("first, then, a great part of them are women, and this was the source of the evil"; 39.15.9).

<sup>440</sup> The concept of *malus* is also associated with *adulterium* in the verse authors, see section 4.4.

Verginia (3.44.1). The term *nefas* (wickedness, wrong) is also used to describe the treatment of both Lucretia and Verginia (3.44.1).

### Valerius Maximus

A change in how *adulterium* and *stuprum* were conceived begins to appear in Valerius. This is seen through the verbs that he uses in association with *adulterium* to show the criminal nature of the acts: *deprehendere* (catch, 6.1.13, 8.1.absol.12); *damnare* (condemn, 6.5.ext.3); *causam dicere* (plead, 8.1.absol.12); *vindicare* (punish, 5.9.1). *Stuprum*, on the other hand, is something that is committed (*committere*, 5.9.1) and that someone can be compelled or forced into (*patior coactere*, 6.1.1, 6.1.ext.2; *compellare*, 6.1.12; *patior*, 6.1.9). It also pollutes (*coinquinare*, 6.1.6).

Both *adulterium* and *stuprum* are shown by Valerius to be a *crimen*.<sup>441</sup> *Adulterium* is associated with *infamia* and *libido* (8.1.absol.12). Whereas *stuprum* is described as *incestus* (6.8.1), *inpudicitia* (6.1.11) and is placed in opposition to *pudicitia*.<sup>442</sup>

### Tacitus

The legal significance that has been given to *adulterium* is clear to see in Tacitus' work. This is mainly shown through the words used in association with it: verbs of accusation and prosecution;<sup>443</sup> of confession;<sup>444</sup> of punishment and conviction;<sup>445</sup> and of acquittal.<sup>446</sup> There are references to punishments (*poena*, *Ger.* 19; *Ann.* 2.50), remaining unpunished (*impunitus*, *Ann.* 6.40) and to accusers (*delator*, *Ann.* 2.50, 6.40; *accusator*, *Ann.* 6.29). *Adulterium* was something that one could be exposed to or reproached for (*obiectare*, *Ann.* 11.2, 11.30). Moreover, reference is made to the *lex Iulia* itself (*Ann.* 2.50, 4.42). *Stuprum*, however, even though it is also a crime under the *lex Iulia*, is not associated with any such words nor is anyone prosecuted or punished for *stuprum* within Tacitus' work. It is something that is simply committed or given:

---

<sup>441</sup> *adulterium*: 6.5.ext.3, 8.2.2; *stuprum*: 5.9.1, 6.1.6. *Adulterium* is also called a "*crimen libidinis*" at 8.1.abol.12 and *stuprum* is a "*crimine impudicitiae*" at 6.1.11.

<sup>442</sup> 6.1.6, 6.1.7, 6.1.9, 6.1.ext.2, 9.1.7.

<sup>443</sup> *accusare* (*Ann.* 4.52, 11.1); *arcessere* (*Ann.* 2.50); *corripere* (*Ann.* 6.40); *postulare* (*Ann.* 4.52).

<sup>444</sup> *fateri* (*Ann.* 14.62).

<sup>445</sup> *punire* (*Ann.* 3.24, 4.42, 4.44); *damnare* (*Ann.* 4.42, 4.71); *convincere* (*Ann.* 4.71).

<sup>446</sup> *absolvere* (*Ann.* 3.38).



*“stuprum ausa”* (“daring to [commit] *stuprum*”; *Hist.* 1.48); *“stuprum dedisse”* (“gave *stuprum*”; *Ann.* 4.1); *“stuprum admiserat”* (“had committed *stuprum*”; *Ann.* 14.2).

It was possible to entice (*pellicere*) a member of the opposite sex into *adulterium* (*Ann.* 4.3, 13.45). The offer of *adulterium* was also a way to gain favour with prominent figures: *“proaviam suam divo Iulio per Gallias bellanti corpore atque adulterio placuisse”* (“for his grandmother had pleased the deified Julius, while he was waging war in Gaul, by her body and her *adulterium*”; *Hist.* 4.55). On the other hand, to refuse the advances of a powerful suitor may have proved dangerous:

*nam in C. Silius, iuventutis Romanae pulcherrimum, ita exarserat ut Iuniam Silanam, nobilem feminam, matrimonio eius exturbaret vacuoque adultero poteretur. neque Silius flagitii aut periculi nescius erat: sed certo, si abnueret, exitio et nonnulla fallendi spe, simul magnis praemiis, operiri futura et praesentibus frui pro solacio habebat.*

For she was so inflamed for C. Silius, the most beautiful of Roman youths, that she drove Junia Silana, his noble wife, from her marriage and took possession of the unattached adulterer. Silius was ignorant of neither the disgrace nor the danger; but since, if he refused, it was certain death and there was some hope of it remaining unknown, and since the rewards were great, he took comfort in closing his eyes to the future and enjoying the present.

(*Ann.* 11.12)

Both *adulterium* and *stuprum* created a link and intimacy between the two parties involved: *“per adulterium... inter intimos”* (“intimates through *adulterium*”; *Ann.* 4.12); *“stupro cognitam”* (“known [to him] through *stuprum*”; *Hist.* 4.44); *“stupro vinxisse”* (“joined through *stuprum*”; *Ann.* 4.10); *“stupro eius inligatus”* (“attached to her by *stuprum*”; *Ann.* 12.25). They could also be used as a tool for persuasion: *“quotiens pecuniae materia deesset, stupris et adulteriis exorabatur”* (“whenever the matter of money was absent, he was persuaded by *stupra* and *adulteria*”; *Hist.* 1.66).

The verb *polluere* ‘to pollute’ is used with both *adulterium* (*Hist.* 3.41) and *stuprum* (*Hist.* 2.56, 3.41; *Ann.* 6.1, 13.17). However, it was only *stuprum* that was associated with violence and non-consensual sex: *“ad stuprum trahebantur”* (“dragged off to *stuprum*”; *Hist.* 4.14); *“filiae stupro violatae sunt”* (“his daughters were violated by *stuprum*”; *Ann.* 14.31). Moreover, *stuprum* could be taken through *vis* (*Hist.* 2.56, 3.33).

It is not always possible to distinguish a set pattern with which words are associated with either *adulterium* or *stuprum* within Tacitus' writing, for concepts and actions which are associated with the terms are often not repeated. However, Tacitus does associate these types of behaviour with kings and emperors:

*nomen sedemque Caesaris Domitianus acceperat, nondum ad curas intentus, sed stupris et adulteriis filium principis agebat.*

Domitian had accepted the name of Caesar and the imperial residence, with no care for his duties as yet, but with *stupra* and *adulteria* he played the part of an emperor's son.

(*Hist.* 4.2)<sup>447</sup>

*Adulterium* was found in the palace (*aula*) where there was "*corruptius quam in privata domo habiti*" ("more corrupted licence than is found in private houses"; *Hist.* 1.22). Moreover, it was thought by the emperor Otho to be "*principatus praemia*" ("the prerogative of princely power"; *Hist.* 1.30) and is described by Tacitus as one of the "*regnorum libidines*" ("royal desires"; *Hist.* 1.22).

There are only two occasions where an adjective is used in association with any of the words being studied. The first: "*traditam Tiberio pervicax adulter contumacia et odiis in maritum accendebat*" ("after she was handed over to Tiberius, her obstinate adulterer incited defiance and hatred in her against her husband"; *Ann.* 1.53). *Pervicax* here describes the adulterer himself, Sempronius Gracchus, who is charged with *adulterium* with Julia the Elder. It does not offer any understanding of how Tacitus viewed the figure of the *adulter* in general. The same is true at *Ann.* 11.12 where "*vacuo adultero*" ("the single adulterer") describes Gaius Silius' marital status rather than the nature of the position of the *adulter*. However, it still remains possible to gain some insight into how Tacitus viewed *adulterium* and *stuprum*.

The two terms are shown to be negative and are associated with unattractive qualities. Both create *infamia* (*Hist.* 3.41) and are forms of *libido* (*Hist.* 1.22; *Ann.* 11.26). Moreover, it is *libido* and *saevitia* which spurred on the men who sacked Cremona, where "*non dignitas, non aetas protegebat quo minus stupra caedibus, caedes stupris miscerentur*" ("neither rank nor age

---

<sup>447</sup> See also: "*et saepe in propinqua degressus, aditis iuxta Tiberim hortis, saxa rursum et solitudinem maris repetiit pudore scelerum et libidinum quibus adeo indomitis exarserat ut more regio pubem ingenuam stupris pollueret*" ("and after landing often in neighbouring parts and visiting the gardens near the Tiber, he resorted once more to the rocks and solitude of the sea, in shame at sin and lust; he was so inflamed by their wild passions that, in the manner of a king, he polluted the children of freeborn parents with *stupra*"; *Ann.* 6.1).

protected anyone from the *stupra* mixed up with murders and the murders mixed up with *stupra*"; *Hist.* 3.33) and they encouraged Cartismandua, queen of the Brigantes, to have an affair and to try to depose her husband from the throne and replace him with her *adulter* (*Hist.* 3.45). Furthermore, people are driven to *adulterium* by *amor* (*Ann.* 4.3, 13.44) and it is a *mala cupido* (evil desire) which prompts the wife of Calvisius Sabinus to commit *stuprum* (*Hist.* 1.48).<sup>448</sup> *Adulterium* also ruined reputations (*Ann.* 13.45) and not just that of the people involved:

*atque illa, cui avunculus Augustus, socer Tiberius, ex Druso liberi, seque ac maiores et posteros municipali adultero foedabat ut pro honestis et praesentibus flagitiosa et incerta expectaret.*

And she, the grand-niece of Augustus, sister of Tiberius, having had children with Drusus, disgraced herself, her ancestors, and her posterity with a provincial adulterer, in order to hope for a disgraceful and uncertain future instead of an honourable present.

(*Ann.* 4.3)

Most notably *adulterium* is a "*crimen impudicitiae*" ("charge of lewdness"; *Ann.* 4.52)<sup>449</sup> whilst *stuprum* is at no point called a crime.

The negative associations of *stuprum* were more in relation to excess and a decadent lifestyle, and it was engaged in alongside revelries (*comissatio*, *Hist.* 1.30) and gluttony (*ganea*, *Ann.* 6.4).<sup>450</sup> Accusations of *adulterium* were either made on their own or alongside other crimes, such as *maiestas* (*Ann.* 2.50), counterfeiting birth, and administering poison (*Ann.* 3.22), and other more fantastic charges, such as magic (*Ann.* 4.52, 6.29) and consulting astrologers about the imperial household (*Ann.* 3.22).

Tacitus does not offer commentary on the cases that he records and neither does the language that he uses in relation to these terms offer much insight into his own opinion of *adulterium* and *stuprum*. At the beginning of the *Histories* Tacitus includes *adulterium* as a

<sup>448</sup> The same episode is recounted by Plutarch (*Galba*. 12.1) and Dio, who records that both Sabinus and his wife (here named Cornelia) were indicted but he does not cite adultery as her crime (59.18).

<sup>449</sup> See also *Ann.* 3.24, 6.25.

<sup>450</sup> "*Haterius inuisior fuit quia somno aut libidinis vigiliis marcidus et ob segnitiam quamvis crudelem principem non metuens inlustribus viris perniciem inter ganeam ac stupra meditabatur*" ("Haterius was detested all the more because withered by sleep or the waking hours of lust and so sluggish as to have no fear of the emperor whatever his cruelty, yet amid his gluttony and *stupra* he was able to contemplate the destruction of illustrious men"; *Ann.* 6.4).

common occurrence in the period he is about to relate.<sup>451</sup> Adulterous relations were a part of the degradation and corruption of the age; though whether he viewed them as a cause or a product of this disorder is unclear. The clearest opinion that Tacitus gives us about his views on *adulterium* is in the *Germania*:

*paucissima in tam numerosa gente adulteria, quorum poena praesens et maritis permissa: abscisis crinibus nudatam coram propinquis expellit domo maritus ac per omnem vicum verberare agit; publicatae enim pudicitiae nulla venia: non forma, non aetate, non opibus maritum invenerit. Nemo enim illic vitia ridet, nec corrumpere et corrumpi saeculum vocatur.*

*Adulteria* are very few for such a number of people, punishment is quick and is decided by the husband: after having her hair cut off and being stripped naked, her husband expels her from the house in front of her relations and drives her with lashes through the whole village. For no pardon is given to confiscated chastity; neither beauty, nor youth, nor riches will find her a husband. No-one laughs at vices there; corruption, neither suffered nor created, is called the spirit of the age.

(Ger. 19)

Through his praise of the strict punishment of *adulterium* by the Germanic peoples, Tacitus criticises the Roman system of public prosecution and the *lex Iulia*. *Adulterium* destroys *pudicitia*, yet in Rome this is no longer taken seriously and is accepted as part of the imperial age. Tacitus thus warns Rome of the dangers of such immoral behaviour and indifference towards it.

### Suetonius

The verbs used with *adulterium* are *flagrare* (burning, Jul. 52.3), *exercere* (practise, Aug. 69.1), *damnare* (condemn, Tib. 11.4) and *condemnare* (condemn, Claud. 43.1). *Stuprum* is used with *comperire* (detect, Tib. 35.1) and *sollicitare* (tempt, Gaius 12.2). *Adulterium* creates *infamia* and is associated with *impudicitia* (Jul. 52.3), as well as *libido* (Aug. 69.1; Tib. 11.4), *ganea* (Gaius 11.1), and *incestus* (Nero 5.2). Moreover, *adulterium* was a *crimen*<sup>452</sup> and could be charged alongside *maiestas* (Nero 5.2). However, no association is made between *stuprum* and the concepts that have been found in previous authors, such as *libido*, *crimen* and *impudicitia*.

---

<sup>451</sup> “*pollutae caerimoniae, magna adulteria: plenum exiliis mare, infecti caedibus scopuli*” (“sacred rites were polluted, there were *adulteria* in high places: the sea was full of exiles, its cliffs stained by the bodies of the dead”; Hist. 1.2).

<sup>452</sup> “*crimine adulteriorum*” (Nero 35.2); “*adulterii crimen*” (Dom. 8.3).

The infidelities of the imperial family and the Roman elite are recorded throughout the *Lives*. The emperors engage in adultery. In particular Augustus, who after bringing in the *lex Iulia* was blatant and unapologetic in his affairs:

*adulteria quidem exercuisse ne amici quidem negant, excusantes sane non libidine, sed ratione commissa, quo facilius consilia adversariorum per cuiusque mulieres exquireret.*

In fact not even his friends deny that he engaged in *adulteria*, of course excusing it not because of passion but through undertaking business, by which he inquired into the plans of his adversaries more easily through their women.

(*Aug.* 69.1)<sup>453</sup>

Accusations of incest were made against Caligula and his sisters (*Gaius* 24.1) and also against Nero's father Domitius and his sister Lepida (*Nero* 5.2). What is more, seven emperors are said to have been involved in sexual relationships with men (Julius Caesar: *Jul.* 52.3; Augustus: *Aug.* 68.1; Tiberius: *Tib.* 44.2; Caligula: *Gaius* 36.1; Nero and Otho together: *Otho* 2.2; Vitellus: *Vit.* 12.1). Moreover, adultery within the imperial family was often linked to *maiestas* and attempts to gain power: Agrippina the Younger, Julia Livia and Aemilius Lepidus (*Gaius* 24.3); Messalina and her adulter Silius (*Claud.* 29.3, 36.1).

### 3.5) Conclusions

The impact of the *lex Iulia de adulteriis coercendis* on the representation of *adulterium* and *stuprum* in Latin prose literature had several effects. At the outset, it is possible to see a change in the use of *adulterium* and *stuprum* over time. The use of the terms by Valerius Maximus, however, remains an anomaly that suggests that this impact was slow to take effect.

In the earlier authors *stuprum* was the dominant term and it was used to refer to sexual affairs with any partner – a married woman, virgin, widow, or freeborn male. By the second century AD *adulterium* had overtaken *stuprum* and was employed more frequently. The new focus on *adulterium* that was created by the *lex Iulia* can be seen as a factor in this change. *Stuprum* was still used by the later authors to refer to the actual act of sex with a married woman, but it was not used as a term of sexual transgression in a legal sense. So though we are told by the jurists that a separate charge of *stuprum* was also created by the *lex Iulia* so far there has been no

---

<sup>453</sup> Other emperors that engage in adultery: Julius Caesar (*Jul.* 51.1, 52.3); Caligula (*Gaius* 11.1, 12.2).

evidence of this within the literature studied. Throughout the period covered *adulterium* was used to refer to a sexual relationship with a married woman. It was never used in relation to a *virgo* and where it was used in relation to an unmarried woman she was a widow. Under the *lex Iulia* the charge for a sexual affair with a widow would be *stuprum*. However, in the republican period *adulterium* and *adulter* was used to refer to such an affair and they seem to have continued to be used in this way despite the introduction of the *lex Iulia*. *Stuprum* also carried the meaning of rape and sexual violence, especially when the verbal forms *stuprare* and *constuprare* were used in the passive. *Adulterium*, on the other hand, was never used to refer to the rape of a married woman and so it could only be used in relation to consensual sexual relationships.

The biggest changes occur in how the words were conceived. In the earlier authors *stuprum* was regarded as the greatest disgrace and threat; it was repeatedly associated with *infamia* and was described as a *crimen*. *Adulterium*, however, was not linked with *crimen* until Valerius Maximus, after which *stuprum* loses such associations. Therefore, even though Valerius Maximus's use of the terms *adulterium* and *stuprum* does not seem to have been affected by the *lex Iulia*, the new legal connotations associated with the terms and with adultery do appear in his text. Moreover, whilst *adulterium* is repeatedly described in terms of accusation and legal process within the later authors, *stuprum* has no such associations and is not conceived as a legal charge. A significant transformation in how the two terms were conceived and also used can therefore clearly be seen in the later authors. Yet certain associations did remain the same as both terms continued to be associated with *infamia* and *libido* and it was repeatedly a *mala libido* that urged men to commit both acts, a concept that is also found in the verse poets.

## Chapter Four: *adulterium* and *stuprum* in Latin Verse

The verse authors have been chosen to sample a range of genres – comedy, elegy, satire and epigram. However, it has not been possible to include examples from all of these genres through the whole of the period covered. For one, Roman comedy is found only in the earliest part of the sample as Plautus and Terence are the only extant examples. Elegy, on the other hand, was only written for a small part of the period covered as it started in the mid first century BC and finished with Ovid. What is more, elegy stopped being written not long after the introduction of the *lex Iulia* and so it can only go so far in helping us understand any changes in the use of language after the introduction of the legislation. Nevertheless, elegy covers the crucial period in which ancient moralists argued that the civil wars damaged traditional morality and in which Augustus began his moral reforms. The Augustan poets were witnesses, therefore, to the legal and moral changes that opened up sexual relationships to criminal charges if they involved the wrong kind of woman.<sup>454</sup> Ovid will be a particularly interesting case study as his poetry was clearly influenced by the *lex Iulia* and can be seen responding to it.

Included in this chapter are the writers of comedy Plautus and Terence, the poets Catullus, Propertius,<sup>455</sup> Horace, and Ovid, the *Epigrams* of Martial and the *Satires* of Juvenal.<sup>456</sup> Within Latin verse literature all forms of love were written about: licit and illicit, hetero- and homo-sexual (to use the modern terms), unrequited and reciprocated. These authors, therefore, offer a rich and varied selection of anecdotes and opinions on sexual transgression in Rome. However, the diverse nature of these genres will need to be taken into consideration and questions asked not only about the influence of change over time and of the introduction of the *lex Iulia*, but also about how the requirements and restrictions of genre impact on their representation of adultery.

---

<sup>454</sup> For the Augustan poets' awareness of law and legal language, particularly Ovid, see Kenney (1969) and Gebhardt (2009). Kenney credits Ovid with introducing the widespread use of legal language into high Roman poetry (1969:254). Gebhardt, however, rejects this suggestion and does not see in Ovid a greater employment of legal language compared to his contemporaries once allowance is made for the size of his corpus (2009:86-88).

<sup>455</sup> There are no instances of the terms *adulterium*, *stuprum*, or *moechus* in Tibullus and so his work has not been included.

<sup>456</sup> All of the extant work of these authors has been included in the study.

## 4.1) The Authors

First, to understand the interaction between the law and the authors' use of *adulterium* and *stuprum* the dates of composition and publication of their works must be considered. Furthermore, it is necessary to consider not only the date at which each collection was published but also, where it is possible, the date at which the individual poems that contain our words were composed.

Plautus wrote a series of Roman comedies that were based on Greek originals in the last two decades of the third century BC and the first two decades of the second (McDonald and Walton 2007:329-330).<sup>457</sup> The six comedies of Terence were written in the 160s BC, with the *Andria* performed first in 166 BC (Brown 2006:x-xi).<sup>458</sup> New Comedy is not an original Roman format but was inherited from the Greeks and so many of the plays are set in Greek cities. However, both Plautus and Terence romanise the characters and the surrounding social structure (Ormand 2009:146).<sup>459</sup> Moreover, New Comedy is not a transparent model of everyday behaviour: "comedies are meant to be funny; much of their humour stems from an inversion of social norms" (Ormand 2009:162). Despite this the plays can still reveal something about attitudes to sex as the situations that they portray would need to be conceivable and they should not offend the moral sensibilities of the audience. It is for this reason that a wife's adultery is rarely portrayed on stage.<sup>460</sup>

Catullus was born in 84 BC,<sup>461</sup> a generation before the elegists. Very little is known about his life or the dates at which he published. The last dateable internal reference is to 54 BC and following Jerome's assertion that he died at the age of thirty his death has also been dated to 54 BC. However, this date has been questioned by some scholars, with a later date of 52 or 51 BC

---

<sup>457</sup> The exact number of plays written by Plautus is debated, but twenty complete plays survive today which can be authenticated.

<sup>458</sup> Only two of Terence's plays include our terms, the *Andria* (166 BC) and the *Eunuchus* (161 BC). Our knowledge of Terence's life relies on a biography entry by Suetonius, the reliability of which is questioned (Brown 2006:ix-x).

<sup>459</sup> See Brown (2006:xii-xvii) and Christenson (2000:4-12) for further discussion of the differences between the original Greek plays and the Latin adaptations.

<sup>460</sup> Adultery in Plautus is discussed further in section 4.4. See also Braund (2005) and Scafuro (1997:233-238). Nevertheless, the adultery mime was a popular and long-lasting type of mime (Reynolds 1946; Kehoe 1984).

<sup>461</sup> Jerome records Catullus' birth in the consulship of Cinna in 87 BC (*ad Euseb. Chron.* p.150.24-26, edited by Helm). However, Goold has argued for 84 BC as Cinna was consul in both 87 and 84 BC. Several of Catullus' poems, including 53, were not written before 54 BC and as Jerome says he was thirty when he died (*ad Euseb. Chron.* p.154.22-23, edited by Helm), a date of 84 BC is therefore probable (Goold 1983a:2; see also Dettmer 1997:1).



suggested instead (Skinner 2007:3).<sup>462</sup> In either case, by 32 BC Catullus is described by Cornelius Nepos as already being dead (Att. 12.4)<sup>463</sup> and all of his poems were published long before Augustus' reign and his legislation.

A contemporary of Augustus, Horace was connected to the *princeps* through the patronage of Maecenas.<sup>464</sup> The composition and publication of his works coincided with the end of civil war and the first decades of Augustus' rule and they often reflected contemporary feelings and Augustan policy. Moreover, he was writing around the time of the introduction of the *lex Iulia de adulteriis coercendis* in 18 BC. The earliest that Horace's poems can be dated is 38 BC<sup>465</sup> and from a reference in *Satire* 2.6 this is also thought to be the date at which Horace was first introduced to Maecenas: "*septimus octavo propior iam fugerit annus,/ ex quo Maecenas me coepit habere suorum/ in numero*" ("the seventh year, nearly eighth now, has passed since Maecenas began to count me among his friends"; *Sat.* 2.6.40-42). This poem is dated to the winter of 31-30 BC, which would place the introduction to Maecenas in early 38 BC.<sup>466</sup> His earliest publication was the first book of *Satires*.<sup>467</sup> At *Sat.* 1.10.44-45 Horace makes reference to the *Eclogues* of Virgil, which were published between 41 and 38 BC.<sup>468</sup> The publication of the first book of *Satires* came after this and a date of 35 BC is thought most probable by Nisbet and

---

<sup>462</sup> Skinner is sceptical about such an early date and goes further by suggesting that the number XXX could have been written in error by a scribe instead of XXXX. In this reconstruction Catullus would have lived till 44 BC and he would have seen the outbreak of civil war (2007:3). Either way, Catullus died at an age at which Ovid could still describe him as a young man: "*obuius huic venias hedera iuvenalia cinctus/ tempora cum Calvo, docte Catulle, tuo*" ("may you come to meet him with your youthful temples crowned with ivy, learned Catullus, with your Calvus"; Ovid *Am.* 3.9.61-62).

<sup>463</sup> However, it is not possible to determine how long before this reference he died.

<sup>464</sup> See DuQuesnay (1984) for an overview of the relationship between Horace and Maecenas, particularly within *Satire* book one.

<sup>465</sup> Griffin concedes that some of the *Satires* and *Epodes* may have been composed before this date, but they would certainly have been reedited and refined before publication (1993:3).

<sup>466</sup> At *Sat.* 1.6.56-62 Horace says that at his original meeting with Maecenas shame (*pudor*) stopped him from speaking and it was not until nine months later that Maecenas called for him again and he was fully introduced into his circle.

<sup>467</sup> Horace jokes that poverty forced him to turn to verse after the confiscation of his property following the civil war of 43-43 BC (*Epist.* 2.2.49-52).

<sup>468</sup> The *Eclogues* are thought to have been published individually or in pairs, rather than as a whole, and a date of publication for all of them is placed within the period 41 to 38 BC by Coleman (1977:15-18).

Hubbard (1980:xxvii).<sup>469</sup> The *Epodes* and the second book of *Satires* were then published around 30 BC (Nisbet 2007:12), with certain poems written considerably before this date.<sup>470</sup>

Following this Horace changed to writing lyric poetry and published the first three books of the *Odes*, which are believed to have been published as a single collection, though this is not explicitly confirmed anywhere (Nisbet and Hubbard 1980:xxxv).<sup>471</sup> The earliest datable reference is to 30 BC<sup>472</sup> and the date of publication is thought to be 23 BC, due to references in *Od.* 1.4 to Sestius, who was made consul suffect in June 23 BC, and in *Od.* 2.10 to Lucinius Murena, the brother-in-law of Maecenas, who was executed in 22 BC.<sup>473</sup> Horace went on to publish the *Epistles* in 20-19 BC (Nisbet 2007:14-15). The fourth book of *Odes* was published later as a single book, though some of the non-political odes may have been written not long after the publication of *Odes* 1-3 (Nisbet 2007:16). Internal evidence suggests *Od.* 4.6 was written around the time of the *Carmen Saeculare* in 17 BC and the last firmly datable poem is 4.5, which anticipates Augustus' return from Spain and Gaul in 13 BC. The composition of *Od.* 4.5 was therefore only a few years after the introduction of the *lex Iulia* and in this poem is perhaps the clearest representation of the legislation (*Od.* 4.5.21-22).<sup>474</sup> Nisbet identifies a "cluster of datable allusions" in the mid-teens (2007:17) and a publication date of 13 BC for book four is generally accepted (Thomas 2011:7).<sup>475</sup>

Propertius is thought to have been born in the mid to late 50s BC, for at 4.1.127-133 he describes himself as assuming the *toga virilis* not long after his father's property was confiscated in the proscriptions of the late 40s BC.<sup>476</sup> His first book was published around 29 to 28 BC<sup>477</sup> and it

---

<sup>469</sup> Fraenkel was sceptical that a date for the first book of *Satires* could be determined or that it is possible to know the amount of time between the publication of *Satires* one and two (1957:136). Rudd dates *Sat.* 1.2 to 38 BC (1993:73). Sharland rejects any suggestion that *Sat.* 1.2 was an early attempt at writing satire that was composed before the introduction with Maecenas, but instead sees it as a member of a unit consisting of the first three satires (2010:101-102).

<sup>470</sup> *Ep.* 7 and 16 express horror at the renewal of civil war, this is presumed to be the Sicilian War with Sextus Pompeius in 38-36 BC (Nisbet 2007:9).

<sup>471</sup> Evidence in favour of this scheme of publication has been taken from the fact that some of the poems in book three were written before others in book one and also that in *Epistle* 1.13 Horace talks about his work in the plural.

<sup>472</sup> *Od.* 1.37 celebrates the death of Cleopatra in 30 BC. However, there is evidence that some of the *Odes* may have been written before the *Epodes* were completed and published (Nisbet 2007:12-13).

<sup>473</sup> Nisbet 2007:14.

<sup>474</sup> Quoted in section 4.2. It is notable that this is the only poem in which Horace uses the term *stuprum*.

<sup>475</sup> Nisbet's suggestion (2007:16-17) of a potential publication date as late as 10 BC is rejected by Thomas (2011:6).

<sup>476</sup> "*ossaue legisti non illa aetate legenda/ patris et in tenuis cogeris ipse lares:/ nam tua cum multi versarent rura iuveni,/ abstulit excultas pertica tristis opes./ mox ubi bulla rudi dimissa est aurea collo,/ matris et ante deos libera sumpta toga/ tum tibi pauca suo de carmine dictat Apollo.*" ("Though not of an age to gather them, you gathered the bones of your father and you were forced into a poorer home: for though your lands were turned with many bullocks, the severe measuring-rod stole your refined lands.

was after this that Propertius also entered into Maecenas' circle. The second and third books were published in quick succession in 25 and 23 BC respectively.<sup>478</sup> There then followed a large gap before Propertius published his fourth and final book in 16 BC, only a year or so after the introduction of the *lex Iulia*.<sup>479</sup> The break in publication also heralded a change in tone and scope; the first person accounts, detailing the poet's own opinions and feelings, that fill the first three books are side-lined and replaced by narratives delivered through the words of other characters. Propertius is not known to have published anything after this and he had died by AD 2.<sup>480</sup>

Determining the dating of Ovid's poetry is of particular importance for this study as he was not only writing in the period immediately following the introduction of the *lex Iulia de adulteriis coercendis*, but he was also explicitly interacting with the legislation. In the *Tristia* Ovid says that he started reciting his poems when "*barba resecta mihi bisve semelve fuit*" ("my beard had been cut only once or twice"; 4.10.58). This would have been when he was seventeen or eighteen years old in 26 to 25 BC (Knox 2009:5). These poems were about his love for Corinna (*Trist.* 4.10.59-60) and were the start of the *Amores*. There is nothing to date any of the poems in the *Amores* to this early a date. The earliest datable reference is *Am.* 3.9 dedicated to Tibullus who died in 19 BC.<sup>481</sup> Between the period 25 to 2 BC Ovid published the *Amores*, *Heroides*, *Ars Amatoria*, and *Remedia Amoris*, as well as several lost works. However, the exact sequence of their publication is not clear (Knox 2009:6).

It is apparent, however, from the epigram to the *Amores* that the work extant today formed a second edition of three books, which had been reduced from an original collection of five. Although it is difficult to establish the alterations made between the two editions (Syme 1978:6), it has been argued that the difference was not great and that the second edition was a shortened, rather than a greatly revised, version (Cameron 1968:325, 327).<sup>482</sup> *Amores* 1.1-3 play

---

Soon when the *bullā* of gold was dismissed from your inexperienced neck and the toga of a freeman assumed before the gods of your mother, then Apollo told you a little about his song.")

<sup>477</sup> Keith 2008:2.

<sup>478</sup> Richardson 1977:9-10; Hutchinson 2006:8; Keith 2008:11.

<sup>479</sup> Book four is dated by a reference at 4.6.77 to the defeat of the Sycambri in 16 BC: "*ille paludosos memoret servire Sycambros*" ("let him speak of the slavery of the marshy Sycambri"). However, other poems within the fourth book can be dated earlier. Such as 4.3, in which Arethusa writes to her husband, Lycotas, who is campaigning in the east, and so may have been written before the Parthian settlement in 20 BC (Richardson 1977:12). The composition of book four, therefore, is likely to have begun not long after the publication of book three. However, for whatever reason, it took Propertius nearly a decade to complete it.

<sup>480</sup> Ovid at *Rem. Am.* 764, dated to AD 2, talks of Propertius in the past tense: "*vel tua, cuius opus Cynthia sola fuit?*" ("Or you, to whom Cynthia alone was your work?").

<sup>481</sup> The poem could still, however, have been composed a number of years after his death (White 2002:5 n.10).

<sup>482</sup> Ovid claims at *Trist.* 4.10.61-62 that he burned the most defective elements of his earliest works.

on the first three poems of Propertius's third book, published in 23 BC, suggesting that the first book of the *Amores* was published after this date, with the rest coming after 20 BC.<sup>483</sup> However, the lack of internal references, which would allow dating of the poems, and the difficulties faced in determining which poems formed part of the first edition or which were later additions made during Ovid's revision of the *Amores*, make it difficult to know which poems were being written in 18 BC when Augustus was introducing his moral legislation. Nonetheless, certain poems can clearly be seen to play with the terms of the *lex Iulia* and so can be dated after 18 BC, such as *Am.* 2.19 and 3.4.<sup>484</sup> Moreover, Williams suggests it was because of the introduction of the *lex Iulia* that Ovid breaks from the tradition of previous elegy by claiming in *Am.* 1.1 that he was forced to write such verse by Cupid and by writing about a fictional *puella* (1968:538-540).<sup>485</sup> It had now become too dangerous to write about love for a real married woman.

The second edition of the *Amores* can be much more securely dated to 7 BC from a reference to the Sygambri in *Am.* 1.14, in which Ovid assures his addressee that there will soon be an influx of hair for wigs following their subjugation: "*nunc tibi captivos mittet Germania crines;/ tuta triumphatae munere gentis eris*" ("now Germany will send to you the hair of captives; you will be saved by the gift of this race whom we are triumphant over"; 1.14.45-46). The Sygambri were involved in a number of conflicts with Rome during this period (16 BC, 11 BC, and 8 BC) and Tiberius was awarded a triumph in January 7 BC. McKeown suggests that this poem was written following the campaign in 8 BC due to the reference to *triumphatae...gentis* (1987:79).<sup>486</sup> Before the second edition of the *Amores* Ovid published the *Medea* sometime between 15 and 8 BC (Syme 1978:8). The *Heroides* were also published before the second edition of the *Amores* as they are referred to at 2.18.19-26, and it is thought that they do not predate 13 BC (White 2002:10).

The next of Ovid's works was the *Ars Amatoria* and it is from this poem onwards that Ovid shows an awareness of the *lex Iulia*. The first two books of the *Ars* were published together and

---

<sup>483</sup> McKeown 1987:75. However, it is near impossible to offer more definitive dates for the publication of the *Amores* and its relationship to the publication of Ovid's other works (Knox 2009:6).

<sup>484</sup> See discussion of these two poems in section 4.4. For the relationship between the *Amores* and 'Augustan ideology' see Davis (1999).

<sup>485</sup> He repeats the assertion that Corinna was fictional in the *Tristia* (2.339-340). Williams goes further to say that Ovid's repeated claims within the *Ars* and *Tristia* that he was not involved with married women confirm "the relevance which the Augustan marriage laws had for the writing of love-elegy" (1968:540). For the debate surrounding the elegiac mistress and whether she can be seen as being based in reality see Hallett (1973), Luck (1974), Sullivan (1976:77-81), Griffin (1985), Wyke (1987; 2002). I agree with Fear (2000:220) that there is little possibility in reaching a consensus. It is precisely because the elegists are playing on the distinctions between *matrona* and *meretrix* that the status of the women that they portray appears to be confused.

<sup>486</sup> Agreed by Syme (1978:3-6) and White (2002:5 n.12).

references at 1.171-172 to a mock sea battle staged by Augustus and at 1.177-178 to the preparations of Gaius Caesar to go on a campaign in the east, both of which are dated to 2 BC, provide a *terminus post quem* for publication.<sup>487</sup> It is not possible to date the third book of the *Ars* from internal references and so dating relies on the *Remedia Amoris* (Gibson 2003:38-39). The conclusion of the campaign against the Parthians in AD 2 provides a *terminus ante quem* as Ovid shows no awareness of this when discussing the Parthians in the *Remedia Amoris* (155-158, 244). As the *Remedia Amoris* is addressed to both men and women it can be assumed that the third book of the *Ars* predates it (Gibson 2003:39).<sup>488</sup> Therefore, between 2 BC and AD 2 the first and second books of the *Ars* were published, followed by the third book, and then the *Remedia Amoris*. The subject matter of these books and their lessons that come close to promoting adultery, despite Ovid's repeated assurances otherwise, show a clear response to the *lex Iulia*.<sup>489</sup> The fact that Ovid has to make assurances that he is not aiming his teaching at married women shows the impact made by the legislation since earlier elegy. Perhaps, however, it is not so much the introduction of the *lex Iulia* itself, rather the conviction of Julia for adultery in 2 BC and an apparent crackdown on such behaviour that stimulates this distancing from adultery.<sup>490</sup>

The *Metamorphoses* and the *Fasti* were published after AD 2.<sup>491</sup> In the *Tristia* Ovid claims to have written six books of the *Fasti* before he was interrupted (2.549-552), namely by his exile in AD 8. However, these first six books of the *Fasti* show signs of reworking during his exile (Green 2004:15-25). Within a year of being in exile Ovid began writing his defence in the *Tristia*, and then from AD 12 until his death in AD 17 he wrote the four books of the *Ex Ponto* (White 2002:16-20).

Martial wrote his epigrams under the emperors Domitian, Nerva and Trajan, between AD 86 and AD 101.<sup>492</sup> His death in AD 105 is recorded in a letter by Pliny the Younger (*Epist.* 3.21) but

---

<sup>487</sup> The extant version of *Ars* 1 and 2 may be a second edition but a first edition would have only predated the second by a year or two (Syme 1978:15). However, the reference to *artes... Amoris* at *Am.* 2.18.19 may refer to a version of the *Ars* as early as the publication of the second edition of the *Amores* in 7 BC (White 2002:13 n.39).

<sup>488</sup> McKeown also thinks that it is most probable that the third book of the *Ars* came before the *Remedia Amoris* but says that the book could have come any time before Ovid's exile in AD 8 (1987:77).

<sup>489</sup> For the relationship between the *Ars* and Augustus' programme of moral reform see: Rudd 1976, chapter 1; Wallace-Hadrill 1985; Davis 1995; Watson 2002b:154-158; Williams 2009:208-211.

<sup>490</sup> Indeed, it has been suggested by White that the publication of the first two books after 2 BC is in fact a second edition, promoted by the scandal surrounding Julia, which has made it necessary for Ovid to distance his teachings from adultery (2002:13 n.39).

<sup>491</sup> McKeown suggests that considering the scale of these works he may have started their composition prior to this (1987:78).

<sup>492</sup> Books one and two AD 86; book three AD 87; book four AD 89; book five AD 90; book six AD 91; book seven AD 92; book eight AD 94; book nine AD 95; the version of book ten extant today is a second edition published in AD 98; book eleven AD 96; book twelve AD 101 (Sullivan 1991:15-55).

the majority of detail about his life must be found within his writing.<sup>493</sup> The flattery heaped on Domitian in the earlier books meant that Martial took pains later on to distance himself after Domitian's assassination (10.72; Sullivan 1991:75-77).<sup>494</sup>

Very little is known about Juvenal's personal life, though the *Satires* appear to have been written in the second and third decades of the second century AD, under both Trajan and Hadrian (Braund 1996:15-16).<sup>495</sup> However, references in Martial (7.24 and 7.91, both dated AD 92; 12.18, AD 101-102) to Juvenal's oratorical skill show that he was writing and publishing before the publication of the *Satires*.

## 4.2) The Terms

In the prose chapter the most frequently occurring term was *stuprum*. This is an unsurprising result given that *stuprum* can be used as a general term for sexual immorality and that it also incorporates the more specific term *adulterium* in its meaning. However, in the verse authors *stuprum* is rarely found and instead the focus has turned to *adulterium* and in particular the word *adulter*, which is used by every author apart from Terence (see fig. 4).<sup>496</sup> Terence instead uses only the borrowed Greek form *moechus*, which is also frequently found in the other authors but not at all in Propertius and Ovid.<sup>497</sup>

Plautus uses the greatest range of words, followed closely by Horace. Moreover, *stuprum* is only used by Plautus and the writers of elegy. This avoidance of *stuprum* by the other authors is not easily understood – the term can be scanned without difficulty and can thus be included in all metres. Likewise, with the exception of Ovid, *adulterium* is rarely used. The focus is instead on the adulterous couple, not on the act itself or the legal charges of *adulterium* and *stuprum*. Of further

---

<sup>493</sup> See Sullivan 1991:1-55; Williams 2004:3-5.

<sup>494</sup> Martial's tenth book was originally published in AD 95 but following the assassination he revamped the book, removing epigrams that were addressed to or referred to Domitian (Sullivan 1991:44-52).

<sup>495</sup> For further detail of the dating of individual satires see Syme (1984b).

<sup>496</sup> Adams explains the avoidance of *adulter* in Plautus and Terence by suggesting that at this time the term may not have been established with the specialised meaning of 'adulterer' (1983:352). See appendix 2 (ii) for individual frequency tables for each verse author, including references for all occurrences.

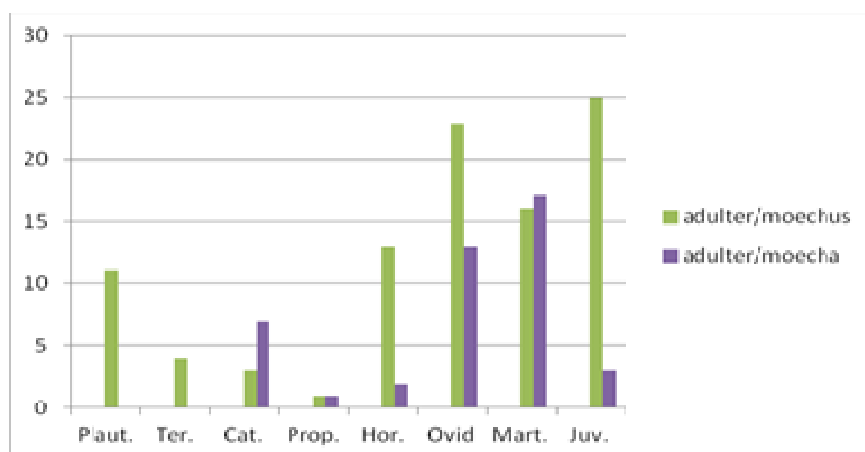
<sup>497</sup> See Maltby on Terence's use of Greek loan words; he includes *moechus* within a group which is "most likely to have retained its foreign flavour and which Terence is most likely to have used for deliberate stylistic effect" (1985:118). Cf. Hough on Terence (1947) and also Plautus (1934), who charts the chronology of their plays through the development of their style in using Greek words.

Figure 4: individual word frequency in the verse authors

Author \ Word	Plaut.	Ter.	Cat.	Hor.	Prop.	Ovid	Mart.	Juv.	Total
adulterium	2		4		1	15	1	1	24
adulter	1		1	8	1	23	2	13	49
adultera			1	1		13	2	1	18
adulterus	1			1		4			6
adulterinus	1								1
adulterare	1			1		2			4
stuprum	10			1	3	4			18
stuprare	2								2
moechus	10	4	2	5			14	12	47
moecha			6	1	1		15	2	25
moechari	1		2	1			1		5
Total	29	4	16	19	6	61	35	29	

interest as regards to Plautus and Terence is the fact that they do not use the feminine forms *adultera* and *moecha*, words which are used by the later authors (fig. 5).<sup>498</sup> The authors who show more interest in the female transgressor (as opposed to the male) are Catullus and Martial, whose uses of *adulter/moechus* and *adultera/moecha* are roughly equal in number.

Figure 5: masculine and feminine forms in the verse authors



*Stuprum* is only found within Plautus and the Augustan poets (Propertius, Horace (*Odes*), and Ovid). Plautus uses *stuprum* to refer to an adulterous relationship, the act of sex itself and to

<sup>498</sup> Catullus is the first Latin author to use *moecha* (Adams 1983:351).

sexual disgrace.<sup>499</sup> It is used by Propertius as a condemnation of morality in Rome at 2.32.41<sup>500</sup> and to the adultery of Clytaemnestra at 3.19.20 and 4.7.57.<sup>501</sup> The only occurrence of *stuprum* in Horace occurs after the introduction of the *lex Iulia*:

*tutus bos etenim rura perambulat,  
nutrit rura Ceres almaque Faustitas,  
pacatum volitant per mare navitae,  
culpari metuit fides,  
nullis polluitur casta domus stupris,  
mos et lex maculosum edomuit nefas,  
laudantur simili prole puerperae,  
culpam poena premit comes.*

In fact the ox wanders safely through the pastures, Ceres and kind Fertility nourish the crops, tranquilly the sailors hurry over the sea, faith fears blame, the pure home is polluted by no *stupra*, custom and law have overcome manly wickedness, women in labour are praised for the similarity of their offspring, whilst punishment follows fault closely.

(*Od.* 4.5.17-24)

The poem was published five years after the introduction of Augustus' moral legislation and can be seen to praise these reforms. The strength of *stuprum* here is heightened by *polluere* and it is used to refer to all sexually immoral and disruptive behaviour that might affect the home, including *adulterium* and rape. *Stuprum* is used by Ovid to refer to the rape of Deidamia by Achilles at *Ars* 1.698 and 1.704.<sup>502</sup> It is also used to refer to the illicit sexual behaviour of the stars (*Met.* 2.529-30)<sup>503</sup> and Oenone states that she has never demanded gems and gold as a price for

<sup>499</sup> Adultery (*Amph.* 489, 883, 898, 1016, 1034s; *Cas.* 201); sex (*Poen.* 99; *Truc.* 263; *Cas.* 888); sexual disgrace (*Cas.* 82).

<sup>500</sup> Quoted in section 4.3.

<sup>501</sup> "*quidve Clytaemestrae, propter quam tota Mycenis/ infamis stupro stat Pelopea domus?*" ("Or why should I repeat of Clytaemestra, on account of whom the whole house of Mycenaean Pelops remains infamous through her *stuprum*?"; 3.19.19-20); "*una Clytaemestrae stuprum vehit, altera Cressae/ portat mentitae lignea monstra bovis*" ("one carries the *stuprum* of Clytaemestra, another the monstrous timber of the false Cretan cow"; 4.7.57-58).

<sup>502</sup> "*forte erat in thalamo virgo regalis eodem;/ haec illum stupro comperit esse virum*" ("by chance the royal virgin was in the same bedroom; she found out that he was a man through *stuprum*"; *Ars* 1.697-698); "*vis ubi nunc illa est? quid blanda voce moraris/ auctorem stupri, Deidamia, tui?*" ("Where now is that violence? Why with charming voice are you staying with the author of your *stuprum*, Deidamia?"; *Ars* 1.703-704). Davis suggests that in this use of *stuprum* the crime outlawed by Augustus is "presented as nothing more than the product of a young man's exuberance" (2006:95).

<sup>503</sup> "*sideraque in caelo stupri mercede recepta/ pellite*" ("and expel stars that have been accepted into heaven as the price for *stuprum*").



*stuprum* (Her. 5.143).<sup>504</sup> The term is not used after the introduction of the *lex Iulia* by these authors to refer specifically to adultery.

In Plautus, Terence, Catullus, and Martial it is the colloquial Greek forms *moechus/a* and the verb *moechari* that dominate (fig. 6). The force of these terms was crude and full of derision. Yet, whilst Catullus can use *moecha* to refer to the *moecha turpis* who steals the poet's tablets in poem 42,<sup>505</sup> he also uses it to refer to Helen of Troy at 68.103.<sup>506</sup> This difference in the use of the two terms does not seem to be due to a change over time. However, the reason why *moechus/a* may have been chosen over *adulter/a* becomes clearer when genre is taken into account. In figure 6 Horace's *Satires* have been separated from his other works.

Figure 6: use of *adulter/a* or *moechus/a* in the verse authors

Author \ Word	Plaut.	Ter.	Cat.	Hor. Sat.	Hor. Other	Prop.	Ovid	Mart.	Juv.
<i>adulter/a</i>	1	0	2	1	8	1	36	4	14
<i>moechus/a</i>	10	4	8	5	1	1	0	29	14

This shows that *moechus* is more commonly used within the lower verse forms of comedy, satire and epigram.<sup>507</sup> Nonetheless, when Martial does use *adultera*, he uses it interchangeably with *moecha* within the same epigram.<sup>508</sup> Where the terms are found in Propertius and Horace they are again used to refer to characters that are deserving of derision; Propertius uses *moecha* to refer to the *comica moecha* in the plays of Menander (4.5.44)<sup>509</sup> and Horace uses *moechus* to

<sup>504</sup> Quoted in section 4.3.

<sup>505</sup> "*iocum me putat esse moecha turpis*" ("an ugly *moecha* thinks she can make me a joke"; 42.3). He also calls her *putida*: "*moecha putida, redde codicillos, / redde, putida moecha, codicillos!*" ("dirty *moecha*, return my tablets, return my tablets, dirty *moecha*"; 42.11-12), repeated again at 42.19-20.

<sup>506</sup> "*ne Paris abducta gavisus libera moecha / otia pacato degeret in thalamo*" ("that Paris might not spend undisturbed leisure in his peaceful bedroom with his abducted *moecha*").

<sup>507</sup> Watson has shown the influence of genre on the selection of vocabulary in epic, elegy and lyric poetry (1985). However, she recommends caution as this is not always universally appropriate and often a variety of factors influence a poet's choice of vocabulary (1985:447).

<sup>508</sup> "*ilia siligineis pinguescit adultera cunnis, / convivam pascit nigra farina tuum. / ... splendet Erythraeis perlucida moecha lapillis, / ducitur addictus, te futuente, cliens*" ("that *adultera* grows fat on wheat cunts, your guest grazes on black flour... the *moecha* is bright and shining with Erythraean precious stones, your client is led away into bondage while you fuck"; 9.2.3-4, 9-10).

<sup>509</sup> "*sed potius mundi Thais pretiosa Menandri, / cum ferit astutos comica moecha Getas*" ("but rather extravagant Thais in elegant Menander, when the comic *moecha* cheats the sly Scythians"; 4.4.43-44).

refer to the arrogant lovers that Lydia will weep over in her old age (*Od.* 1.25.9).<sup>510</sup> Catullus remains an anomaly.

Plautus is the only author to use all three verbal forms.<sup>511</sup> *Stuprare* is not used again by any other authors. *Adulterare* is used by Horace in the *Epodes*:

*novaque monstra iunxerit libidine  
mirus amor, iuvet ut tigris subsidere cervis,  
adulteretur et columba miluo,  
credula nec rivos timeant armenta leones  
ametque salsa levis hircus aequora.*

When a strange love will join unusual monsters in lust, it is a delight for tigers to settle down with deer and for the dove to be corrupted by the kite, neither will the trusting herd fear the tawny lion, and the nimble goat will love the salty sea.

(*Ep.* 16.30-34)

The unnatural pairings of predator and prey in this passage gives *adulterare* a sense of forbidden corruption, a stronger sense than purely 'to commit adultery'. It is also used by Ovid to mean 'to corrupt or alter' without a sexual meaning.<sup>512</sup> *Moechari* is used by Catullus, Horace (*Satires*), and Martial and all three use it to mean 'to commit adultery'.<sup>513</sup> The use of the verbal forms, therefore, appears to correspond to genre and the lower forms of satire and epigram. Indeed, Catullus' use of *moechari* shows it to be a crude and disparaging term:

*Mentula*<sup>514</sup> *moechatur. moechatur mentula? certe.  
hoc est quod dicunt: ipsa olera olla legit.*

---

<sup>510</sup> "*invicem moechos anus arrogantes/ flebis in solo levis angipotu*" ("in turn, you a worthless old woman will weep in an empty alley over your arrogant lovers"; *Od.* 1.25.9-10).

<sup>511</sup> *stuprare*: to have sex with a virgin (*Aul.* 36; *Truc.* 821); *adulterare*: to counterfeit a symbol (*Bacch.* 268); *moechari*: to commit adultery (*Cas.* 975).

<sup>512</sup> *Fast.* 1.373, quoted in section 2.2; "*copia tot laticum, quas auget, adulterat undas/ nec patitur vires aequor habere suas*" ("the wealth of so many waters corrupts the waves which it increases, nor was the sea allowed to keep its own strength"; *Ex Pont.* 4.10.59-60). The choice of *adulterare* here, however, adds the extra dimension of a transformation from a pure to an impure state. According to Green "we are presented with a novel picture of transformable gods as beings who become a corrupted amalgam the more they change shape" (2004:175).

<sup>513</sup> *Cat.* 94.1, quoted below; "*Sallustius in quas/ non minus insanit quam qui moechatur*" ("for whom Sallustius rages no less than he who commits adultery"; *Hor. Sat.* 1.2.48-49); *Mart.* 6.91, quoted in section 4.4.

<sup>514</sup> *Mentula* is the basic obscenity used to describe the male sexual organ and is on a par with *cunus*, designating the female; see Adams (1982:9-12, 80-81).

Mentula committed adultery. A cock committed adultery? Certainly. This is what they say: the pot picks its own potherbs.

(94)<sup>515</sup>

This lack of use of verbal forms again points to the fact that it is not the act of committing adultery itself that interests the verse authors but the people involved. The adjectival forms *adulterus* and *adulterinus* are also rarely used.<sup>516</sup>

Finally, if the terms are grouped together with their derivatives then a clear picture of changes in the use of the terms over time appears (fig. 7). The increase in the use of *adulterium* and its derivatives occurs during the Augustan period; for example, Ovid only uses *adulterium* twice in his works published before the introduction of the *lex Iulia*, but it is found thirteen times afterwards.<sup>517</sup> The greatest use of *adulter/a* is also during this period. It has already been suggested that genre seems to have played a part in the choice of the words used for adulterer and adulteress. However, it may also be said that this increased use of *adulter/a* at the time when the *lex Iulia* had publically defined *adulterium* may be a reflection of the language of the law. The use of *stuprum* decreases significantly after Plautus<sup>518</sup> and it is noticeably avoided by the writers of satire and comedy.<sup>519</sup> However, this does not seem to have any relation to the introduction of the *lex Iulia*. Richardson suggests that Propertius avoids *stuprum* as it is an ugly word and so it is only used for strong effect (1977:307). This would not stop the authors of comedy and satire from using the term; as we can see by their use of *moechus* over *adulter* they do not shy from use of more colloquial or unattractive words.

---

<sup>515</sup> This two line attack on Mamurra exploits his nickname *Mentula* and its other, cruder meaning 'penis' to link him to the action of adultery and by doing so he shows that "the real forte of Caesar's henchman is sexual immorality" (Arkins 1982:16). Furthermore, Ormand suggests that in poem 29 Catullus uses this association of Mamurra with sexual depravity and abuse to suggest that he has violated a province and as Caesar gave the province to him Caesar has also become tainted with the same vices (2009:199).

<sup>516</sup> Plautus uses *adulterinus* in relation to a symbol and it has the meaning of 'counterfeit', without sexual connotations (*Bacch.* 266).

<sup>517</sup> Before: *Her.* 4.34; *Am.* 3.5.44. Afterwards: *Ars* 2.367, 2.484; *Met.* 2.545, 4.171, 4.236, 7.717, 8.156, 9.25; *Fast.* 2.808; *Trist.* 2.213, 2.430, 2.514; *Ex Pont.* 3.3.58.

<sup>518</sup> However, the high percentage with which Propertius appears to use the term is misleading considering the small size of the sample.

<sup>519</sup> Horace uses the term only in his *Odes*.

Figure 7: percentage frequency of *adulterium*, *stuprum*, and *moechus* (including their derivatives) in the verse authors

Author \ Word	Plaut.		Ter.		Cat.		Hor.		Prop.		Ovid		Mart.		Juv.	
<b>adulterium</b>	6	21%	0	0%	6	37%	11	58%	2	33%	57	93%	5	14%	15	52%
<b>stuprum</b>	12	41%	0	0%	0	0%	1	5%	3	50%	4	7%	0	0%	0	0%
<b>moechus</b>	11	38%	4	100%	10	63%	7	37%	1	17%	0	0%	30	86%	14	48%
<b>Total</b>	29		4		16		19		6		61		35		29	

### 4.3) Status

To understand fully the use of these terms and how the authors used them it is necessary to investigate the status of the women involved, as it is the woman's marital status that makes sexual relationships adulterous or not. Figure 8 shows the type of woman the authors apply our terms to. As in chapter three, the classification as married has been made for all women who are described within the text as being married (*uxor*, *nupta*, etc.), where reference is made within the text to a *maritus* or the husband is specifically named, or when we know from another source that the woman was married even if this is not mentioned by the text in question. However, the elegists often used the terms for husband and wife (*vir* and *coniunx*) to refer to their own paramours and rivals, and as a result it is not possible to make an immediate assumption that their use is confirmation that the relationship in question is a marriage.<sup>520</sup>

On the whole *adulterium*, *adulter*, and *adultera* are used in relation to married women by all of the authors. However, they were also used on occasion to refer to relationships that do not involve a married woman<sup>521</sup> or as general terms without reference to specific people. Moreover, there are a significant number of cases for all of the terms where it is not possible to determine the marital status of those involved. *Stuprum* was used most frequently by Plautus, who typically uses the term in reference to married women but on occasion it is found in relation to unmarried women, showing that there was flexibility in the use of term. In the later authors who use *stuprum*, it again remained flexible and was either used to refer to married women, unmarried women, or as a general term.

<sup>520</sup> Williams understands *coniunx* to mean a married man (1968:535-536, see further discussion in section 4.4). Moreover, the man whom Tibullus describes as Delia's *coniunx* is called a *maritus* by Ovid at *Trist.* 2.457. Nevertheless, it is the word's ambiguity that perhaps appeals to the elegists and Ovid can be seen to deliberately play on it in his use of the term *vir* (Sharrock 1994:116 n.36). See also Adams on the Latin terms for 'wife' (1972).

<sup>521</sup> Included in this is Ovid's use of *adulterium* at *Ars* 2.484 to refer to a relationship between dogs.

The use of *moechus* and *moecha* is also varied and the authors can use the terms to refer both to married and unmarried women. Moreover, whilst Plautus uses *moechus* as a general term without qualifying it by reference to specific women, by the end of our period Martial and Juvenal use it mostly in relation to married women. What is more, *moecha* has a particularly high number of cases for which it is not possible to determine the status of the woman in question; she is just called *moecha* without further detail. This does not happen with *adultera*, where the authors, chiefly Ovid, do provide details of the marital status of the *adultera*. The need to qualify who the *adultera* was may reflect the more formal nature of the term when compared to *moecha* and the need to show that she was a married woman. However, none of the verbal forms – *adulterare*, *stuprare* and *moechari* – are used to refer to married women. Instead they are used either in relation to unmarried women or in general.

Figure 8: status of the passive partner in the sexual affair in the verse authors

	Status of the passive partner?	Plautus	Terence	Catullus	Horace	Propertius	Ovid	Martial	Juvenal	Total
adulterium	Married	1		2			7			10
	Unmarried	1					2			3
	Uncertain			2		1	1			4
	General						5	1	1	7
adulter	Married	1			3	1	17	1	8	31
	Unmarried				1		3		1	5
	Uncertain				2		2	1		5
	General			1	2		1		4	8
adultera	Married				1		10			11
	Unmarried						2			2
	Uncertain			1				1	1	3
	General						1	1		2
adulterus	Married				1		2			3
	Unmarried									
	Uncertain						1			1
	General	1					1			2
adulterinus	Married									
	Unmarried									
	Uncertain									
	General	1								1

<b>adulterare</b>	Married									
	Unmarried						2			2
	Uncertain									
	General	1			1					2
<b>stuprum</b>	Married	7				2	1			10
	Unmarried	3					2			5
	Uncertain									
	General				1	1	1			3
<b>stuprare</b>	Married									
	Unmarried	2								2
	Uncertain									
	General									
<b>moechus</b>	Married	2	1		1			9	6	19
	Unmarried		2					2		4
	Uncertain			2	1			1	3	7
	General	8	1		3			3	3	18
<b>moecha</b>	Married			1				3	1	5
	Unmarried							3		3
	Uncertain			5	1	1		7	1	15
	General							1		1
<b>moechari</b>	Married									
	Unmarried	1								1
	Uncertain									
	General			2	1			1		4

### Plautus

Plautus' use of the terms does not follow a set pattern. *Adulter* is used only once by Plautus and he does so in relation to an affair with a married woman (*uxor*, *Amph.* 1049). *Adulterium*, however, is used to refer both to a married (*uxor*, *Mil.* 802) and an unmarried woman (*Casina*, *Cas.* 975).<sup>522</sup> However, the only occurrence of the verb *adulterare* in Plautus is in relation to its non-sexual

<sup>522</sup> Lysidamus is accused of *adulterium* with Casina, who is unmarried. *Adulterium* is either used here to refer to an unmarried woman, which would be highly unusual when compared with the use of the term by the other authors, or it is used because Lysidamus is married, which would also be an unique use of the term. Cf. Aulus Gellius 10.23.5 (quoted in section 1.5), where a husband is said to both commit adultery and to be 'adulterated'.

meaning ‘to forge’.<sup>523</sup> The adjectival form *adulterus* is used in relation to sexual disgrace but no indication of the types of women involved is given (*Mil.* 90). The other adjective he uses (*adulterinus*) does not carry a sexual meaning (*Bacch.* 266). When he uses *stuprum*, he does on the whole use it to refer to married women.<sup>524</sup> However, on three occasions it is used in relation to women who we are told elsewhere in the play are unmarried (*Poen.* 99; *Truc.* 263; *Cas.* 82). The verb *stuprare* is also used in contexts where the female is known to be unmarried (*Aul.* 36; *Truc.* 821). Plautus uses *moechus* in reference to men in relationships with married women; either we are told she is a wife (*uxor*, *Bacch.* 918) or that she has a husband (*vir*, *Amph.* 135). On the whole, however, it is used in general with no reference to who the *moechus* was having a relationship with (*Mil.* 775, 924, 1131, 1390, 1398, 1436; *Truc.* 610). Moreover, the verbal form *moechari* is used in relation to an unmarried girl (*Cas.* 975).

### Terence

Terence only refers to the *moechus* and in the first instance in the *Andria* it does involve the adulterer of a married woman (316). However, all of the other references, which appear in the *Eunuchus* (957, 960, 992), involve an unmarried woman. The *moechus* is Chaerea, who has dressed up as a eunuch in order to rape a slave girl. However, she is revealed to be an Athenian citizen who was kidnapped as a small child and sold into slavery. As a result, the rape becomes disgraceful and dishonourable.<sup>525</sup> Chaerea is apprehended and faces the punishments normally given to *moechi* (*Eun.* 957-958).<sup>526</sup> *Moechus* appears to be being used here to refer to a rapist of an unmarried girl; a translation of lover or adulterer is therefore not appropriate.

---

<sup>523</sup> “*adulterare eum aibat rebus ceteris*” (“he said that in other matters he had committed forgery”; *Bacch.* 268).

<sup>524</sup> *Stuprum* is used repeatedly in the *Amphitryo* to describe the relationship between Jupiter and Alcmena, who we are told within the play is an *uxor* (498, 898, 1016, 1034s, 1141). In the *Casina* it is also used for a sexual relationship with a married woman (*nupta*, 888) and with a woman who has a husband (*vir*, 201).

<sup>525</sup> That the sexual relationship was rape rather than consensual is necessary to the plot (Brown 2006:151). The girl is absolved of blame as she did not consent and as a result her reputation is still intact once she is discovered to be a citizen and she can go on to marry Chaerea.

<sup>526</sup> See also *Eun.* 992-993. Both quoted in section 2.1.

## Catullus

Catullus refers to the affairs of Caesar and Mamurra in poem 94 and at 57.8 he calls them both *adulter*.<sup>527</sup> These references are made to general acts of adultery and no mention is made of the status of the women they were involved with. Where we know that the woman involved in the affair is married, this is because we are either told by Catullus that she has a husband (*coniunx*, 66.84; *maritus*, 78.6) or the woman is well-known (Helen, 68.103). More often the status of the woman is not known. Either she is referred to solely as *moecha* (42.3, 42.11, 42.12, 42.19, 42.20)<sup>528</sup> or *adultera* (61.98) without further detail about who she is. Indeed, in poem 61, Catullus warns that no *adultera* will lead the newly married Manlius away from his wife:

*non tuus levis in mala  
deditus vir adultera,  
probra turpia persequens,  
a tuis teneris volet  
secubare papillis,  
lenta sed velut adsitas  
vitis implicat arbores,  
implicabitur in tuum  
complexum.*

Your husband will not, having been easily given to a wicked *adultera* and following ugly disgraces, want to lie away from your soft breasts, but just as the pliant vine entwines the nearest trees, so he will be entwined in your embrace.

(61.97-105)

It is the marital status of the woman that qualifies a relationship as adultery and so a married man could have an affair with an unmarried woman without it being termed adultery. The mistress in this poem is called an *adultera* but there is no indication of her status or whether she herself was married. Catullus is either using *adultera* here to refer to a mistress, and so classes male extra-marital affairs as adultery, or he uses the term to indicate a relationship with a married woman.<sup>529</sup>

---

<sup>527</sup> “*non hic quam ille magis vorax adulter*” (“one was no more a greedy adulterer than the other”; 57.8); poem 94 is quoted in section 4.2. Catullus further links Caesar and Mamurra together in poem 29 where he describes Mamurra as “*vestra mentula*” (“your [i.e. Caesar’s] penis”; 29.14).

<sup>528</sup> Arkins (1982:17) identifies the *moecha turpis* of poem 42 as Ameana, the mistress of Mamurra, but there is no indication in the text to support this. Hernández, however, instead identifies her as Lesbia (2006).

<sup>529</sup> Kroll suggested that the *adultera* here should be understood as a *paelex* (1929:114) but this is rejected by Thomsen who argues that the *adultera* must be a married woman for Manlius’ relationship with her to be described as “*probra turpia*” in line 99 (1992:80-91).



If this imagined affair was conducted with a married woman then it would cause Manlius problems not just within his own marriage but within society in general.

There are also problems in determining the status of the woman when she can be identified but no detail as to her marital status is offered. In poem 113 Catullus jokes that, if a person commits adultery once, more affairs will follow:

*consule Pompeio primum duo, Cinna, solebant  
Maeciliam: facto consule nunc iterum  
manserunt duo, sed creverunt milia in unum  
singula. fecundum semen adulterio.*

Two frequented Maecilia, Cinna, when Pompey was first consul: now that he has been made consul again two still remained, but 1000 appears next to each one. The seed is abundant in *adulterium*.

(113)

It is not possible to identify Maecilia, but the force of the statement would not be the same if she was not a *matrona* in the upper circles of society. Similar problems occur when Catullus refers to the *moechi* of Lesbia (11.17, 37.16).

### Horace

It is possible to determine that the adulterers described by Horace in *Satires* 1.2 and 2.7 are involved with married women, either because he describes the women involved as wives (*coniunx*, *Sat.* 2.7.46; *uxor*, *Sat.* 1.2.35, 1.2.57;<sup>530</sup> *matrona*, *Sat.* 1.2.54, 1.2.63, 1.2.78, 1.2.94, 2.7.62) or we are told that they have a husband (*maritus*, *Sat.* 2.7.61; *vir*, *Sat.* 1.2.120). Similarly, in the *Odes*, the *adulteri* are shown to be involved with wives (*coniunx*, *Od.* 3.24.20) and there is the presence of a *maritus* (*Od.* 3.6.26) or *vir* (*Od.* 3.24.20). The fame of Paris and Helen and their affair means

---

<sup>530</sup> Particularly the wife of another man: "*non alienas/ permolere uxores*" ("they do not grind other men's wives"; *Sat.* 1.2.34-35); "*nil fuerit mi' inquit 'cum uxoribus umquam alienis'*" ("he said, 'there will be nothing ever between me and the wives of others'"; *Sat.* 1.2.57); "*coniunx aliena*" ("the wife of another"; *Sat.* 2.7.46). Also at *Sat.* 1.2.54, Horace portrays Sallustius as praising himself because "*matronam nullam ego tango*" ("I touch no matron"). It is thought that this Sallustius is the historian Sallust, who was said to have been caught in adultery: "*in adulterio deprehensum ab Annio Milone loris bene caesum dicit et, cum dedisset pecuniam, dimissum*" ("it was said that he was caught in *adulterium* by Annius Milo, beaten well with whips and, when he had paid him money, set free"; Aul. Gel. 17.18). Horace, therefore, may have deliberately reversed the story as a joke so that Sallustius promotes relationships with freedwomen instead (Sharland 2010:117 n.38).

that the references to them as *adulter* and *adultera* can also be seen as adultery.<sup>531</sup> Moreover, where the term *moecha* is used in *Satire* 1.4.113 in opposition to a *meretrix* it can only be assumed by the sense of the passage that the term is being used to refer to ‘another man’s wife’.

532

However, the woman is not always shown to be married. At *Odes* 3.16.1-7 Acrisius guards his daughter Danaë from “*nocturnis adulteriis*” though she is unmarried. This is the only example where it is possible to determine confidently that Horace used the terms for sexual transgression in a way that was not in line with their definitions under the *lex Iulia*. Moreover, the third book of *Odes* was published in 23 BC, before the introduction of the *lex Iulia*. Several named female characters engage in affairs with *adulteri* and *moechi* in Horace’s poems.<sup>533</sup> However, their marital status is left undisclosed and as a result it is not possible to determine the validity of the terminology used in these instances. Nevertheless, the Greek nature of their names suggests they are from the demi-monde of *hetaerae* that frequent elegy and it would then be inappropriate to translate the terms *adulter* and *moechus* as adulterer in these instances. *Adulter* could also be used in general (*Sat.* 1.3.106, quoted in section 4.4).

In the only occurrence of *stuprum* in his works, Horace refers to the sexual depravity that threatened Roman homes before Augustus’ moral reforms (*Od.* 4.5.17-24).<sup>534</sup> The term is used as a general reference to illicit sexual activity and no more detail is given about who it involved than *domus*.

### Propertius

Propertius does not provide any internal evidence to show whether the relationships he describes involve married women or not. He uses *adulter* to refer to Paris (2.34.7)<sup>535</sup> and refers to the

<sup>531</sup> Paris is called an *adulter* at *Od.* 4.9.13 and the adjective *adulterus* is used to describe his hair at *Od.* 1.15.19. Helen is called an *adultera* at *Od.* 3.3.25.

<sup>532</sup> The full text is: “*a turpi meretricis amore/ cum deterret: ‘Scetani dissimilis sis./ ne sequer moechas, concessa cum venere uti/ possem: ‘deprepsi non bella est fama Treboni’/ aiebat.*” (“When he would deter me from the base love of a *meretrix*, he said, ‘you should not be like Scetanus.’ And so I would not pursue a *moecha*, when I could have an approved love, he said, ‘the reputation of Trebonius when caught in the act is not handsome.’”; 1.4.111-115).

<sup>533</sup> Lydia is involved with *moechi* (*Od.* 1.25.9-10); Pholoë (*Od.* 1.33.7-9), Damalis (*Od.* 1.36.17-19), and Canidia (*Ep.* 5.57-60) each with an *adulter*. For a discussion of the character of Canidia see Manning (1970), however he does not comment on her marital status.

<sup>534</sup> Quoted in section 4.2.

<sup>535</sup> “*hospes in hospitium Menelao venit adulter*” (“the guest came to Menelaus in friendship to be an *adulter*”).

*stuprum* of Clytaemnestra (3.19.20, 4.7.57),<sup>536</sup> but the fame of these characters means that we know the women involved are married. Notably, the second reference to the *stuprum* of Clytaemnestra is dated after the introduction of the *lex Iulia*. However, the sense of the term here is almost ‘shame’ or ‘guilt’ to show the weight of the illicit behaviour that must be carried over the Styx rather than the act of sexual transgression itself.<sup>537</sup> *Stuprum* is also used by Propertius to refer to the general degradation of sexual morality in Rome:

*an quisquam in tanto stuprorum examine quaerit  
 'cur haec tam dives? quis dedit? unde dedit?'  
 o nimium nostro felicem tempore Romam,  
 si contra mores una puella facit!*

For who after enquiring in so great an examination of *stupra* asks ‘why is she so rich? who gave it? from where did it come?’ O how great is the fortune of Rome in our time, if one girl acts against the customs [of them all].

(2.32.41-44)<sup>538</sup>

He also uses *moecha* in general terms to refer to the *comica moecha* in the plays of Menander (4.5.44).<sup>539</sup>

Interestingly, Propertius uses the term *adulterium* to refer to the infidelity of his mistress Cynthia:

*'quid tu matutinus,' ait 'speculator amicae,  
 me similem vestris moribus esse putas?  
 non ego tam facilis: sat erit mihi cognitus unus,  
 vel tu vel si quis verior esse potest.  
 apparent non ulla toro vestigia presso,  
 signa volutantis nec iacuisse duos.  
 aspice ut in toto nullus mihi corpore surgat  
 spiritus admisso notus adulterio.'*

<sup>536</sup> Quoted in section 4.2.

<sup>537</sup> This is closely linked to the original meaning of *stuprum* as ‘disgrace’, see discussion in section 1.5 of the meaning of *stuprum* as given in Festus.

<sup>538</sup> This reference follows a series of mythical exempla about how “*semper formosis fabula poena fuit*” (“stories have always been the penalties for the beautiful”; Prop. 2.32.26), including Helen, Venus and Oenone. However, Richardson suggests that unless a line has been lost linking it to the preceding exempla, the reference to *stupri* is part of the subsequent discussion about present day Rome (1977:307).

<sup>539</sup> Quoted in section 4.2.

‘Why, you are an early spy of your girl,’ she said, ‘do you think my morals are similar to yours? I’m not so easy: knowing one man is enough for me, either you or whoever is able to be truer. No traces appear from being pressed into the bed or signs of writhing about showing that two slept. Consider that in my whole body there is no familiar breath rising up admitting to *adulterium*.’

(2.29.31-38)

Cynthia describes herself as willing to be a *univira*, the ideal of female chastity and morality, though she does not mind with whom as long as he is true to her. She complains that Propertius has double standards, and that although he comes to check up on her he is involved with other women himself. Furthermore, she claims that she has not spent the night with another man and there are no signs to indicate any *adulterium*; particularly, no *notus spiritus*, the heavy breathing that is familiar to Propertius from his own liaisons. Propertius and Cynthia were not married;<sup>540</sup> indeed as we have seen in poem 2.7 he claims that moral reform threatened to break them apart.<sup>541</sup> Even so, Propertius placed their relationship on the same social level as marriage by calling Cynthia’s imagined infidelity *adulterium* and so the feelings of outrage and shame that would result from his partner being involved with another man are heightened. Roman society would not care so much for a mistress who cheats on her lover, but a wife engaged in *adulterium* was shameful to both herself and her husband. That this is the only use of *adulterium* by Propertius adds to the force of the term when used in relation to Cynthia.

---

<sup>540</sup> Conversely, Williams argues that Cynthia is a married woman and so her affair with Propertius is *adulterium* (1968:529). He suggests that just because there are no references to Cynthia’s husband within Propertius’ poems it does not mean that she was not married. Moreover, he sees Propertius’ claim in 2.7 that a *lex* would have separated them as further proof that Cynthia was a married woman; he has not been able to marry her because she was already married, not because she was a *meretrix* (1968:531-534). This is rejected by Cairns (1979:189).

<sup>541</sup> Whether this was an early attempt by Augustus in 28-27 BC to implement marriage legislation is debated. Williams argued for such a reading (1962:28; agreed by Wallace-Hadrill 1985:180-181). However, it has been rejected by Badian who suggests that it instead reflects an earlier law (1985). Gale goes on to argue that, if Badian is correct, this poem cannot be read as a determined attack on Augustus’ moral programme (1997:90). Cairns also reads it as praise of, rather than an attack on, Augustus’ attempt at introducing a marriage law (1979:187). McGinn, however, remains uncertain but proposes that if it was an Augustan statute then it was short-lived (1998a:71). Without more detail about Cynthia’s marital status or of what the provisions of the proposed legislation were it remains impossible to determine how it would have separated them.

## Ovid

It is possible to determine that the sexual relationship being referred to by Ovid is between a married woman and another man on twenty-eight occasions. This can be done when the woman in question is known to be married, such as Helen,<sup>542</sup> Pasiphaë,<sup>543</sup> Venus,<sup>544</sup> Lucretia,<sup>545</sup> Omphale,<sup>546</sup> Alcmena,<sup>547</sup> and Clytaemnestra.<sup>548</sup> The depiction of the woman as a *coniunx*<sup>549</sup> or *nupta*<sup>550</sup> also informs us that she is married, just as when we are told that she has a *vir* (husband)<sup>551</sup> or when other terms relating to marriage are used.<sup>552</sup> Context can also show that the woman is married.<sup>553</sup> On all of these occasions the terms being used are *adulter*, *adultera*, and *adulterium*, whereas *stuprum* is not used by Ovid to mean sex with a married woman.

*Adulterium* is used on two occasions to relationships that do not involve a married woman; at *Ars* 2.484 in reference to dogs<sup>554</sup> and also at *Met.* 4.236 to describe the seduction of the maiden Leucothoë by Helios. *Adultera* is also used at *Met.* 2.471 to refer to the relationship between Jupiter and the unmarried Callisto and at *Met.* 10.347 to the relationship between the unmarried Myrrha and her father Cinyras. However, confusion comes when a mythical couple are not married but are engaged in a stable relationship. For example, Faunus is called an *adulter* at *Fast.* 2.335 for his intrusion on Hercules and his *domina*. This mistress was Omphale, the widowed queen of Lydia who was engaged in a relationship with Hercules. Similarly, the affair between Coronis and Ischys is called *adulterium* at *Met.* 2.545. Coronis is in a relationship with Apollo that is not marriage but her betrayal is still referred to as *adulterium*.

On the whole *stuprum* is not used by Ovid to refer to sexual relationships with married women. It is used twice to refer to the rape of Deidamia, a *regalis virgo* (royal virgin, *Ars* 1.697),

---

<sup>542</sup> *Her.* 1.6, 5.125, 13.133, 17.18, 17.217, 19.177; *Am.* 2.18.37; *Ars* 2.365, 2.367.

<sup>543</sup> *Ars* 1.295, 1.304, 1.309; *Met.* 9.740.

<sup>544</sup> *Met.* 4.171, 4.182.

<sup>545</sup> *Fast.* 2.808.

<sup>546</sup> *Her.* 9.53.

<sup>547</sup> *Met.* 9.25.

<sup>548</sup> *Rem. Am.* 161.

<sup>549</sup> *Am.* 3.4.37; *Met.* 7.717, 7.741, 8.132.

<sup>550</sup> *Trist.* 2.499.

<sup>551</sup> *Her.* 6.133; *Am.* 3.4.29; *Trist.* 2.499.

<sup>552</sup> *socii di* (marriage gods, *Her.* 5.125); *taeda* (wedding, *Her.* 6.133); *ius iugalis* (nuptial vow, *Met.* 7.715); *legitimi tori* (legitimate beds, *Ex Pont.* 3.3.58); *stola* (*Ex Pont.* 3.3.58).

<sup>553</sup> *Ars* 2.637.

<sup>554</sup> "*haeret adulterio cum cane nexa canis*" ("the dog is bound in *adulterium* to the clinging bitch").

by Achilles.<sup>555</sup> The association with *vis* (*Ars* 1.704) indicates rape rather than consensual sex. *Stuprum* is also used in relation to the stars (*Met.* 2.529-530).<sup>556</sup> There is one occasion where *stuprum* is used to refer to a consensual sexual relationship with a married woman. In her complaint against Paris' relationship with Helen in the fifth *Heroides*, Oenone says that she has always been *casta* (chaste, 5.133) and "*nec pretium stupri gemmas aurumque poposci*" ("nor did I demand as the price of *stuprum* gems and gold"; 5.143).

### Martial

Adulter is used by Martial for a man in a relationship with a married woman<sup>557</sup> but both *adulter* and *adultera* are used when it is not possible to determine the status of the woman (*Lesbia*, 1.34.3;<sup>558</sup> the *adultera* at 9.2.3). *Adultera* is also used to refer to a married woman and at the same time associated with the *lex Iulia*: "*quae nubit totiens, non nubit: adultera lege est*" ("she who marries so often is not marrying: she is an *adultera* by the law"; 6.7.5). *Adulterium* is used once by Martial: "*commenta es dignum Thebano aenigmate monstrum, / hic ubi vir non est, ut sit adulterium*" ("you have invented a marvel worthy of the Theban riddle: that here where there is no man, it should be *adulterium*"; 1.90.9-10). That a man needed to be present for *adulterium* to take place is evident. However, the term is used in general and no indication is given of what Bassa's marital status might be, apart from her preference for women over men. At no point, therefore, does Martial directly use *adulterium* or its derivatives to refer to women who he says are unmarried, although it is often unclear as to what they were.

Both *moechus* and *moecha* are used by Martial in relation to married women.<sup>559</sup> But he also uses *moechus* to describe a man who was in a relationship with a concubine:

*quod nubis, Proculina, concubino  
et, moechum modo, nunc facis maritum,  
ne lex Iulia te notare possit:  
non nubis, Proculina, sed fateris.*

<sup>555</sup> *Ars* 1.698, 1.704.

<sup>556</sup> Quoted in section 4.3.

<sup>557</sup> For example, we are told she has a *vir* (10.95.1).

<sup>558</sup> However, as Martial compares her unfavourably to *meretrices* this *Lesbia* appears to be a woman from the upper classes (Ormand 2009:250).

<sup>559</sup> *moechus*: either we are told she is a wife (*uxor*, 3.85.1, 3.92.1, 6.90.1) or that she has a husband (*vir*, 1.74.1, 3.70.1; *coniunx*, 12.93.1, 12.93.5; *maritus*, 2.83.1, 3.85.1, 11.7.2). *moecha*: either we are told she has a husband (*maritus*, 2.47.1) or that she is a wife (*uxor*, 7.10.13), or it is implied in the text (11.7.11).

Because you are marrying your concubine, Proculina, he who was just a moment ago a *moechus*, you now make your husband so that the *lex Iulia* is not able to stigmatise you. You are not marrying, Proculina, but confessing.

(6.22)

Under the *lex Iulia* a man who kept a freeborn and respectable woman as a concubine could be liable for a charge of *stuprum*, but a freedwoman, prostitute, or convicted adulteress could be a concubine.<sup>560</sup> It therefore appears that he is here using *moechus* to refer to a relationship with a woman who was liable for a charge of *stuprum*. When Martial uses *moechus* elsewhere, it is either done so in general terms without reference to specific individuals (6.2.5, 6.2.6, 11.61.1) or where no indication of the status of the woman that the *moechus* is involved with is given (1.90.2, 3.96.2). However, *moecha* is found in relation to unmarried women<sup>561</sup> and he is the only author to refer to a *moecha* in general.<sup>562</sup> Martial also uses the verb *moechari* as a general term with no reference to the people involved in the action (6.91.2). Moreover, Martial often gives no more detail than referring to the woman as *moecha* so it is not possible to determine her marital status.<sup>563</sup>

### Juvenal

*Adulter* is used by Juvenal on the whole in cases where the woman can be identified as married – either we are told that the woman is a wife (*sponsa*, 1.78; *nupta*, 3.45; *matrona*, 10.318), that she has a husband (*maritus*, 6.237, 10.311) or that she is in a relationship of *coniugium* (9.80). He also refers twice to women involved with an *adulter* whom we know to be married from other contexts (Tanaquil, 6.567; Julia, 2.29). Juvenal only uses it in relation to an unmarried woman on one occasion, where he describes Crispinus as an *adulter* who “*viduas tantum aspernatur*” (“rejected only widows”; 4.4). This follows the pattern found within the prose authors, whereby, though the *lex Iulia* set out *stuprum* as the appropriate charge for a widow, the terminology of *adulterium* still continued to be used in relation to their affairs.<sup>564</sup> However, Juvenal also uses

---

<sup>560</sup> See sections 1.2 and 1.3.

<sup>561</sup> Martial uses the term to refer to a woman who is not yet married at 2.49.2 and 6.45.4. He also uses it in reference to the eunuch Thelyn (10.52.2).

<sup>562</sup> “*offendor moecha simpliciore minus*” (“I am offended less by a more straightforward *moecha*”; 6.7.6).

<sup>563</sup> 2.39.1, 3.82.28, 3.84.1, 3.93.15, 9.2.9, 10.14.7, 11.11.6.

<sup>564</sup> See discussion of references to widows in section 3.3.

*adulter* to refer to adulterers in general without reference to particular people.<sup>565</sup> The only woman Juvenal directly calls an *adultera* is Larga at 14.25 but no information is given about her status and so it remains unknown what type of woman she was.

Juvenal does not use either *moechus* or *moecha* in relation to unmarried women. *Moechus* is used in relation to a relationship with a married woman,<sup>566</sup> in general without reference to specific people (2.27, 6.24, 6.42) and also where it is not possible to determine the woman's status (Oppia, 10.220; the mother of Larga, 14.26).<sup>567</sup> Moreover, his only use of *moecha* is for a married woman (*nupta*, 6.278). Therefore, it appears that Juvenal's use of the terms does correspond to how the *lex Iulia* defined *adulterium* and the people liable for it. However, caution is necessary as for a large number of the women described no information is given about their marital status and, although it is not possible to tell from the text, Juvenal may have had unmarried women in mind on occasions when he used the terms.

#### 4.4) Associations

Beyond the study of how the terms themselves were used it is also necessary to understand the context within which they were used by the verse authors. The chapter will now look at the associations that the authors made with the terms through the words used in connection with them and the situations in which adultery was considered a suitable topic.

##### Plautus

Adultery is central to the plot of the *Amphitryo*. However, what is most unusual about the adultery in this play is that it is the wife's adultery, rather than the husband's, that is its focus.<sup>568</sup>

---

<sup>565</sup> "*quo, si nocturnus adulter/ tempora Santonico velas adoperta cucullo?*" ("What does it matter, if you become an *adulter* at night and hide concealed with a Santonican hood?"; Juv. 8.144-145). See also Juv. 6.329, 6.365.Ox22, 6.404.

<sup>566</sup> She is called an *uxor* (1.55) or she is said to have a husband (*coniunx* and *maritus*, 6.99; *maritus*, 6.464, 6.465, 9.25 and 10.317).

<sup>567</sup> The mother is not said to be married or unmarried but it can be assumed that if she is not married at present then she is a divorcee or a widow.

<sup>568</sup> The only other occurrences of adultery of a wife in New Comedy are in the *Bacchides* 842-924 and in the *Miles Gloriosus*. However, Braund has noted that both of these are fictional cases of adultery and so she suggests that "since the stories are invented, it seems clear that actual adultery on the part of a married woman was considered inappropriate for the genre of the *palliata*" (2005:52). The *Amphitryo*, therefore,



The potential unease that surrounded such a plotline was alleviated by the involvement of Jupiter, as through his tricks Alcmena remained unaware of her own adultery and so retained a sense of innocence<sup>569</sup> and through his godly powers he was able to resolve the play so that the married couple were reunited and the affair forgotten:

*tu cum Alcmena uxore antiquam in gratiam  
redi: haud promeruit quam ob rem vitio vorteres;  
mea vi subactast facere.*

I have reconciled you with your wife Alcmena as before. She does not deserve that you blame her for the matter; she was compelled by my power to do it.

(*Amph.* 1141-1143)

Amphitryon accuses Alcmena of *stuprum* but also of *probrum* (disgrace, *Amph.* 869, 882, 1034k)<sup>570</sup> and *dedecor* (dishonour, *Amph.* 883, 898). Adams proposes that it was possible for Plautus to use these more general terms for sexual transgression over *adulterium* as it was not always necessary to distinguish adultery from fornication in ordinary speech (1983b:351). As such, there was no need at this time to use technical terms to describe the adultery.

Alcmena is made *misera* (miserable, *Amph.* 897) by the accusations and she says that she is no longer able to stay in the house (“*durare nequeo in aedibus*”; *Amph.* 882). It is interesting that it is Alcmena who wants to leave rather than Amphitryon who is forcing her to go, which is what would later be expected under the later *lex Iulia*. Amphitryon calls the adulterer a “*thensaurum stupri*” (“monster of *stuprum*”) who “*domi uxorem meam/ impudicitia impedit*” (“has entangled my wife in unchastity at home”; *Amph.* 1034r-1034s). Moreover, he threatens to cut down (*obtruncare*) any man he finds in his house (*Amph.* 1048-1050, quoted in section 2.1). The same threat is made at *Bacch.* 918 and at *Mil.* 1390 the old man waits to attack (*adorior*) the *moechus*.

In the *Miles Gloriosus*, the slave Palaestrio describes his master Pyrgopolynices (the braggart soldier of the title) and his philandering in very strong terms:

---

broke the standard rules for plotlines in New Comedy. The adultery of the wife, however, formed the basis of the plotline of the adultery mime (see Kehoe 1984:89-94).

<sup>569</sup> Cf. the representation of rape in Terence’s *Eunuchus* discussed in section 4.3. It is only because the girl was raped and so innocent of any offence that an illicit sexual relationship with a female of respectable status could be tolerated.

<sup>570</sup> The sexual transgression of the unmarried Phaedria is also described as *probrum* in the *Aulularia* (74, 276). See discussion of the definitions of the terms in the section 2.2, where *probrum* was shown to have originally been used to refer to sexual disgrace before being superseded by *stuprum* around this time.

*gloriosus, impudens,  
stercoreus, plenus periuri atque adulteri.  
ait sese ultro omnis mulieres sectarier:  
is deridiculost, quaqu incedit, omnibus.  
itaque hic meretrices, labiis dum ductant eum,  
maiores partem videas valgis saviis.*

He is boastful, shameless, filthy, and full of lying and adultery. He says that all the women follow him voluntarily: whatever way he advances, he is an absurdity to all. And so you see that most of the *meretrices*, since they make faces at him, have bow-legged lips.

(*Mil.* 89-94)

It is not only his sexual freedom that makes Palaestrio describe him as *impudens* and *stercoreus* but that he lied and boasted about it. Later in the play we find Palaestrio again describing his master's sexual behaviour: "*erus meus ita magnus moechus mulierum est, ut neminem/ fuisse aequae neque futurum credo*" ("my master is such a big *moechus* of women, that I believe there never was anyone equal to him and nor will there be in the future"; *Mil.* 775-776). Pyrgopolynices is described by other characters as "*populi odium... magnidicum, cincinnatum,/ moechum unguentatum*" ("the displeasure of the people... boastful, curly haired, a perfumed *moechus*"; *Mil.* 923-924) and "*formast ferox*" ("proud of his looks"; *Mil.* 1390). A similar description of a *moechus* is given in the *Truculentus*:

*tun tantilli doni causa,  
holerum atque escarum et poscarum, moechum malacum, cincinnatum,  
umbraticulum, tympanotribam amas, hominem non nauci?*

Do you for the sake of such little gifts, of vegetables, of food, of vinegar drink, give your love to a soft, curly haired, lounging, timbrel playing *moechus*, a man considered worthless?

(*Truc.* 608-611)

This association of the adulterer with extravagance and an effeminate appearance is a repeated theme in the prose authors studied.<sup>571</sup> Moreover, he is also called a *miser* (*Mil.* 801) and an *improbis* (*Mil.* 802) and is said to be hated by all men and women ("*eum oderunt qua viri qua mulieres*"; *Mil.* 1392). At the end of the play the beating given to Pyrgopolynices is said to be *ius*

---

<sup>571</sup> The elegists, however, avoid these associations. This is unsurprising considering their close assimilation to the role of the *adulter*.

(*Mil.* 1436-1437, quoted in section 2.1). The *Miles Gloriosus*, therefore, offers a damning portrayal of the *moechus*.

In other plays *stuprum* is associated with the night (*noctus*, *Aul.* 36) and being *impudens* (shameless, *Truc.* 263) and it is shown to be in opposition to being “*pudica et libera*” (“chaste and freeborn”; *Cas.* 81). It was also a way in which a wife could gain property without the knowledge of her husband (*Cas.* 198-202). In contrast, however, Plautus used *stuprum* to refer to the act of sexual union between a married couple on their wedding night: “*inlecebram stupri principio eam savium posco*” (“I first asked her for a kiss as bait for *stuprum*”; *Cas.* 888). This use of *stuprum* is very unusual and is not found anywhere else in relation to a legally and morally sanctioned sexual union.

### Terence

The picture of adultery gained from Terence and the words he uses in association with our terms is very narrow, as with only four occurrences of *moechus* in total it is difficult to extrapolate much from the text. As we have seen, in the *Eunuchus* the term *moechus* is used to refer to a rapist of an unmarried girl. Moreover, his actions are described by the slave Parmeno as “*tantum facinus*” (“an immense crime”; 959). The reason he gives for this description is:

*an non tibi hoc maxumumst?  
quis homo pro moeCHO umquam vidit in domo meretricia  
prendi quemquam?*

Does it not seem very momentous to you? Who ever saw a man seized as a *moechus* in the home of a *meretrix*?

(*Eun.* 959-961)

The exceptional nature of this rape is that a citizen girl was raped in the house of a prostitute. In normal circumstances a respectable girl would not be found in such an establishment and if she were to be raped it would not happen there. Moreover, it can be assumed that the rapist of a slave or a prostitute would not be called a *moechus* as the term is only used to describe Chaerea once the girl’s real status is revealed. Association is also made between the *moechus* and capture and punishment: “*hunc pro moeCHO postea/ comprehendere intus et constrinxere*” (“afterwards they apprehended him inside the house as a *moechus* and tied him up”; *Eun.* 992-993).

## Catullus

The verbs that Catullus uses with *adulterium* show that it is something that can be taught (*monstrare*, 78.5-6)<sup>572</sup> or made (*facere*, 67.35-36).<sup>573</sup> It is also possible to give yourself (*dedire*) to *adulterium* (66.84)<sup>574</sup> or to an *adultera* (61.98).<sup>575</sup>

*Adulterium* is committed against a *maritus* (78.5). Indeed, Gallus is *stultus* for teaching his nephew how to commit *adulterium* when he himself is a husband. A woman who commits *adulterium* is shown to be *indignus* (unworthy) when the Lock of Berenice refuses offerings from her:

*sed quae se impuro dedit adulterio,  
illius a mala dona levis bibat irrita pulvis:  
namque ego ab indignis praemia nulla peto.*

But as for her who gave herself to unclean *adulterium*, let the light dust drink from her useless and evil gifts: for I seek no prizes from the unworthy.

(66.84-86)

What she has to offer is *mala* and *irrita* and the lock of hair only wants gifts from wives "*casto colitis quae iura cubili*" ("who by law cultivate a chaste marriage bed"; 66.83).<sup>576</sup> Moreover, Thomsen proposes that the repeated association of *malus* with adultery<sup>577</sup> shows that it is an indisputable characteristic of the *adultera* (1992:80). In poem 37, the woman is loved by all the men of rank and wealth, but what is particularly *indigna* is that she is also loved by all the *pusilli moechi* who haunt the byways.<sup>578</sup> The status of the lover, therefore, increases the indignity and

---

<sup>572</sup> "*Gallus homo est stultus, nec se videt esse maritum,/ qui patruus patruui monstret adulterium.*" ("Gallus is a stupid man, for he does not see that he is a husband, who as an uncle teaches his nephew *adulterium* with his uncle's wife.")

<sup>573</sup> "*sed de Postumio et Corneli narrat amore,/ cum quibus illa malum fecit adulterium*" ("but she tells stories about Postumius and the love of Cornelius, with whom she made wicked *adulterium*").

<sup>574</sup> Quoted below.

<sup>575</sup> Quoted in section 4.3.

<sup>576</sup> Thomsen interprets this line to mean women who have had sexual relations before they were married but it is only when they marry that they become *adultera* and so defile the wedding night with their *adulterium* (1992:84-85).

<sup>577</sup> See also "*mala... adultera*" (61.97-98); "*cum quibus illa malum fecit adulterium*" ("with whom she made wicked *adulterium*"; 67.36). Horace also says that Helen is a "*mala... avi*" ("bad omen") brought to Troy (*Od.* 1.15.5).

<sup>578</sup> "*hanc boni beatique/ omnes amatis, et quidem, quod indignum est,/ omnes pusilli et semitarii moechi*" ("all you men of rank and wealth love her, and in fact, to her shame, also all the petty *moechi* that are fond of byways"; 37.14-16).

shame of the relationship. A relationship with an *adultera* is shown to be *probra turpia* (ugly disgrace, 61.99) and the *moecha* who steals Catullus' tablets is both *turpis* and *putida* (42.3, 42.11-12, 42.19-20);<sup>579</sup> although this reads as more of a personal attack than an indication of Catullus' views on *moechae* in general. The *adulteri* Caesar and Mamurra are described by Catullus as *maculae* (stains, 57.3), *morbosi* (diseased, 57.6) and "*improbri cinaedi*" ("wicked *cinaedi*"; 57.10). Furthermore, he depicts *adulterium* as *impurum* (unclean, 66.84). However, *adulterium* involved *amor* (67.35-36) and the verb used to show the relationship between a woman and her *moechus* was *amare* (37.14-16).<sup>580</sup>

In poem 17 Catullus is angry at a man who does not guard his young wife. Moreover, he later comments on the futile nature of trying to guard against adultery in poem 67, where the door's defence for allowing the adulterer to enter "is that its symbolic role as upholder of domestic morality is ineffectual where temptation and weak or corrupt human character exist" (Levine 1985:67-68).

### Horace

The verbs that are used with *adulter* are *quaerere* (*Od.* 3.6.25),<sup>581</sup> *peccare* (*Od.* 1.33.9),<sup>582</sup> *munire* (*Od.* 3.16.3-4),<sup>583</sup> and *ardere* (*Od.* 4.9.13-15).<sup>584</sup> Moreover, *moechus* is associated with the verb *deprehendere* (to catch, *Sat.* 1.4.113-5).<sup>585</sup> *Stuprum* is used with *polluere*: "*nullis polluitur casta domus stupris*" ("the pure home is polluted by no *stuprum*"; *Od.* 4.5.21). The various *adulteri* within Horace are described both as *turpis* (base, *Od.* 1.33.9) and *nitidus* (shining, *Od.* 3.24.20), they could be *iunior* (young, *Od.* 3.6.25) or *senes* (old, *Ep.* 5.57) and they are associated with the night (*nocturnus*, *Od.* 3.16.4). There seems to be no single picture of an *adulter* in Horace's mind.

In a discussion of early Rome in *Satire* 1.3, Horace associates the adulterer with criminals: "*coeperunt.... ponere leges,/ ne quis fur esset, neu latro, neu quis adulter*" ("they began... to lay

<sup>579</sup> Quoted in section 4.2. The phrase is also repeated at 42.19-20.

<sup>580</sup> Both quoted above.

<sup>581</sup> "*iuniores quaerit adulteros*" ("she seeks younger adulterers").

<sup>582</sup> "*turpi Pholoe peccet adultero*" ("Pholoe will make a mistake with a base *adulter*").

<sup>583</sup> "*munierant satis/ nocturnis ab adulteris*" ("they were enough to guard her from nocturnal *adulteri*").

<sup>584</sup> "*non sola comptos arsit adulteri/ crines et aurum vestibus inlitum/ mirata*" ("not only [Spartan Helen] became inflamed, marvelling at the arranged locks of the *adulter* and his gold covered clothes").

<sup>585</sup> Quoted in section 4.3.

down laws, that no one should be a thief, a bandit, or an *adulter*”; *Sat.* 1.3.105-106).<sup>586</sup> Not only is an adulterer closely associated with these unsavoury characters, but Horace assigns to early Rome laws to combat this type of behaviour. Later in the *Odes*, however, we see that Augustus has brought in laws against immorality: “*mos et lex maculosum edomuit nefas*” (“custom and law have overcome stained wickedness”; *Od.* 4.5.22). Furthermore, in *Odes* 3.6 we see adultery being called *impermissa gaudia* (“unlawful delights”)<sup>587</sup> and in *Sat.* 1.4.113 the love of a *moecha* is opposed to “*concessa venere*” (“an approved love”). Adultery was also seen to be a *peccatum* (fault, sin) in *Satire* 2.7<sup>588</sup> and it is also associated with *dedecus* (shame) in the *Odes* (3.6.25-32). The associations made with adultery, therefore, are decidedly pessimistic.

The focus throughout Horace’s work, perhaps unsurprisingly, is on the negatives involved with adultery.<sup>589</sup> The old *adulter* is also shown to be a figure of ridicule: “*senem, quod omnes rideant, adulterum/ latrent Suburanae canes*” (“let the dogs of Subura bark at the old *adulter*, which all should laugh at”; *Ep.* 5.57-58). It is also notable that the couple that Horace repeatedly associates with adultery are Paris and Helen.<sup>590</sup> The infamous nature of the story meant that it would already be well known to his audience but Horace still reminds us of the disastrous fate of that relationship:

*pastor cum traheret per freta navibus  
Idaeis Helenen perfidus hospitam,  
ingrato celeris obruit otio  
ventos ut caneret fera  
Nereus fata: ‘mala ducis avi domum  
quam multo repetet Graecia milite,  
coniurata tuas rumpere nuptias  
et regnum Priami vetus.’*

---

<sup>586</sup> Similar associations to a *fur* and *sicarius* are also made at *Sat.* 1.4.1-5: “*Eupolis atque Cratinus Aristophanesque poetae/ atque alii, quorum comoedia prisca virorum est,/ si quis erat dignus describi, quod malus ac fur,/ quod moechus foret aut sicarius aut alioqui/ famosus, multa cum libertate notabant.*” (“The poets Eupolis and Cratinus and Aristophanes and the other men, to whom old comedy belongs, if any deserved to be described as evil and a thief, as an adulterer or a murderer or infamous for some other thing, they observed him with much liberty.”)

<sup>587</sup> “*mox iuniores quaerit adulteros/ inter mariti vina, neque eligit/ cui donet impermissa raptim/ gaudia luminibus remotis*” (“soon she seeks younger lovers whilst her husband is at his revelries, and neither does she choose to whom she will hastily give her unlawful delights when the lights have been removed”; *Od.* 3.6.25-28).

<sup>588</sup> “*peccati conscia erilis*” (“conscious of her mistress’ sin”; *Sat.* 2.7.60); “*matronae peccantis*” (“an erring matron”; *Sat.* 2.7.62); “*non... peccatve superne*” (“she is not the chief sinner”; *Sat.* 2.7.64).

<sup>589</sup> This is most apparent in *Satire* 1.2 where he discusses the relevant merits and problems with relationships with married women, *libertinae*, and prostitutes.

<sup>590</sup> *Od.* 1.15, 3.3.25-28, 4.9.13-16.

When the treacherous shepherd carried his hostess Helen over the sea in Trojan ships, Nereus overpowered the quick winds with an unwelcome calm so that he could recite the cruel fates: 'With bad omens you carry home a woman whom Greece will take back with many soldiers, swearing to break your marriage and the ancient kingship of Priam.'

(*Od.* 1.15.1-8)

The example of Paris and Helen, though it is an extreme and comes from a legendary past, still served as one of the greatest illustrations of why adultery should be avoided. In addition, adultery is also shown by Horace to be one of the factors that has led to the decay of morality and the weakening of Rome (*Od.* 3.6.17-32) and he praises the Scythians, where "*peccare nefas aut pretium est mori*" ("to sin is wickedness or rather the price is death"; *Od.* 3.24.24).<sup>591</sup>

Two satires in particular develop a detailed account of the opinions and understanding of adultery that Horace chose to portray. The first is *Satire* 1.2,<sup>592</sup> in which Horace starts with the observation: "*dum vitant stulti vitia, in contraria currunt.../ nil medium est*" ("while avoiding vices, fools run into their opposites... there is no middle"; *Sat.* 1.2.24, 28). He then uses the choice of sexual partners as an example of this behaviour, focusing on married women, prostitutes, and *libertinae*. No group of women comes without their own problems and even the *libertinae* – which are seen as the *tutior* (safer, *Sat.* 1.2.47) group – still can bring *damnum* (disaster, *Sat.* 1.2.52) and *dedecus* (shame, *Sat.* 1.2.53).<sup>593</sup> However, the picture that Horace paints of adultery is particularly unfavourable:

*audire est operae pretium, procedere recte  
qui moechis non voltis,<sup>594</sup> ut omni parte laborent*

---

<sup>591</sup> Cf. Tacitus' praise of the Germans in *Ger.* 19 (see section 3.4).

<sup>592</sup> There has been a large selection of scholarship that has sought to determine Horace's purpose in writing *Satire* 1.2: "he is primarily interested not in the kind of *woman* to satisfy sexual needs, but rather in the kind of *relationship* existing between sexual partners" (Dessen 1968:200); Baldwin argues that the satire does not carry a moral message, instead "his prime concern is rather to make fun of the grand passions of the Love Poets by reducing sex to a comic physical exercise" (1970:460); Bushala suggests that Horace is analysing man's sexual drive (1971).

<sup>593</sup> Rudd has proposed that lines 921-924 of Lucilius' *Fornix* should be understood as advising against married women and instead advocates fornication with prostitutes (1986:205-206), showing a similar interest in recommending the types of women the readers of satire should have relationships with. Propertius also plays on Horace's discussion of sexual extremes at 2.23, where he chooses a different extreme, a relationship with an "*immundus soccus*" ("dirty slipper"), understood as a streetwalker (Gibson 2007:28).

<sup>594</sup> Compare Ennius: "*audire est operae pretium, procedere recte/ qui rem Romanam Latiumque augescere voltis*" ("listen, it is worth your while, you who want success for Rome and increase for Latium"; *Ann.* 465).

*utque illis multo corrupta dolore voluptas  
atque haec rara cadat dura inter saepe pericla.*

Listen, it is worth your while, you who do not want adulterers to advance properly, how they suffer in every part and how for them pleasure is corrupted by much pain and, though it is rare, it often happens amongst cruel dangers.

(Sat. 1.2.37-40)

It is the *dolor* and *periculum* that the adulterer faces and how these ruin his *voluptas* that creates such a gloomy picture of adultery.<sup>595</sup> The potential trouble that can result from adultery is further demonstrated by a talking penis who does not want his owner to engage in adultery:

*'quid vis tibi? numquid ego a te  
magno prognatum deposco consule cunnum  
velatumque stola, mea cum conferbuit ira?'*

'What do you want for yourself? Do I ever, when my anger has got me heated, demand from you a cunt descended from a great consul and concealed in a stola?'

(Sat. 1.2.69-71)<sup>596</sup>

Instead, Horace advocates sexual affairs that do not involve married women, but this is not done from the desire to maintain the respectability of the woman and the sanctity of marriage. There is no point in the satire where he talks of the immorality or dishonour of adultery (Dessen 1968:200). The only negatives shown are those that harm the adulterer; no attention is paid to the consequences for the woman or for her marriage. Moreover, when describing high class women Horace uses phrases such as "*cunni albi*" ("white cunts"; Sat. 1.2.36) and "*magno prognatum consule cunnum*" ("a cunt descended from a great consul"; Sat. 1.2.70).<sup>597</sup> As a result, despite highlighting their elite status Horace reduces them to their sexual parts and as a result degrades them.

---

Horace copies word for word from Ennius until the vulgar *moechis* "shatters the epic ambience" (Curran 1970:240).

<sup>595</sup> See the discussion of Horace's portrayal of the punishments given to adulterers and also the extremes that they will go to to avoid them in section 2.1.

<sup>596</sup> See Sharland (2010:110ff.) for an overview of the rhetorical convention of *prosopopoiia*. She describes Horace's use of it here as "brilliant and original" and it serves to make the audience more receptive to the message as they share in the humiliation of the adulterer while he is addressed in this manner by his penis (2010:110, 113).

<sup>597</sup> See Curran 1970:242-245 who argues that by referring to a woman both by her sexual organ and by her social status Horace is showing the differences between nature and social convention.



Horace defines the women in the satire by their dress. The *matrona* wears a stola (*Sat.* 1.2.71, 99) that covers her feet (*Sat.* 1.2.28-29).<sup>598</sup> The prostitute wears the toga (*Sat.* 1.2.63), so much so that she can be referred to just by the adjective *togata* (*Sat.* 1.2.82).<sup>599</sup> Horace advises against a married woman for she wears long garments and therefore is able to conceal any imperfections from a potential lover (*Sat.* 1.2.94-5). The prostitute, however, openly displays herself: “*Cois tibi paene videre est/ ut nudam, ne crure malo, ne sit pede turpi*” (“she is easily visible to you in her Coan silk, as if she is naked, lest she has a bad leg or an ugly foot”; *Sat.* 1.2.101-102). Moreover, the comparison of women’s clothing and the coverings given to race horses when they are being inspected by a potential buyer adds further degradation (*Sat.* 1.2.86-89). Through all this the woman, whether a *matrona*, a prostitute, or a *libertina* is seen as a commodity for the sexual gratification of the male.

The impression emerges that it is not the adulterous affair itself that is the problem. Rather, it is the dangerous nature of the consequences if one is caught that is of greatest concern and this forms the last line of the satire: “*deprendi miserum est*” (“to be caught is to be deplored”; *Sat.* 1.2.134). Horace advises his readers to take sexual gratification whenever it is available, for example with a slave boy or girl (*Sat.* 1.2.116-118), and to always go for an easy love: “*namque parabilem amo venerem facilemque*” (“for I love a love that is available and easy to get”; *Sat.* 1.2.119).

The second is *Satire* 2.7; set during the Saturnalia festival, Horace has allowed his slave Davus to speak to him freely. Davus tries to show that Horace is just as much a fool as himself or even worse. His main point is that Horace engages in affairs with *coniunx aliena*:

*te coniunx aliena capit, meretricula Davum:  
peccat uter nostrum cruce dignius?*

The wife of another man captures you, a little prostitute takes Davus: which of us commits a sin more worthy of the cross?

(*Sat.* 2.7.46-47)

---

<sup>598</sup> Horace seems to be the first poet to use the term *stola* as shorthand for referring to married women, a means of reference which becomes common in elegy (Curran 1970:225). See Curran (1970) for a discussion of the importance of clothing to this satire.

<sup>599</sup> See discussion in section 2.2.

Davus continues through the next fifty lines of text to highlight the dangers of adultery.<sup>600</sup> The connection to *peccare* (to sin, do wrong) has already been shown and is most prominent in this satire.<sup>601</sup> The adulteress *capit* (captures, seizes) Horace and adultery makes Horace a slave as he will keep going back for more, whatever the dangers: “*quaeres, quando iterum paveas iterumque perire/ possis, o totiens servus*” (“you will seek to know when again you may be terrified, when again you may perish, O so often a slave”; *Sat.* 2.7.69-70). The theme of Horace’s slavery continues:

*nempe  
tu, mihi qui imperitas, aliis servis miser atque  
duceris ut nervis alienis mobile lignum.*

Surely you, who rule over me, wretchedly serve others and you perform as if a wooden puppet moved by other strings.

(*Sat.* 2.7.80-82)

Moreover he is said to have a *dominus*: “*urget enim dominus mentem non lenis et acris/ subiectat lasso stimulos versatque negantem*” (“for an ungentle master burdens your mind, presses your weariness with his sharp spur, and despite your refusals changes your mind”; *Sat.* 2.7.93-94).<sup>602</sup>

Davus warns Horace that an adulterer is *famosus* and *sollicitus* (*Sat.* 2.7.51) and he repeatedly refers to the fear and panic of an adulterer afraid to be caught: *metuere* (*Sat.* 2.7.56, 68); *tremere* (*Sat.* 2.7.57); *formidare* (*Sat.* 2.7.65); *pavere* (*Sat.* 2.7.69);<sup>603</sup> *cavere* (*Sat.* 2.7.68). We are also given the image of the cowardly adulterer hiding from the husband:

*quid refert, uri virgis ferroque necari  
auctoratus eas, an turpi clausus in arca,  
quo te demisit peccati conscia erilis,  
contractum genibus tangas caput?*

<sup>600</sup> The ease with which Davus describes adultery is seen by Reynolds to indicate that the audience were familiar with the situation and suggests that this was a result of the adultery mime (1946:78). This familiarity is also evident at *Ars* 3.601-610, where Ovid suggests that passions can be reignited by role-playing the action of the adultery mime (see Gibson 2007:36-37).

<sup>601</sup> *Sat.* 2.7.60, 2.7.62, 2.7.64, all quoted above.

<sup>602</sup> Further examples of Horace’s slavery show that he is controlled not only by lust: “*tune mihi dominus, rerum imperiis hominumque/ tot tantisque minor, quem ter vindicta quaterque/ inposita haud umquam misera formidine privet?*” (“Are you my master, you who are ruled by so many and so great commands of men and things, you whom the praetor’s rod touches three or four times but never frees from wretched terror?”; *Sat.* 2.7.75-77).

<sup>603</sup> And the noun *pavor* at *Sat.* 2.7.57.

What does it matter, whether you have been sold into bondage to be hurt by rods and killed by the sword, or confined in a disgraced chest, where conscious of her mistress' sin her slave girl has hid you, touching your drawn-in head to your knees?

(Sat. 2.7.58-61)

The husband has a "*iusta potestas*" ("just power"; Sat. 2.7.62) over the adulterer:

*ibis sub furcam prudens dominoque furenti  
committes rem omnem et vitam et cum corpore famam?*

Will you wilfully pass under the forked yoke and commit to the furious master all of your possessions, your life and fame with your body?

(Sat. 2.7.66-67)

Davus' final piece of advice to Horace in regard to this choice of love affair is: "*eripe turpi/ colla iugi, 'liber, liber sum,' dic age!*" ("rescue your neck from the disgraceful yoke, come say 'free, I am free'"; Sat. 2.7.91-2).

The two satires are in sharp contrast. In *Satire* 1.2 we see Horace advise against adultery for the aggravation and danger that it brings to love. Yet, by the end of the second book of satires he is shown by his own slave to be an adulterer himself. Sat. 2.7 also confirms the joke at the end of Sat. 1.2 that it is because of his own experience that he is able to describe the dangers of adultery. Moreover, it calls into question the validity of the opinions on adultery that have been advanced both by the literary persona that addresses the audience in Sat. 1.2 and the character of Davus in 2.7.<sup>604</sup> Regardless of the differences in the portrayal of Horace's involvement in adultery within these two satires, they can still both be seen as discouraging adultery and both offer a sharp warning as to the dangers that it poses (at least to those who get caught).

---

<sup>604</sup> Rudd does not consider this inconsistency between Horace's preaching and his practice to be an indication that the views he puts across in the *Satires* are pure fiction but that he has "heightened or dramatised the more lurid elements" for comic and literary effect (1986:199). For Sharland, however, Sat. 2.7 was strategically placed in order to subvert "most of the satirist's formal stances that he has adopted as moral speaker throughout both satiric books" (2010:133). Evans, on the other hand, sees in this repetition and hypocrisy an attempt by Horace to show that he has tired of satire and that satire has outgrown itself (1978:311).

### Propertius

Little insight into Propertius' understanding of and opinions about adultery can be gained from the associations he makes with the terms. The only verb used directly by Propertius with any of our words is *admittere* (admit, commit): "*aspice ut in toto nullus mihi corpore surgat/ spiritus admisso notus adulterio*" ("consider that in my whole body there is no familiar breath rising up admitting to *adulterium*"; 2.29.37-38). It was therefore something you could be caught at. We also see in Propertius that the *stuprum* of Clytaemnestra creates *infamia*, but not just for herself as it is the "*tota Mycenis... domus*" which is stained by her actions (3.19.19-20).<sup>605</sup> Moreover, in this same poem Propertius says that it is not possible to control women's chastity:

*obicitur totiens a te mihi nostra libido:  
crede mihi, vobis imperat ista magis.  
vos, ubi contempti rupistis frena pudoris,  
nescitis captae mentis habere modum.  
flamma per incensas citius sedetur aristas,  
fluminaque ad fontis sint reditura caput,  
et placidum Syrtes portum et bona litora nautis  
praebeat hospitio saeva Malea suo,  
quam possit vestros quisquam reprehendere cursus  
et rabidae stimulos frangere nequitiae.*

So often have you reproached our lusts: but believe me, it governs you women more. You, when you have broken the reins of despised chastity, you do not know how to limit your frenzied heart. Sooner shall the flames be calmed through burning corn, and streams shall return to the head of their source, and Syrtes offer a quiet port and savage Malea give sailors hospitality on her good shores, than will any man be able to hold back your course or break the goads of your impetuous wantonness.

(3.19.1-10)

This poem was published in 23 BC, at a time when Augustus was already contemplating moral reform (if Propertius is to be believed at 2.7).<sup>606</sup> This adds further weight to its scathing condemnation of female immorality and the futility with which Propertius views male attempts to control it. The theme of a husband's control over his wife's chastity is also picked up by Ovid (*Am.* 2.19 and 3.4) who openly uses it to subvert the *lex Iulia*.

---

<sup>605</sup> Quoted in section 4.2.

<sup>606</sup> Lyne describes Propertius' inclusion of such a poem at this time as "pointed" (1980:310 n.57).

## Ovid

There is little repetition in the verbs Ovid uses with our terms. In the *Heroides* we find *cognoscere* (to know or understand, 6.133) with *adultera virgo*, used here as a euphemism for sex,<sup>607</sup> and *tegere* (to hide, conceal, *Her.* 17.46) with *adulter*. The verb *ludere* (to make love) is found twice with *adulter* in the *Amores* (1.3.22, 1.10.4). Also in the *Amores* a woman must be guarded (*custodire* and *servare*, 3.4.5-7) to prevent her becoming an *adultera*, and an *adultera coniunx* offends her husband (*laedere*, 3.4.37). The tone changes in the *Ars Amatoria* and *adulterium* is associated with sin and guilt: “*nil Helene peccat, nihil hic committit adulter*” (“Helen does not sin, the *adulter* is guilty of nothing here”; 2.365).<sup>608</sup> Moreover, *adulterium* is something that binds (*haerere*, *Ars* 2.484). In the *Metamorphoses*, *adulterium* is published (*vulgare*, 4.236) and exposed (*patere*, 8.156). The verb *deprehendere* (to catch) is used in association with an *adulter* at *Met.* 4.182-184 when Vulcan catches Venus and Mars in their adultery.<sup>609</sup> Similarly, in Ovid’s retelling of the rape of Lucretia in the *Fasti* (2.685-852), Tarquinius threatens to kill Lucretia and place her with a slave “*cum quo deprensa fereris*” (“with whom you will be caught”; 2.809) as if in *adulterium*. In the exile poetry we see that Catullus had confessed (*fateri*) his *adulterium* in his poetry (*Trist.* 2.430) and *adulterium* has now been prohibited (*Ex Pont.* 3.3.57-58, quoted below).

*Adulter* is used with the adjectives *turpis* (base, *Her.* 4.34), *callidus* (clever, *Am.* 1.10.4), *sapiens* (wise, *Am.* 3.8.33), *fictus* (false, *Met.* 7.741), *temerarius* (rash, *Fast.* 2.335) and *cultus* (cultured, *Trist.* 2.499). *Turpis* is again used to describe an *adultera* at *Her.* 13.133, whilst *adulterium* is associated with the adjectives *foedus* (foul, *Met.* 8.156), *obscenus* (indecent, *Trist.* 2.212) and *scaenicus* (theatrical, *Trist.* 2.514).

The word most frequently used alongside *adulterium*,<sup>610</sup> *adulter*,<sup>611</sup> and *adultera*<sup>612</sup> is *crimen*, used with both the meaning of ‘charge’<sup>613</sup> and ‘reproach’.<sup>614</sup> Adultery is called an *iniuria*

---

<sup>607</sup> Knox 1995:197.

<sup>608</sup> Pollmann suggests that through this portrayal of Helen’s innocence “Ovid’s elegiac precepts aim at least implicitly at replacing the official legal precepts of how to organise a “correct” heterosexual relationship” (2005:100).

<sup>609</sup> Ovid here tells his reader that he should not expose his lover’s affair with a rival as the embarrassment will only serve to bring them closer together and make them act openly in the future. It is another part of Ovid’s erotodidactic morality that clearly opposes the provisions of the *lex Iulia*.

<sup>610</sup> *Ars* 2.367-371; *Met.* 9.25; *Fast.* 2.808.

<sup>611</sup> *Her.* 17.18, 20.8; *Fast.* 2.808; *Trist.* 2.499.

<sup>612</sup> *Her.* 9.53, 17.217; *Am.* 2.18.37.

<sup>613</sup> Ovid absolves (*solvere*) Helen from the *crimen* of *adulterium* with Paris (*Ars* 2.371); in the *Tristia* adultery is called “*vetiti crimen amoris*” (“the charge of forbidden love”; 2.498). The association with being *vetitus* (forbidden) is found also at *Ex Pont.* 3.3.57-58, quoted below.

(insult, *Met.* 2.471) and *delictum* (offence, wrong, *Her.* 17.219) and is also associated with *dedecus* (shame, *Met.* 2.473). Moreover, *adulterium* leaves a *labes* (stain, *Am.* 3.5.44), brings *obprobrium* (disgrace, *Met.* 8.156) and is a *culpa* (fault, *Met.* 2.545).

In the *Metamorphoses* and *Fasti* there is a theme of adultery being witnessed: at *Met.* 7.741-742 Cephalus says he will act as a *testis* (witness) to the relationship between his wife and her *adulter* and at *Fast.* 2.808 Tarquinius says that will be the *testis* to the *adulterium* he threatens to stage between Lucretia and a slave. Similarly, the bird is an *index* (witness) to the *adulterium* of Coronis at *Met.* 2.544-547. The dating of the *Metamorphoses* and the *Fasti* place these references at the start of the first century AD and two decades after the introduction of the *lex Iulia* and so may reflect the new legal position with respect to adultery, the atmosphere of accusation, and the need for witness testimony that this would have created. There is also a direct reference to the new legal position of adultery in the *Ex Ponto*. Ovid tells us that he has not disturbed *legitimi tori* (lawful beds, *Ex Pont.* 3.3.50) in his poetry and he goes further:

*an sit ab his omnis rigide summota libellis  
quam lex furtivos arcet habere viros?  
quid tamen hoc prodest, vetiti si lege severa  
credor adulterii composuisse notas?*

Or is it that the women, whom the law prevents from having secret lovers, have been rigorously banished from these little books? What however is the benefit of this if I am believed to have composed notes on *adulterium* which is prohibited by a strict law?

(*Ex Pont.* 3.3.55-58)

Ovid is very conscious of the new *lex severa* that prevents *adulterium* with a *furtivus vir*.<sup>615</sup>

Ovid can be seen to comment directly on the provisions of the *lex Iulia* in two poems in the *Amores*, 2.19 and 3.4. Although they are separated in the corpus, they work as a pair and comment on a husband's guardianship of his wife's chastity.<sup>616</sup> In the first Ovid appears to follow the official line by upbraiding a husband for not guarding his wife. However, Ovid has ulterior

---

<sup>614</sup> In the *Heroides* Helen is said to have been without *crimen* before she met Paris: "*et adhuc sine crimine vixi/ et laudem de me nullus adulter habet*" ("and till now I have lived without reproach, and no *adulter* has glory from me"; *Her.* 17.17-18).

<sup>615</sup> Cf. *Rem. Am.* 33, where Ovid promotes relationships that are carried out *furtim* (secretly).

<sup>616</sup> See Davis 2006:81-83. Moreover, Greene sees in these two poems the exploitative attitude of the poet towards women, as the woman is "a commodity of exchange between her lover and her husband" (1994:346).

motives: “*nisi tu servare puellam/ incipis, incipiet desinere esse mea!*” (“unless you start to guard your girl my passion will begin to diminish”; *Am.* 2.19.47-48).<sup>617</sup> Ovid refers to the husband who does not take steps to guard his wife as a *leno maritus* (*Am.* 2.19.57), directly referencing the new charge of *lenocinium* introduced by the *lex Iulia*. Moreover, he criticises the pimping husband who does not complain because: “*corrumpit vitio gaudia nostra suo*” (“our pleasure wastes away through his failing”; *Am.* 2.19.58). He makes a further mockery of Augustus’ attempt to encourage marital fidelity claiming that “*quod licet, ingratum est; quod non licet acrius urit*” (“what is allowed is disagreeable; what is forbidden burns more fiercely”; *Am.* 2.19.3). However, in *Am.* 3.4 Ovid takes the same line as Propertius in 3.19, that it is futile to guard a woman:

*dure vir, inposito tenerae custode puellae  
 nil agis; ingenio est quaeque tuenda suo.  
 siqua metu dempto casta est, ea denique casta est,<sup>618</sup>  
 quae, quia non liceat, non facit, illa facit!  
 ut iam servaris bene corpus, adultera mens est;  
 nec custodiri, ne velit, ulla potest.*

Impudent man, you will achieve nothing by placing a guard over a young girl; it is her own nature that must guard her. If she is chaste after fear has been taken away then she is really chaste; but if she does not do it because she cannot do it, then she does it! Although you now guard her body well, the mind is adulterous; it is not possible to guard her, unless she wishes it.

(*Am.* 3.4.1-6)

The terms *adulter* and *adultera* are found four times in this poem (lines 5, 8, 29 and 37) and so the *lex Iulia* is immediately brought to mind. Lyne proposes that Ovid is specifically referring to married relationships in these two poems through repeated references to the protagonists as *maritus*, *ingenua*, and *uxor* (1980:280).<sup>619</sup> What is perhaps a more damning and potentially controversial claim by Ovid, however, is that protecting chastity is un-Roman:

<sup>617</sup> McKeown sees the use of *mea* here, as opposed to *tua*, as an “outrageous paradox” and proposes that *mea* implies not only possession but also affection (1998:427-428).

<sup>618</sup> Compare with Tibullus: “*nec saevo sis casta metu, sed mente fideli*” (“don’t be chaste from cruel fear, but a loyal mind” (1.6.75). In this poem Tibullus is also warning a man described as a *vir* and *coniunx* to keep guard of his *puella* (also called *coniunx*); however, this is for Tibullus’ benefit. Williams has rightly shown that this poem would not make sense if Delia is not understood here to be a married woman and so *coniunx* refers to a husband rather than a lover (1968:535-536).

<sup>619</sup> At the same time Ovid also calls the woman *puella*. However, Lyne maintains that the language of the two poems “explicitly evokes legal marriage and adultery – whatever *de facto* institution he might have hoped, or not hoped, that we should actually infer” (1980:275; agreed by McKeown 1998:407).

*rusticus est nimium, quem laedit adultera coniunx,  
et notos mores non satis urbis habet  
in qua Martigenae non sunt sine crimine nati  
Romulus Iliades Iliadesque Remus.*

He is too rustic, whom an adulterous wife offends, and does not have enough familiarity with the manners of the city in which even the sons of Mars were born not without reproach, Romulus, child of Ilia, and, child of Ilia, Remus.

(Am. 3.4.37-40)

In these two poems not only can Ovid be seen to undermine and challenge the provisions of the *lex Iulia*, but he goes further by suggesting that Augustus' attempts to reform sexual morality will be futile.

### Martial

The verbs that Martial uses show that an *adulter* can give pleasure (*delectare*, 1.34.3), though Lesbia is delighted more by the spectator who watches them than by the actual adulterer. A husband should be concerned (*pertinere*, 7.10.13) that his wife is a *moecha* and a cuckolded husband suffers (*patior*, 3.92.1) a *moechus*. The legal restrictions on adultery are also shown through the use of *prohibere* (prohibit, 6.91.2), *vetare* (forbid, 6.91.2) and *damnum dicere* (convict, 10.52.2). Moreover, adultery is shown to be a *peccatum* (sin, 3.85.1) and *turpis* (disgraceful, 6.90.1) but also a *lusus* (sport, 6.2.1).<sup>620</sup> It is also suggested that people only find pleasure in illicit sexual relationships:

*moechus es Aufidiae, qui vir, Scaevine, fuisti;  
rivalis fuerat qui tuus, ille vir est.  
cur aliena placet tibi, quae tua non placet, uxor?  
numquid securus non potes arrigere?*

You, Scaevinus, who used to be her husband, are the *moechus* of Aufidia; he who was your rival is now her husband. Why is the wife of another man pleasing to you, who when she was your wife was not? Are you not able to be aroused when it is carefree?

(3.70)

---

<sup>620</sup> "*lusus erat sacrae conubia fallere taedae*" ("it used to be a sport to betray the sacred marriage torch").



Moreover, the adulterer who cries on the doorstep of his lover demonstrates the potential threat that he will become a slave to love: “*ad nocturna iaces fastosae limina moechae,/ et madet, heu, lacrimis ianua surda tuis,/ urere nec miserum cessant suspiria pectus*” (“at night you lie on the threshold of your haughty *moecha*, and the deaf door, alas, is wet with your tears and your sighs do not cease scorching your miserable heart”; 10.14.7-9).<sup>621</sup> Love and sexual affairs also distracted a married woman from her duties: “*cum placeat Phileros tota tibi dote redemptus,/ tres pateris natos, Galla, perire fame*” (“while Phileros, bought by your whole dowry, gives you pleasure, Galla, you expose your three children to die from hunger”; 2.34.1-2).

The *moecha* is said to be *famosa* (infamous, 2.39.1, 2.47.1),<sup>622</sup> but also *pauper* (poor, 3.82.28), *bustuaria* (tomb-haunting, 3.93.15) and *fastosa* (haughty, 10.14.7). A *moechus* is also shown to be *miser* (miserable, 2.83.1) after being punished by a husband.

There are a number of poems where the existence of a legal prohibition of adultery is evident (6.2, 4, 7, 22, 45, and 91).<sup>623</sup> Moreover, Martial shows that the renewed focus on sexual transgression was also continued under Nerva: “*Penelopae licet esse tibi sub principe Nerva:/ sed prohibet scabies ingeniumque vetus*” (“it is lawful for you to be a Penelope under Chief Nerva: but your itch and former talent prohibit you”; 11.7.5-6).<sup>624</sup> The motive for the revival of the *lex Iulia* is given as a desire to strengthen the family: “*populisque futuris/ succurris, nasci quos sine fraude iubet*” (“and you help future generations, you order births to be without deceit”; 6.2.3-4). The need for this renewal of the *lex Iulia* perhaps suggests that the enforcement of the *lex Iulia* was not consistently upheld and that it had varied success. Nevertheless, Martial’s inclusion of references to Domitian’s moral revival should not be seen as an unquestioning approval of this legislation.

<sup>621</sup> The same sentiment is found at Hor. *Sat.* 2.7.69-70.

<sup>622</sup> The metrical position of *famosae...moechae* is the same in both passages and found nowhere else in Latin literature (Williams 2004:144): “*coccina famosae donas et ianthina moechae*” (2.39.1); “*subdola famosae moneo fuge retia moechae*” (2.47.1). Cf. Suetonius who refers to *matronae* who are prostituting themselves to avoid the law as “*feminae famosae*” (*Tib.* 35.2; see McGinn 1992:288-290 and 1998b:247-249).

<sup>623</sup> Although 6.4 does not refer to the *lex Iulia*, it is included in the cycle on the Julian law as it refers to Domitian’s censorship and his attempts at moral reform: “*plus debet tibi Roma, quod pudica est*” (“Rome owes more to you, because she is chaste”; 6.4.5). This reform of the adultery laws by Domitian is also mentioned by Juvenal 2.28-31. See section 2.3 for a discussion of Martial’s depiction of the punishments of the adulterer and adulteress.

<sup>624</sup> The association of Penelope with marital chastity is repeated again in epigram 1.62.5-6: “*iuvenemque secuta relicto/ coniuge Penelope venit, abit Helene*” (“she secured a young man and sent away her husband; she came as a Penelope and left a Helen”).

All but one of the references to the law are in book six, which is dated to the early 90s AD (Williams 2004:5).<sup>625</sup> Moreover, the repeated references to the law within book six show Martial's preoccupation with it at this time. Martial begins by appearing to praise Domitian's attempts at moral reform (6.2 and 6.4). The next epigram in the cycle starts with the same tone but after two lines it is clear that it is not going to offer the same straightforward praise for the *lex Iulia*:

*Iulia lex populis ex quo, Faustine, renata est  
atque intrare domos iussa Pudicitia est,  
aut minus aut certe non plus tricesima lux est,  
et nubit decimo iam Telesilla viro.  
quae nubit totiens, non nubit: adultera lege est.  
offendor moecha simpliciore minus.*

It is at least thirty days, but certainly not more, Faustinus, since the *lex Iulia* was revived for the people and Pudicitia was ordered to enter their homes, and Telesilla is now marrying her tenth husband. She who marries so often is not marrying: she is an *adultera* by the law. I am offended less by a more straightforward *moecha*.

(6.7)

Telesilla has made a mockery of the legislation and Martial suggests that the behaviour that the legislation encourages is actually worse than that which it sought to prohibit.<sup>626</sup> The *lex Iulia* had been revived. For some this caused a problem and we see Proculina having to marry her *conubinus* to avoid being stigmatised (*notare*) by the *lex Iulia* (6.22).<sup>627</sup> Similarly, Laetoria marries Lygdus.<sup>628</sup> However, according to Martial she will be more disgraceful as a wife:

*luscistis, satis est: lascivi nubite cunni:  
permissa est vobis non nisi casta Venus.  
haec est casta Venus? nubit Laetoria Lygdo:  
turpius uxor erit quam modo moecha fuit.*

You played, it is enough: marry you lustful cunts: love is not permitted to you unless it is chaste. Is this love chaste? Laetoria marries Lygdus: she will be more disgraceful as a wife than she was just now as a *moecha*.

(6.45)

<sup>625</sup> Outside of book six is 11.7, referring to Nerva's attempts to promote chastity.

<sup>626</sup> The language of this epigram plays on 6.4, which praised Domitian's reforms, adding a further layer of mockery (Garthwaite 1990:15).

<sup>627</sup> Quoted in section 4.3.

<sup>628</sup> Lygdus also appears in 6.39.12-13 and is described as the *concubinum* of Cinna.

Martial tells Zolius, on the other hand, to rejoice; but only because he was impotent and so was not able to be a lover regardless of the law: "*sancta ducis summi prohibet censura vetatque/moechari. gaude, Zoile, non futuis*" ("the sacred censorship of our distinguished leader prohibits and forbids adultery. Rejoice, Zoilus, you are impotent"; 6.91). Having read the later epigrams in the cycle it is hard to view 6.2 and 6.4 as outright praise of Domitian's attempts at moral reform. Moreover, Garthwaite reads a deliberate attempt in 6.2 and 6.4 to establish a mask of praise that serves to direct attention away from the later epigrams that show the ineffectiveness of the moral legislation (1990:15).<sup>629</sup> The whole cycle of references to the *lex Iulia* within the sixth book of Martial's epigrams can therefore be seen to work together to both criticise and ridicule Domitian's attempt at moral reform.

### Juvenal

The verbs that Juvenal uses show that an *adulter* ravaged (*diripere*, 6.404) their partners but they also had the ability to pollute (*polluere*, 2.29) not only the family and society, which we see frequently in the other authors, but also themselves. They had to fear (*metuere*, 10.311) the punishment of the husband and often had to hide (*latere*, 6.237) and conceal (*velare*, 8.144) themselves. We also see *moechi* being prosecuted (*accusare*, 2.27). Reference is made twice to the *lex Iulia*; once in relation to an *adulter* (2.29-31) and also once where *adulter* and *moechus* are used interchangeably within the same passage (10.311-317).<sup>630</sup> Moreover, these laws are said to be "*omnibus atque ipsis Veneri Martique timendas*" ("feared by all and also by Venus and Mars"; 2.31). *Moechi* are said to be loved (*amare*, 10.220) by their women and Juvenal claims that an *adulter* could even save a marriage: "*instabile ac dirimi coeptum et iam paene solutum*/"

<sup>629</sup> See Quintilian (*Inst. Orat.* 9.2.67) for a contemporary discussion of how through *emphasis* and intentional double entendre it was possible to safely criticise those in power. Further discussed by Ahl 1984:189ff.

<sup>630</sup> "*i nunc et iuvenis specie laetare tui, quem/ maiora expectant discrimina. fiet adulter/ publicus et poenas metuet quascumque mariti/ iratis debet, nec erit felicius astro/ Martis, ut in laqueos numquam incidat. exigit autem/ interdum ille dolor plus quam lex ulla dolori/ concessit: necat hic ferro, secat ille cruentis/ verberibus, quosdam moechos et mugilis intrat./ sed tuus Endymion dilectae fiet adulter/ matronae.*" ("Go now and rejoice in the beauty of your son, whom the greatest dangers wait for. He will be a public adulterer and he will fear the punishments which are owed to the anger of the husband, he will not be luckier than the glory of Mars and not fall into the husband's nets. But occasionally the husband's anger demands more pain than the law concedes as punishment: this husband kills him with the sword, that one flays him with bloody lashes, he penetrates certain adulterers with a mullet. But your Endymion will be the adulterer of a beloved woman.")

*coniugium in multis domibus servavit adulter* ("there are many houses in which an adulterer has saved a marriage that was unstable, beginning to divide and now almost broken up"; 9.79-80).<sup>631</sup>

An *adulter* could be *publicus* (public, 10.311) but was also associated with the *domus* (9.80). In a discussion of how to gain social advancement in Rome you had to commit crime, the *praetextatus adulter*<sup>632</sup> is listed alongside the "*nurus corruptor avarae*" and "*sponsae turpes*" ("the seducer of a greedy daughter-in-law" and "disgraceful brides"; 1.77-78) as those who do not let a man sleep through worry. One *adulter*, Crispinus, is described as "*monstrum nulla virtute redemptum/ a vitiis, aegrae solaque libidine fortes/ deliciae*" ("a monster through his vices, redeemed by no virtue, sickly and strong in his lewd pleasures alone"; 4.2-4). Moreover, linked with ideas of concealment, the *adulter* is associated with the night (*nocturnus*, 8.144). The danger of the *poena* and the *ira mariti* (punishment and anger of the husband) is also shown at 10.314-317.<sup>633</sup> Certain *moechi* gained reputations and became *notus* (notorious, 9.25, 6.42). Moreover, we also see that women (referred to only as *femina* with no further detail about their status) displayed themselves in temples:

*nuper enim, ut repeto, fanum Isidis et Ganymedem  
Pacis et advectae secreta Palatia matris  
et Cererem (nam quo non prostat femina templo?)  
notior Aufidio moechus celebrare solebas,  
quodque taces, ipsos etiam inclinare maritos.*

For recently, as I remember, you were accustomed to go to the temple of Isis and of Peace with its Ganymede and the secret palaces of the Mother carried from afar and Ceres (for in which temple does a woman not display herself?) and you, a more notorious *moechus* than Aufidius, and what you are silent about, you would corrupt even the husbands themselves.

(9.22-26)

The *moechus* being addressed does not gossip and keeps silent about his exploits. Moreover, we see that he is such a successful and well-known *moechus* that even the husbands are corrupted by

---

<sup>631</sup> That there could be love (*amor*) between a husband and wife is also shown at 6.275-277, even if this love is imagined by the husband: "*tu credis amorem,/ tu tibi tunc, uruca, places fletumque labellis/ exorbes*" ("you think it is love, you then please yourself, you worm, kissing away her tears").

<sup>632</sup> Braund understands *praetextatus* here as referring to the youth of the *adulter* (1996:94). Perhaps, however, Juvenal is also playing on the further meaning of *praetextatus* to mean innocence, as the *toga praetexta* was thought to protect children by marking them as pure and unsullied (see Sebesta 2005). The *praetextatus adulter*, therefore, is an oxymoron.

<sup>633</sup> Quoted in section 2.2.

him. The *moechus* is also placed in opposition to the husband-pimp (*leno*), who the adulterer can bribe so that he looks the other way: “*cum leno accipiat moechi bona, si capiendi/ ius nullum uxori, doctus spectare lacunar,/ doctus et ad calicem vigilantibus stertere naso*” (“since a pimp accepts gifts from the *moechus*, if there is no right for the wife to inherit, he learns to look at the ceiling, and he learns to snore with wakeful nose against his cups”; 1.55-57).<sup>634</sup> This is a clear reference to the *lex Iulia*, in which a husband who does not divorce an adulterous wife is charged with *lenocinium*. Moreover, the association with a cuckolded husband and drinking is found in Horace *Od.* 3.6.25-26. An adulterer threatened a marriage as a wife would no longer listen to and obey her husband, but instead would become loyal to her lover:

*si iubeat coniunx, durum est conscendere navem,  
tunc sentina gravis, tunc summus vertitur aer.  
quae moechum sequitur, stomacho valet. illa maritum  
convomit, haec inter nautas et prandet et errat  
per puppem et duos gaudet tractare rudentis.*

If her husband orders her to embark on a ship it is cruel, then the bilge water is offensive, the great waves go round and round: if she is following her lover her stomach is strong. Then she vomits on her husband; now she is amongst the sailors and wanders through the ship and rejoices in handling the rough rigging.

(6.98-102)

More than this, in *Satire* 6<sup>635</sup> Juvenal shows that a husband will lose all control and become a slave to his wife who will be *domina* (6.30).<sup>636</sup> Moreover, she would only make herself look attractive for the adulterer:

<sup>634</sup> Cloud warns against using this passage to understand the law surrounding the right to inherit (1989:55-57); Juvenal is following a declamation theme rather than a real life situation.

<sup>635</sup> The purpose of *Satire* six has long been debated; it is now understood as a satire against marriage rather than as purely a misogynist diatribe against women (Braund 1992). Examples of adultery and adulterous wives are therefore used throughout to show this concern with wives and marriage (Braund 1992:75-78). Smith, however, suggests that it is not just wives that Juvenal blames and criticises but also the husbands who let their wives partake in such behaviour (1980:329-330). Moreover, the themes with which Juvenal's diatribe in *Satire* 6 addresses women are standard poetic topoi; for example, Smith has shown the similarities between *Satire* 6 and Horace's *Od.* 3.6 (2005:116).

<sup>636</sup> Further reference to servitude: “*summitte caput cervice parata/ ferre iugum*” (“submit your head and give your neck to carry the yoke”; 6.207-208). We also see a husband who closes his eyes and ignores his wife's transgressions (6.432-433) and a wife who pays no attention to what her husband says (6.508-511). See Smith 1980:329.

*ad moechum lota veniunt cute. quando videri  
vult formosa domi? moechis foliata parantur,  
his emitur quidquid graciles huc mittitis Indi.*

They will come to their *moechus* with clean skin. When does she ever wish to be seen as beautiful at home? Nard oils are prepared for *moechi*, for them she buys whatever the slender Indians send here.

(6.464-466)

The *moecha* is also said to pretend to be *zelotypa* (jealous, 6.278) over her husband's affairs in order to hide her own.

According to Juvenal, adultery was the earliest *crimen*:

*anticum et vetus est alienum, Postume, lectum  
concutere atque sacri genium contemnere fulcri.  
omne aliud crimen mox ferrea protulit aetas:  
viderunt primos argentea saecula moechos.*

It is an ancient and long-established practice, Postumus, to shake another man's bed and to despise the Genius of the sacred couch. All other crimes came later on in the age of Iron, but it was the Silver Age that saw the first adulterers.

(6.21-24)

What is more, he warns that it is now near impossible to find a chaste wife in Rome (6.47-51). Mythical characters are associated with adultery (Venus and Mars, 2.31; Tanaquil, 6.565-568), as well as republican figures (Clodius, 2.27)<sup>637</sup> and contemporaries to Juvenal, both known (Domitian and Julia, 2.32-33) and also now unfamiliar to us (Fabula and Carfinia, 2.68-70; Crispinius, 4.1-4; Ursidius, 6.42; Aufidius, 9.25; Oppia, 10.220; Endymion, 10.310-19; Larga, 14.25-30).<sup>638</sup> Moreover, the extent to which *adulterium* would be associated with disgrace depended on the adulterer's circumstances:

---

<sup>637</sup> The close proximity of Domitian as *adulter* and Clodius as *moechus* shows the hypocrisy both of Domitian's attempt at moral reform but also through this link "the simple appeal to republican political traditions as standards for action is shown to be at best ambiguous and potentially deceptive" (Stewart 1994:312).

<sup>638</sup> For a discussion of names in Juvenal see Jones 2007:56-60, 68-70.

*namque ibi fortunae veniam damus. alea turpis,  
turpe et adulterium mediocribus: haec eadem illi  
omnia cum faciunt, hilares nitidique vocantur.*

We give a pardon to these men because of their fortune. Gaming and *adulterium* are a disgrace to men of mediocre standing: but when these other men do these things, they are called cheerful and refined.

(11.176-178)

Gifts and letters were exchanged between the adulter and the adulteress (3.45-46, 14.29-30). A woman could have numerous lovers: "*quae numquam maternos dicere moechos/ tam cito nec tanto poterit contexere cursu,/ ut non terdecies respiret*" ("she who cannot count her mother's *moechi* so quickly, nor is able to weave together so many at a run, so as not to take breath thirty times"; 14.26-28; see also Oppia at 10.219-220). Moreover, beauty is identified as a factor that makes adultery more likely (10.311-14).<sup>639</sup> Similarly, having a mother who was an adulteress would make a daughter more likely to follow her example (14.25-30).<sup>640</sup>

#### 4.5) Conclusions

There were significant changes in how the terms were used by the verse authors. However, the impact that the *lex Iulia* may have had on these changes is not so apparent. *Stuprum* does begin as the dominant term but it falls out of use before the adultery legislation was introduced so that an understanding of why the term was avoided by the verse authors must be found elsewhere. At the same time, however, the use of *adulterium* and its derivatives increased and this can be seen as having been influenced by the *lex Iulia*, particularly within Ovid who clearly engages with the law. Adam's observation,<sup>641</sup> therefore, that it was not necessary for Plautus to always use specific terminology to describe adultery is not applicable to the authors writing after the introduction of the *lex Iulia*. The more technical language of *adulterium* and its derivatives is used with much more frequency once it becomes necessary to define the act of adultery under law. A further variation that can be associated with the *lex Iulia* is the increase in the attention paid to the female sexual partner that began under Catullus but which was accelerated in the authors writing

---

<sup>639</sup> Quoted above.

<sup>640</sup> In *Satire* six Juvenal says that it is the mother who teaches the daughter to elude her husband and to carry out affairs (6.231-241).

<sup>641</sup> 1983:351 (see section 4.4).

after 18 BC. Moreover, the use of the Greek form *moechus*, which was rarely used in the prose authors, did not change in relation to the *lex Iulia* but instead its use depended on the type of genre.

Within the genres of comedy, satire, and epigram adultery is on the whole shown to be a dangerous and imprudent form of sexual gratification. In Plautus and Terence adultery is always punished and the adulterer is ridiculed by all (particularly in the *Miles Gloriosus*). It has been demonstrated that adultery involving a wife was rarely depicted in New Comedy, although it was regularly depicted on stage in the form of mime. It is therefore unsurprising that the portrayal of adultery in this context would maintain the moralistic condemnation of such behaviour (despite a few laughs at the expense of both the husband and the adulterers along the way). However, in Horace (*Satires*), Martial, and Juvenal the negative way in which adultery was depicted was not a result of a sense of right and wrong, but instead a warning of the hazards and risks that the adulterer exposed himself to. For the authors who wrote during the period in which the *lex Iulia* was introduced a shift can be seen in how morality and chastity were represented and the new legal associations of adultery are evident. This is particularly marked in Ovid. Moreover, Martial and Juvenal both associate adultery with concealment, accusation, and punishment and references to Domitian's revival of the *lex Iulia* also serve to highlight the legal context of the law.



## Conclusion

The *lex Iulia de adulteriis coercendis* was a significant attempt at social manipulation and it heralded a stark change in how sexual morality was conceived and controlled, moving from the republican system of private family justice to a state-regulated legal process. Sexual morality had always been a concern amongst the moralists. However, the *lex Iulia* sought now to focus this moralising discourse and to lay down a single practice for the prosecution and punishment of adultery. It has been shown that the degree of attention that the jurists paid to the *lex Iulia* is testament to its importance in Roman society. Furthermore, it is due to this large volume of text devoted to the legislation by the jurists, as well as the preservation of this material by the Justinianic compilers, that it is possible for us to recreate the vast majority of the law's provisions.<sup>642</sup> Yet still, the juristic texts are not without their own limitations and allowances must be made for their late date in comparison to the original law and the possibility of later interpolations and amendments. What is more, inherent within the juristic sources is an elite male bias and a focus on the aspects of the law that affected the propertied upper classes to which the jurists belong. This in turn narrows our understanding of the *lex Iulia* and its wider application to the lower classes.

Despite the six centuries of legal discourse that clouds our understanding of the original legislation and the confusions within the legal texts over even the most basic use of the terms of the law, it is still possible to gain a detailed knowledge of the *lex Iulia*. We can determine the types of women who were liable for charges of *adulterium* and *stuprum* (and so in turn conclude which categories were considered available for sexual relations). Moreover, the procedures for accusations can be recreated with some confidence and the penalties faced by those found guilty are known from Paul (*Sent.* 2.26.14). The provisions of the law are reflected in the literary sources,<sup>643</sup> although not by all as Martial and Juvenal both refer to husbands inflicting physical punishment on the *adulter*, which was outside the provisions of the law. Nevertheless, it is in the nature of the genres of epigram and satire that they would show penalties that are not necessarily in line with those set out by law. Chapter two therefore shows that the *lex Iulia* did

---

<sup>642</sup> Compare, for example, our limited knowledge of the *lex Scantinia*, which was not included within the juristic digests.

<sup>643</sup> *Lenocinium* (Juv. 1.55-57; Suet. *Dom.* 8.3); sixty-day period of husband's right to accuse (*Ann.* 2.85); exile (see section 2.3).

have an impact on Roman society as the law can be seen at various times within the first six centuries AD to be continuously revived, implemented, and commented on.

In chapter three there was a sharp contrast in how the republican prose authors used the terms *adulterium* and *stuprum* in comparison to those writing in the imperial period. The use of the terms changed so that, whereas *stuprum* had been the dominant term in the republic, *adulterium* and its derivatives can be seen to acquire a new focus. There was also a shift in how the terms were conceived and from Valerius Maximus onwards *adulterium* begins to be associated with law and the process of accusation, whereas *stuprum*, although it was a legal charge under the *lex Iulia*, is not treated in the same way. Moreover, the republican authors had all portrayed *stuprum* to be the more damaging of the two disgraces, yet it later becomes overshadowed by *adulterium*.

In chapter four, on the other hand, the pattern of change in the use of the terms by the verse authors was more complex and less distinct. Nonetheless, it is possible to see that a change did occur in how the two terms were used and conceived within the early imperial period and that by the time Martial was writing at the end of the 1<sup>st</sup> century AD *adulterium* was conceived of as a legal term. The legal connotations surrounding the charge of *adulterium* are evident in Martial and Juvenal and elements of the law are reflected in their language. Nevertheless, they still demonstrate some republican practices, such as the husband exacting a violent punishment on the adulterer. However, it is not possible to determine if this was based on real life or was a fictional reimagining of an adultery scenario. In addition, the verse authors differ from the prose in that they are more concerned with the people involved in the sexual transgression than the act itself and so their focus is on the *adulter/moechus* and *adultera/moecha* rather than *adulterium*, *stuprum*, and the verbal forms.

A problem remains, however, in determining exactly when this change occurred and therefore the extent and chronology of any influence that the *lex Iulia* had on language. Ovid makes an immediate reaction to the introduction of the legislation, but then his exile meant that he had personal reasons for doing so. However, Valerius Maximus, writing fifty years after the introduction of the law, does not appear to have been greatly influenced by the new associations of the adultery legislation.<sup>644</sup> It is not until the authors writing after Domitian (in both prose and verse) that the most obvious change in the use of the terms occurs. Is this therefore a reflection of his revival of the legislation rather than a long and drawn-out process of influence by Augustus' original enactment of the *lex Iulia*? As we have seen, Tiberius made efforts to move back to the

---

<sup>644</sup> However, the republican nature of his sources may explain this anomaly (see section 3.1).

traditional process of family councils but still there are also numerous examples within Tacitus and Suetonius of accusations made under the *lex Iulia* throughout this period suggesting that it was active under Tiberius. In order to better understand the period immediately after the introduction of the *lex Iulia* a case study has been made of the work of Seneca the Elder (see appendix one). Seneca's use of the terms also fits with the definition of the terms under the *lex Iulia* and it suggests that the change in meaning between *adulterium* and *stuprum* had happened by the first few decades of the first century AD. This change had clearly occurred within the legal atmosphere of declamation, where any impact law had on language can be assumed to be greater than on other forms of literature. I would therefore argue that the *lex Iulia* did have an impact on language and whilst this had an immediate effect on literature that was concerned with law, it took longer to influence other forms of literature. In particular, it was not until Domitian put a new emphasis on the *lex Iulia* by renewing the legislation that a difference in how the terms were used can be seen in both the prose and verse authors. This influence of the language of the law in turn implies that the *lex Iulia* and the criminalisation of this private affair had changed the way in which Rome (or at least the Roman male elite) conceived of adultery; it was now a defined legal concept with criminal associations and expectations of detection, accusation, and punishment.

The effectiveness of regulating morality through law was debated at the time the legislation was introduced and scholars have continued to try to assess the impact and relative successes of the *lex Iulia*. Opinions on the efficacy of the law have been on the whole negative: Treggiari argued that the legislation destabilised marriage (1996:892) and Edwards showed that the *lex Iulia* highlighted the power and disruptiveness of adultery (1993a:59). However, the study of the language pertaining to the adultery law has shown that it did change the way Roman society spoke about sexual transgression and adultery in particular. Law can thus be seen as an influencing factor on society, although the process appears to be slow and was reliant on a sustained application of the law. If, on the other hand, the law was not maintained and was allowed to slip out of the public consciousness (as with the *lex Scantinia*) then its effect on society and on people's attitudes to the behaviour it prohibited would be minimal.

It is most probable that Augustus did not intend for the adultery legislation to be so well publicised by the numerous cases of adultery that involved high profile members of the imperial family. Nevertheless, it can be imagined that in a world where literacy was low and few would have had access to the written law, the gossip surrounding cases of adultery that involved the emperor's own daughter and granddaughter would have made people aware of the legislation. Moreover, it brought adultery into the public sphere and may have facilitated an atmosphere

where adultery was discussed with much greater frequency and openness. In addition, another unintended but no less powerful effect of the legislation was the emergence of a class of *delatores* making false accusations and the use of the law within imperial politics and dynastic disputes. A further consequence of the *lex Iulia* can be seen in our modern preconceptions about Roman immorality and sexual deviance. It is precisely because of the *lex Iulia* that authors like Tacitus and Suetonius included so many episodes of adultery in their work as it had become a political weapon within the imperial household. If the law had not made it public then adultery would not have acquired such a conspicuous place within the imperial histories and so in turn have determined our modern conception of a Rome where vice and adultery were rampant.

It is evident from this survey of adultery in Rome that extra-marital sexual relations were viewed as negative and damaging. For most of the authors this was because they violated the family by bringing into question the paternity of children and because they brought instability to society and led to further immorality. In Horace's *Satires* and Martial's epigrams, however, it was the danger that the adulterer placed himself in by engaging in relationships with married women that was highlighted. Nevertheless, they still advised against adultery. The distinctions that Augustus tried to impose between *meretrix* and *matrona* were easily accepted by Roman society and his aim to reform morality was not without merit. Moreover, the *lex Iulia* did have an impact on the language used to describe adultery and on the way in which the authors conceived of sexual transgression. However, the legislation did not succeed in changing behaviour, a fact proved by the constant revivals and amendments made to the legislation. What is more, the method of using law to regulate sexual behaviour was criticised and ridiculed, particularly when the emperor bringing in the legislation was widely known to have engaged in adultery himself. The relationship between law and society can ultimately be seen as reciprocal – social norms did determine law but law can also be seen to influence society's attitude towards a given issue. An understanding of this interplay is therefore crucial when evaluating Rome and the connections between law, government, and society.

## Appendix One: Seneca the Elder

Seneca the Elder lived through the whole of Augustus' reign<sup>645</sup> and his *Controversiae*, a collection on declamations and declaimers from the Augustan period, were written in retirement in the late 20s and 30s AD and published posthumously (Kennedy 1972:323-324).<sup>646</sup> It therefore offers significant insight into the use of the terms in the period immediately following the introduction of the legislation.

The most frequent term within Seneca the Elder's declamations is *adulterium* and its derivatives.<sup>647</sup> Particular attention is paid to the *adulter* (found eighty times) and the *adultera* (found twenty-one times). The Latin form *moechus* is not found, though Seneca does include it in Greek (*μοιχός*, *Contr.* 1.2.23). In figure 9 the use of *adulterium* and *stuprum* in Seneca is placed alongside the other prose authors. This suggests that the high proportion of *stuprum* being used in comparison to *adulterium* in Valerius Maximus is an anomaly influenced by his copying of his republican sources.

**Figure 9: percentage frequency of *adulterium* and *stuprum* (including their derivatives) in Seneca the Elder**

Author \ Word	Cicero		Sallust		Livy		Seneca the Elder		Valerius Maximus		Tacitus		Suetonius	
<b>adulterium</b>	31	32%	2	29%	5	17%	143	83%	4	17%	48	65%	21	60%
<b>stuprum</b>	67	68%	5	71%	25	83%	29	17%	19	83%	26	35%	14	40%
<b>Total</b>	98		7		30		172		23		75		35	

A further indication that the *lex Iulia* has made an impact on the use of the terms by this point is that *adulterium* is on the whole used to refer only to circumstances involving married women and at no point is it used in relation to unmarried women (see fig. 10). *Stuprum* has varied meanings within the declamations: prostitution (*Contr.* 1.2.7, 10.4.11); rape (*Contr.* 1.5.1, 2.3.4, 2.5.1, 8.6); the act of sexual intercourse (*Contr.* 2.7.pr., 2.7.1, 2.7.5, 2.7.6); sex with men (*Contr.* 3.8, 5.6). But it is only used to refer to married women with the meaning of the act of sexual intercourse and it does not carry a legal connotation. This is a sharp change from the use of

<sup>645</sup> Seneca was born in the 50's BC and died in AD 39 (Kennedy 1972:322-323).

<sup>646</sup> The *Suasoriae* and fragments have also been included in the language study.

<sup>647</sup> See appendix 2 (iii) for word frequency table, including references for all occurrences.

the term in those authors writing before the introduction of the *lex Iulia*, who used it to refer to married women and adulterous relationships.

**Figure 10: status of the passive partner in the sexual affair in Seneca the Elder**

	Married	Unmarried	Unknown	General	Total
adulter	66	0	11	3	80
adulterium	29	0	2	5	36
stuprum	4	17	2	2	25
adultera	20	0	0	1	21
adulterus	5	0	0	0	5
stuprare	0	3	0	0	3
adulterare	1	0	0	0	1
stuprator	0	1	0	0	1
μοιχός	1	0	0	0	1

The focus of the declamations is on the process that follows a couple being caught in adultery (*Contr.* 1.4.pr., 1.4.10, 1.5.5, 1.7.pr., 4.7, 6.6, 7.5.1), particularly being caught in a bedroom (*Contr.* 1.4.11, 2.1.34). Seneca also discusses several themes that are found within the other authors studied: the murder of the adulterous couple (*Contr.* 1.4.pr., 9.1.pr.);<sup>648</sup> the adulterer fathers a child on the adulteress (*Contr.* 1.4.2);<sup>649</sup> the adulteress receives gifts from the adulterer (*Contr.* 2.7).<sup>650</sup> There is also a close connection between an adulteress and poisoning (*Contr.* 6.6).<sup>651</sup> *Stuprum*, however, is often depicted as being a result of force (*Contr.* 2.3.4, 2.5.1, 10.4.11) and is shown to make the woman involved *incesta* (*Contr.* 1.3.1, 6.8).<sup>652</sup> Seneca also appears to comment on the efficacy of using law to control morality:

*adeone iam ad omnem patientiam saeculi mos abiit ut adversus querimoniam viri uxor alieno teste defendatur? at hercules adversus externorum quondam opiniones speciosissimum patrociniū erat: ego viro placeo.*

<sup>648</sup> See discussion of *ius occidendi* in section 2.3.

<sup>649</sup> Cf. Martial 6.39.1-5, 10.95; Juv. 6.76-81, 592-601. The danger of a child being conceived by adultery and the problems of paternity is discussed in section 2.3.

<sup>650</sup> Cf. Plaut. *Cas.* 198-202; Juv. 3.45-46, 14.29-30. Also the discussion of the *lex Oppia* in section 2.1.

<sup>651</sup> According to Quintilian: "*si causam veneficii dicat adultera, non M. Catonis iudicio damnata videatur, qui nullam adulteram non eandem esse veneficam dixit?*" "If an *adultera* is called to trial for poisoning, is she not already to be seen as guilty by the judgement of M. Cato, who said that an *adultera* was as good as a poisoner?" (*Inst. Orat.* 5.11.39). Cf. connection between adultery and poisoning at Cic. *Pro Sest.* 39; Tac. *Ann.* 3.22; *CJ.* 5.17.8.2, AD 449.

<sup>652</sup> See discussion of *incestus* in Cicero (section 3.4).

Has the moral of the age now retired to all submissiveness, so that the wife has to be defended against the complaint of her husband by the testimony of another? But, by heavens, the most plausible defence against the opinions of outsiders used to be: I please my husband.

(*Contr.* 2.7.8)

The involvement of third parties within cases of adultery is shown only to reflect the lack of *mos* within society.

Bonner sees the depiction of adultery in *Contr.* 2.7 as “a fairly accurate picture of contemporary Rome” (1949:35). Nevertheless, there are several contradictions between the law on adultery as demonstrated by Seneca and the provisions of the *lex Iulia*. In *Contr.* 1.4.pr. and 9.1.pr. the right to kill the adulterous pair appears to be given to anyone as long as he kills both.<sup>653</sup> This follows the *lex Iulia* in that both the adulterer and the adulteress had to be killed at the same time. However, in both cases it is the husband who catches (*deprehendere*) the pair and who wants to kill them. As we have seen, under the *lex Iulia* it was only the father of the adulteress who could exercise the *ius occidendi*.<sup>654</sup> Moreover, in *Contr.* 1.4 the husband is said to have the right to pass on the responsibility of killing the adulterous pair to his son if he was incapable of carrying it out.<sup>655</sup> However, Bonner has shown that these inconsistencies reflect earlier practice before the introduction of the *lex Iulia* (1949:119-122). Furthermore, although the declamations contain a mixture of Greek and Roman characters and settings, Bonner finds more genuine elements of Roman law than has previously been supposed (1949:34).<sup>656</sup>

---

<sup>653</sup> “*adulterum cum adultera qui deprenderit, dum utrumque corpus interficiat, sine fraude sit*” (“whoever catches an *adulter* with an *adultera*, as long as he kills both, may go without harm”). This exact phrase is found in both of the declamations.

<sup>654</sup> Conversely, in *Contr.* 9.1 it is the father who objects to the killing of the adulteress.

<sup>655</sup> Cf. *CJ.* 9.9.4 (promulgated by Alexander Severus but no date given), which gives the husband the right to order his sons to kill an adulterer who was of low status: “*Gracchus, quem numerius in adulterio noctu deprehensum interfecerit, si eius condicionis fuit, ut per legem Iuliam impune occidi potuerit, quod legitime factum est, nullam poenam meretur: idemque filiis eius qui patri paruerunt praestandum est.*” (“If Gracchus, whom Numerius killed, in an act of adultery in the night, was one of those persons who could be killed with impunity, under the Julian law, then, since the act was lawful, no penalty was incurred. The same right must be extended to his sons who obeyed their father.”)

<sup>656</sup> Bonner is cautious over assumptions that the declamations containing pirates and tyrants are Greek in origin (declamations involving *adulterium* or *stuprum* – *Contr.* 1.2, 1.7, 4.7): “the most, in fact, that can be said is that, although such subjects were probably originally due to Greek ingenuity, the Romans probably took over merely the conventional characters and settings, but thoroughly Romanised the treatment of them, and adapted them to their own legal thinking” (1949:34-35).

## Appendix Two: Word Frequency Tables

### (i) Prose Authors

#### Cicero:

Word	Frequency	Reference
stuprum	63	<i>In Cat.</i> 1.26; <i>In Cat.</i> 2.7; <i>In Cat.</i> 2.9; <i>In Cat.</i> 2.1; <i>In Cat.</i> 2.25; <i>Pro Flacc.</i> 34; <i>Pro Planc.</i> 86; <i>Pro Cael.</i> 71; <i>Pro Mil.</i> 13; <i>Pro Mil.</i> 73; <i>Pro Mil.</i> 85; <i>Pro Mil.</i> 87; <i>Pro Font.</i> 38; <i>In Verr.</i> 1.14; <i>In Verr.</i> 2.1.62; <i>In Verr.</i> 2.1.64; <i>In Verr.</i> 2.2.82; <i>In Verr.</i> 2.2.110; <i>In Verr.</i> 2.3.23; <i>In Verr.</i> 2.4.20; <i>In Verr.</i> 2.4.71; <i>In Verr.</i> 2.4.83; <i>In Verr.</i> 2.4.102; <i>In Verr.</i> 2.4.144; <i>In Verr.</i> 2.5.26; <i>In Verr.</i> 2.5.34; <i>In Verr.</i> 2.5.94; <i>De Dom.</i> 50; <i>De Dom.</i> 105; <i>Pro Sest.</i> 16; <i>Pro Sest.</i> 18; <i>Pro Sest.</i> 20; <i>Pro Sest.</i> 39; <i>In Piso.</i> 9; <i>In Piso.</i> 21; <i>In Piso.</i> 42; <i>In Piso.</i> 70; <i>In Piso.</i> 95; <i>Pro Sull.</i> 70; <i>Pro Sull.</i> 71; <i>De Har. Res.</i> 4; <i>De Har. Res.</i> 8; <i>De Har. Res.</i> 8; <i>De Har. Res.</i> 38; <i>De Har. Res.</i> 42; <i>De Har. Res.</i> 44; <i>De Har. Res.</i> 55; <i>Phil.</i> 2.47; <i>Phil.</i> 2.99; <i>Phil.</i> 3.15; <i>Phil.</i> 6.4; <i>De Re Pub.</i> 4.4; <i>De Fin.</i> 2.73; <i>De Fin.</i> 5.64; <i>De Sen.</i> 40; <i>De Off.</i> 3.38; <i>Parad.</i> 23; <i>De Leg.</i> 1.51; <i>De Leg.</i> 2.1; <i>De Nat. Deo.</i> 3.68; <i>Comm. Pet.</i> 9; <i>In Clod. et Cur. frag</i> 22; <i>Post Red.</i> 13
adulterium	16	<i>Pro Flacc.</i> 34; <i>Pro Planc.</i> 30; <i>Pro Cael.</i> 29; <i>Pro Cael.</i> 35; <i>Pro Mil.</i> 72; <i>In Verr.</i> 2.3.6; <i>In Verr.</i> 2.4.144; <i>Pro Sest.</i> 20; <i>In Piso.</i> 70; <i>Pro Scaur.</i> 8; <i>De Orat.</i> 2.275; <i>De Fin.</i> 2.73; <i>De Div.</i> 1.121; <i>De Sen.</i> 40; <i>De Nat. Deo.</i> 1.42; <i>De Nat. Deo.</i> 3.68
adulter	10	<i>In Cat.</i> 2.7; <i>In Cat.</i> 2.23; <i>Pro Cael.</i> 30; <i>Pro Cael.</i> 38; <i>Pro Cael.</i> 49; <i>In Verr.</i> 2.1.9; <i>In Verr.</i> 2.3.4; <i>Pro Sest.</i> 39; <i>In Piso.</i> 28; <i>De Fin.</i> 2.27
adulterare	5	<i>Pro Caec.</i> 73; <i>De Part. Orat.</i> 90; <i>De Off.</i> 1.128; <i>De Leg.</i> 1.43; <i>De Amic.</i> 92
stuprare	4	<i>De Dom.</i> 125; <i>De Har. Res.</i> 33; <i>De Fin.</i> 2.66; <i>De Fin.</i> 5.64
constuprare	2	<i>Ad Att.</i> 1.18.3; <i>Comm. Pet.</i> 10
moechus	1	<i>Ad Fam.</i> 8.7.2

#### Sallust:

Word	Frequency	Reference
stuprum	5	<i>Bel. Cat.</i> 13.3; <i>Bel. Cat.</i> 15.1; <i>Bel. Cat.</i> 23.3; <i>Bel. Cat.</i> 24.3; <i>Hist.</i> 3.66
adulter	1	<i>Bel. Cat.</i> 14.2
adulterinus	1	<i>Bel. lug.</i> 12.3



**Livy:**

Word	Frequency	Reference
stuprum	20	1.59.8; 3.44.2; 3.47.7; 3.50.6; 3.57.4; 10.31.9; 22.57.2; 22.57.2; 26.13.15; 32.21.24; 38.24.3; 39.8.7; 39.8.8; 39.10.7; 39.13.10; 39.13.13; 39.13.14; 39.14.8; 39.15.14; 39.18.4
stuprare	4	1.57.10; 3.44.2; 8.22.3; 39.15.9
adulterinus	3	39.18.4; 40.23.7; 40.55.1
constuprare	2	29.17.15; 39.15.9
adulter	1	1.58.7
adulterium	1	1.58.4

**Valerius Maximus:**

Word	Frequency	Reference
stuprum	16	1.8.ext.3; 2.6.7; 5.9.1; 6.1.1; 6.1.2; 6.1.6; 6.1.7; 6.1.9; 6.1.10; 6.1.10; 6.1.11; 6.1.12; 6.1.ext.2; 6.8.1; 9.1.7; 9.1.ext.2
adulterium	4	6.1.13; 6.5.ext.3; 8.1.absol.12; 8.2.2
stuprare	2	6.1.13; 9.1.ext.5
stuprosus	1	6.1.8

**Tacitus:**

Word	Frequency	Reference
stuprum	26	<i>Hist.</i> 1.30; <i>Hist.</i> 1.48; <i>Hist.</i> 1.66; <i>Hist.</i> 1.72; <i>Hist.</i> 1.74; <i>Hist.</i> 2.56; <i>Hist.</i> 3.33; <i>Hist.</i> 3.33; <i>Hist.</i> 3.41; <i>Hist.</i> 4.2; <i>Hist.</i> 4.14; <i>Hist.</i> 4.44; <i>Hist.</i> 5.22; <i>Ann.</i> 2.85; <i>Ann.</i> 4.1; <i>Ann.</i> 4.10; <i>Ann.</i> 6.1; <i>Ann.</i> 6.4; <i>Ann.</i> 6.48; <i>Ann.</i> 11.2; <i>Ann.</i> 12.25; <i>Ann.</i> 13.12; <i>Ann.</i> 13.17; <i>Ann.</i> 14.2; <i>Ann.</i> 14.31; <i>Ann.</i> 16.19
adulterium	25	<i>Ger.</i> 19; <i>Hist.</i> 1.2; <i>Hist.</i> 1.22; <i>Hist.</i> 1.66; <i>Hist.</i> 3.41; <i>Hist.</i> 4.2; <i>Hist.</i> 4.55; <i>Ann.</i> 2.50; <i>Ann.</i> 2.50; <i>Ann.</i> 2.50; <i>Ann.</i> 3.22; <i>Ann.</i> 3.38; <i>Ann.</i> 4.3; <i>Ann.</i> 4.12; <i>Ann.</i> 4.42; <i>Ann.</i> 4.44; <i>Ann.</i> 4.71; <i>Ann.</i> 6.29; <i>Ann.</i> 11.2; <i>Ann.</i> 11.26; <i>Ann.</i> 11.30; <i>Ann.</i> 13.11; <i>Ann.</i> 13.44; <i>Ann.</i> 13.45; <i>Ann.</i> 14.62
adulter	21	<i>Hist.</i> 3.45; <i>Ann.</i> 1.53; <i>Ann.</i> 2.50; <i>Ann.</i> 3.24; <i>Ann.</i> 3.24; <i>Ann.</i> 4.3; <i>Ann.</i> 4.52; <i>Ann.</i> 6.25; <i>Ann.</i> 6.40; <i>Ann.</i> 6.47; <i>Ann.</i> 11.1; <i>Ann.</i> 11.12; <i>Ann.</i> 11.12; <i>Ann.</i> 11.35; <i>Ann.</i> 12.65; <i>Ann.</i> 13.21; <i>Ann.</i> 13.42; <i>Ann.</i> 13.45; <i>Ann.</i> 14.60; <i>Ann.</i> 15.50; <i>Ann.</i> 15.68
adultera	2	<i>Ann.</i> 11.26; <i>Ann.</i> 14.1

**Suetonius:**

<b>Word</b>	<b>Frequency</b>	<b>Reference</b>
adulterium	14	<i>Jul.</i> 52.3; <i>Aug.</i> 5.1; <i>Aug.</i> 34.1; <i>Aug.</i> 69.1; <i>Aug.</i> 70.1; <i>Tib.</i> 11.4; <i>Tib.</i> 62.3; <i>Gaius</i> 11.1; <i>Claud.</i> 1.1; <i>Claud.</i> 16.1; <i>Claud.</i> 43.1; <i>Nero</i> 5.2; <i>Nero</i> 35.2; <i>Dom.</i> 8.3
stuprum	9	<i>Jul.</i> 7.2; <i>Aug.</i> 68.1; <i>Tib.</i> 35.1; <i>Gaius</i> 12.2; <i>Gaius</i> 24.1; <i>Gaius</i> 24.3; <i>Gaius</i> 36.1; <i>Otho</i> 2.2; <i>Gram.</i> 14
adulter	3	<i>Jul.</i> 74.2; <i>Claud.</i> 29.3; <i>Claud.</i> 36.1
adulterare	3	<i>Jul.</i> 6.2; <i>Jul.</i> 48.1; <i>Aug.</i> 67.2
stuprare	2	<i>Gaius</i> 36.1; <i>Nero</i> 35.2
moechus	2	<i>Jul.</i> 51.1; <i>Otho</i> 3.2
constuprare	2	<i>Tib.</i> 44.2; <i>Vit.</i> 12.1
adultera	1	<i>Gaius</i> 24.3
stuprator	1	<i>Dom.</i> 8.4

(ii) Verse Authors

**Plautus:**

Word	Frequency	Reference
moechus	10	<i>Amph.</i> 135; <i>Mil.</i> 775; <i>Mil.</i> 924; <i>Mil.</i> 1131; <i>Mil.</i> 1390; <i>Mil.</i> 1398; <i>Mil.</i> 1436; <i>Mil.</i> 1436; <i>Truc.</i> 610; <i>Bacch.</i> 918
stuprum	10	<i>Amph.</i> 489; <i>Amph.</i> 883; <i>Amph.</i> 898; <i>Amph.</i> 1016; <i>Amph.</i> 1034s; <i>Poen.</i> 99; <i>Truc.</i> 263; <i>Cas.</i> 82; <i>Cas.</i> 201; <i>Cas.</i> 888
adulterium	2	<i>Mil.</i> 802; <i>Cas.</i> 975
stuprare	2	<i>Aul.</i> 36; <i>Truc.</i> 821
adulter	1	<i>Amph.</i> 1049
adulterare	1	<i>Bacch.</i> 268
adulterinus	1	<i>Bacch.</i> 266
adulterus	1	<i>Mil.</i> 90
moechari	1	<i>Cas.</i> 975

**Terence:**

Word	Frequency	Reference
moechus	4	<i>And.</i> 316; <i>Eun.</i> 957; <i>Eun.</i> 960; <i>Eun.</i> 992

**Catullus:**

Word	Frequency	Reference
moecha	6	42.3; 42.11; 42.12; 42.19; 42.20; 68.103
adulterium	4	66.65; 67.36; 78.6; 113.4
moechus	2	11.17; 37.16
moechari	2	94.1
adulter	1	57.8
adultera	1	61.98

**Horace:**

Word	Frequency	Reference
adulter	8	<i>Sat.</i> 1.3.106; <i>Od.</i> 1.33.9; <i>Od.</i> 1.36.19; <i>Od.</i> 3.6.25; <i>Od.</i> 3.16.4; <i>Od.</i> 3.24.20; <i>Od.</i> 4.9.13; <i>Ep.</i> 5.57
moechus	5	<i>Sat.</i> 1.2.38; <i>Sat.</i> 1.4.4; <i>Sat.</i> 2.7.13; <i>Sat.</i> 2.7.72; <i>Od.</i> 1.25.9
adultera	1	<i>Od.</i> 3.3.25
adulterare	1	<i>Ep.</i> 16.32
adulterus	1	<i>Od.</i> 1.15.19
moecha	1	<i>Sat.</i> 1.4.113
moechari	1	<i>Sat.</i> 1.2.49
stuprum	1	<i>Od.</i> 4.5.21

**Propertius:**

Word	Frequency	Reference
stuprum	3	2.32.41; 3.19.20; 4.7.57
adulterium	1	2.29.38
adulter	1	2.34.7
moecha	1	4.5.44

**Ovid:**

Word	Frequency	Reference
adulter	23	<i>Her.</i> 1.6; <i>Her.</i> 4.34; <i>Her.</i> 17.18; <i>Her.</i> 17.46; <i>Her.</i> 19.177; <i>Her.</i> 20.8; <i>Her.</i> 20.148; <i>Am.</i> 1.3.22; <i>Am.</i> 1.10.4; <i>Am.</i> 3.4.8; <i>Am.</i> 3.8.33; <i>Ars</i> 1.304; <i>Ars</i> 1.309; <i>Ars</i> 2.365; <i>Ars</i> 2.637; <i>Rem. Am.</i> 161; <i>Ibis</i> 336; <i>Met.</i> 4.182; <i>Met.</i> 7.741; <i>Met.</i> 9.740; <i>Fast.</i> 2.335; <i>Fast.</i> 2.808; <i>Trist.</i> 2.499
adulterium	15	<i>Her.</i> 4.34; <i>Am.</i> 3.5.44; <i>Ars</i> 2.367; <i>Ars</i> 2.484; <i>Met.</i> 2.545; <i>Met.</i> 4.171; <i>Met.</i> 4.236; <i>Met.</i> 7.717; <i>Met.</i> 8.156; <i>Met.</i> 9.25; <i>Fast.</i> 2.808; <i>Trist.</i> 2.213; <i>Trist.</i> 2.430; <i>Trist.</i> 2.514; <i>Ex Pont.</i> 3.3.58
adultera	13	<i>Her.</i> 5.125; <i>Her.</i> 9.53; <i>Her.</i> 13.133; <i>Her.</i> 17.217; <i>Am.</i> 2.18.37; <i>Am.</i> 3.4.29; <i>Am.</i> 3.6.77; <i>Ars</i> 1.295; <i>Ibis</i> 309; <i>Met.</i> 2.471; <i>Met.</i> 8.132; <i>Met.</i> 10.347; <i>Trist.</i> 2.371
adulterus	4	<i>Her.</i> 6.133; <i>Am.</i> 3.4.5; <i>Am.</i> 3.4.37; <i>Ars</i> 3.643
stuprum	4	<i>Her.</i> 5.143; <i>Ars</i> 1.698; <i>Ars</i> 1.704; <i>Met.</i> 2.529
adulterare	2	<i>Fast.</i> 1.373; <i>Ex Pont.</i> 4.10.59

**Martial:**

Word	Frequency	Reference
moecha	15	2.39.1; 2.47.1; 2.49.2; 2.83.1; 3.82.28; 3.84.1; 3.93.15; 6.7.6; 6.45.4; 7.10.13; 9.2.9; 10.14.7; 10.52.2; 11.7.11; 11.11.6
moechus	14	1.74.1; 1.90.2; 3.70.1; 3.85.1; 3.92.1; 3.96.2; 6.2.5; 6.2.6; 6.22.2; 6.90.1; 11.7.2; 11.61.1; 12.93.1; 12.93.5
adulter	2	1.34.3; 10.95.1
adultera	2	6.7.5; 9.2.3
adulterium	1	1.90.10
moechari	1	6.91.2

**Juvenal:**

Word	Frequency	Reference
adulter	13	1.78; 2.29; 3.45; 4.4; 6.237; 6.329; 6.365.Ox22; 6.404; 6.567; 8.144; 9.80; 10.311; 10.318
moechus	12	1.55; 2.27; 6.24; 6.42; 6.100; 6.464; 6.465; 9.25; 10.220; 10.317; 14.26; 14.30
moecha	2	2.68; 6.278
adultera	1	14.25
adulterium	1	11.177

(iii) Seneca the Elder

Word	Frequency	Reference
adulter	80	<i>Contr.</i> 1.2.23; <i>Contr.</i> 1.4.pr.; <i>Contr.</i> 1.4.pr.; <i>Contr.</i> 1.4.pr.; <i>Contr.</i> 1.4.1; <i>Contr.</i> 1.4.1; <i>Contr.</i> 1.4.1; <i>Contr.</i> 1.4.1; <i>Contr.</i> 1.4.2; <i>Contr.</i> 1.4.2; <i>Contr.</i> 1.4.2; <i>Contr.</i> 1.4.2; <i>Contr.</i> 1.4.2; <i>Contr.</i> 1.4.3; <i>Contr.</i> 1.4.3; <i>Contr.</i> 1.4.3; <i>Contr.</i> 1.4.3; <i>Contr.</i> 1.4.8; <i>Contr.</i> 1.4.10; <i>Contr.</i> 1.4.10; <i>Contr.</i> 1.4.10; <i>Contr.</i> 1.4.10; <i>Contr.</i> 1.4.10; <i>Contr.</i> 1.4.10; <i>Contr.</i> 1.4.10; <i>Contr.</i> 1.4.11; <i>Contr.</i> 1.4.11; <i>Contr.</i> 1.4.11; <i>Contr.</i> 1.4.11; <i>Contr.</i> 1.4.12; <i>Contr.</i> 1.4.12; <i>Contr.</i> 1.4.12; <i>Contr.</i> 1.4.12; <i>Contr.</i> 1.4.12; <i>Contr.</i> 1.7.2; <i>Contr.</i> 1.7.2; <i>Contr.</i> 1.7.2; <i>Contr.</i> 1.7.2; <i>Contr.</i> 1.7.3; <i>Contr.</i> 1.7.4; <i>Contr.</i> 1.7.7; <i>Contr.</i> 1.7.9; <i>Contr.</i> 1.7.9; <i>Contr.</i> 1.7.9; <i>Contr.</i> 1.7.13; <i>Contr.</i> 2.1.34; <i>Contr.</i> 2.1.34; <i>Contr.</i> 2.1.35; <i>Contr.</i> 2.3.14; <i>Contr.</i> 2.7.pr.; <i>Contr.</i> 2.7.6; <i>Contr.</i> 2.7.6; <i>Contr.</i> 2.7.7; <i>Contr.</i> 2.7.8; <i>Contr.</i> 2.7.9; <i>Contr.</i> 4.7; <i>Contr.</i> 4.7; <i>Contr.</i> 4.7; <i>Contr.</i> 4.7; <i>Contr.</i> 6.6; <i>Contr.</i> 7.5.1; <i>Contr.</i> 7.5.2; <i>Contr.</i> 7.5.4; <i>Contr.</i> 7.5.7; <i>Contr.</i> 7.5.9; <i>Contr.</i> 7.6.13; <i>Contr.</i> 8.3; <i>Contr.</i> 9.1.pr.; <i>Contr.</i> 9.1.3; <i>Contr.</i> 9.1.4; <i>Contr.</i> 9.1.5; <i>Contr.</i> 9.1.5; <i>Contr.</i> 9.1.6; <i>Contr.</i> 9.1.6; <i>Contr.</i> 9.1.7; <i>Contr.</i> 9.1.12; <i>Contr.</i> 9.2.13; <i>Suas.</i> 3.1; <i>Suas.</i> 3.1; <i>Suas.</i> 3.1
adulterium	36	<i>Contr.</i> 1.4.pr.; <i>Contr.</i> 1.4.6; <i>Contr.</i> 1.4.9; <i>Contr.</i> 1.4.12; <i>Contr.</i> 1.5.5; <i>Contr.</i> 1.7.pr.; <i>Contr.</i> 1.7.16; <i>Contr.</i> 2.3.14; <i>Contr.</i> 2.6.5; <i>Contr.</i> 2.7.1; <i>Contr.</i> 4.7; <i>Contr.</i> 4.7; <i>Contr.</i> 4.7; <i>Contr.</i> 4.7; <i>Contr.</i> 4.7; <i>Contr.</i> 4.7; <i>Contr.</i> 4.7; <i>Contr.</i> 6.6; <i>Contr.</i> 6.6; <i>Contr.</i> 6.6; <i>Contr.</i> 6.6; <i>Contr.</i> 6.6; <i>Contr.</i> 6.6; <i>Contr.</i> 6.6; <i>Contr.</i> 6.6; <i>Contr.</i> 6.6; <i>Contr.</i> 6.6; <i>Contr.</i> 6.7; <i>Contr.</i> 6.7; <i>Contr.</i> 6.7; <i>Contr.</i> 7.5.pr.; <i>Contr.</i> 7.5.3; <i>Contr.</i> 7.6.3; <i>Contr.</i> 9.1.pr.; <i>Contr.</i> 9.1.1; <i>Contr.</i> 9.1.15; <i>Contr.</i> 9.2.13; <i>Contr.</i> 10.5.14; <i>Suas.</i> 3.3
stuprum	25	<i>Contr.</i> 1.2.7; <i>Contr.</i> 1.2.8; <i>Contr.</i> 1.2.11; <i>Contr.</i> 1.2.12; <i>Contr.</i> 1.2.12; <i>Contr.</i> 1.2.13; <i>Contr.</i> 1.3.1; <i>Contr.</i> 1.3.2; <i>Contr.</i> 1.5.1; <i>Contr.</i> 1.5.1; <i>Contr.</i> 2.3.4; <i>Contr.</i> 2.5.1; <i>Contr.</i> 2.7.pr.; <i>Contr.</i> 2.7.5; <i>Contr.</i> 2.7.6; <i>Contr.</i> 3.8; <i>Contr.</i> 6.8; <i>Contr.</i> 6.8; <i>Contr.</i> 7.6.9; <i>Contr.</i> 7.6.13; <i>Contr.</i> 7.8.6; <i>Contr.</i> 7.8.6; <i>Contr.</i> 8.6; <i>Contr.</i> 9.1.6; <i>Contr.</i> 10.4.11
adultera	21	<i>Contr.</i> 1.4.pr.; <i>Contr.</i> 1.4.8; <i>Contr.</i> 2.7.1; <i>Contr.</i> 2.7.1; <i>Contr.</i> 2.7.6; <i>Contr.</i> 2.7.8; <i>Contr.</i> 4.7; <i>Contr.</i> 4.7; <i>Contr.</i> 6.6; <i>Contr.</i> 6.6; <i>Contr.</i> 7.3.6; <i>Contr.</i> 7.5.1; <i>Contr.</i> 7.5.4; <i>Contr.</i> 7.5.4; <i>Contr.</i> 7.5.9; <i>Contr.</i> 9.1.pr.; <i>Contr.</i> 9.1.4; <i>Contr.</i> 9.1.4; <i>Contr.</i> 9.1.14; <i>Suas.</i> 3.1; <i>Suas.</i> 3.1
adulterus	5	<i>Contr.</i> 1.4.6; <i>Contr.</i> 1.4.7; <i>Contr.</i> 9.1.7; <i>Contr.</i> 9.1.15; <i>Suas.</i> 3.1
stuprare	3	<i>Contr.</i> 1.2.8; <i>Contr.</i> 5.6; <i>Contr.</i> 7.6.13
adulterare	1	<i>Contr.</i> 7.6.2
stuprator	1	<i>Contr.</i> 7.6.13
μοιχός	1	<i>Contr.</i> 1.2.23

## Bibliography

- Adams, J. N., 1972, "Latin words for 'woman' and 'wife'" in *Glotta*, vol. 50, no. 3, pp. 234-255
- Adams, J. N., 1982, *The Latin Sexual Vocabulary*. Duckworth, London
- Adams, J. N., 1983a, "Martial 2. 83" in *Classical Philology*, vol. 78, no. 4, pp. 311-315
- Adams, J. N., 1983b, "Words for 'prostitute' in Latin" in *Rheinisches Museum für Philologie*, vol. 126, no. 3, pp. 321-358
- Adams, J. N., 2003, *Bilingualism and the Latin Language*. Cambridge University Press, Cambridge
- Ahl, F. M., 1984, "The art of safe criticism in Greece and Rome" in *The American Journal of Philology*, vol. 105, no. 2, pp. 174-208
- Arena, V., 2007, "Roman oratorical invective" in Dominik, W., and Hall, J., (eds.), *A Companion to Roman Rhetoric*. Blackwell Publishing, Oxford. pp. 149-160
- Arjava, A., 1996, *Women and Law in Late Antiquity*. Clarendon Press, Oxford
- Arkins, B., 1982, *Sexuality in Catullus*. Georg Olms Verlag, Hildesheim
- Astin, A. E., 1988, "Regimen morum" in *The Journal of Roman Studies*, vol. 78, pp. 14-34
- Austin, R. G., (ed.), 1960, *M. Tulli Ciceronis: Pro M. Caelio Oratio*. Clarendon Press, Oxford
- Bablitz, L., 2007, *Actors and Audience in the Roman Courtroom*. Routledge, London
- Badian, E., 1988, "Which Metellus? A footnote to Professor Barchiesi's article" in *American Journal of Ancient History*, vol. 13, pp. 106-112
- Badian, E., 1985, "A phantom marriage law" in *Philologus*, vol. 129, no. 1, pp. 82-98
- Badian, E., 1993, "Livy and Augustus" in Schuller, W., (ed.), *Livius: Aspekte seines Werkes*. Universitätsverlag Konstanz, Konstanz. pp. 9-38
- Baldwin, B., 1970, "Horace on Sex" in *The American Journal of Philology*, vol. 91, no. 4, pp. 460-465

- Bauman, R. A., 1968, "Some remarks on the structure and survival of the *quaestio de adulteriis*" in *Antichthon*, vol. 2, pp. 68-93
- Bauman, R. A., 1992, *Women and Politics in Ancient Rome*. Routledge, London
- Bauman, R. A., 1996, *Crime and Punishment in Ancient Rome*. Routledge, London
- Berger, A., 1946, "Note on Gellius, N. A., I, 6" in *The American Journal of Philology*, vol. 67, no. 4, pp. 320-328
- Berger, A., 1953, *Encyclopedic Dictionary of Roman Law*. The American Philological Society, Philadelphia
- Bernstein, N. W., 2012, "'Torture her until she lies': torture, testimony, and social status in Roman rhetorical education" in *Greece & Rome*, vol. 59, no. 2, pp. 165-177
- Bettini, M., 1995, "In vino stuprum" in Murray, O., and Tesušan, M., (eds.), *In Vino Veritas*. British School at Rome, London. pp. 224-235
- Bloomer, W. M., 1992, *Valerius Maximus & the Rhetoric of the New Nobility*. Duckworth, London
- Blume, F. H., (edited by Kearley, T.), 2009, *Annotated Justinian Code: Second Edition*. Accessed online at <http://uwacadweb.uwyo.edu/blume&justinian/default.asp>. Last accessed 19/10/2012
- Bonner, S. F., 1949, *Roman Declamation in the Late Republic and Early Empire*. University of Liverpool Press, Liverpool
- Boswell, J., 1980, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century*. University of Chicago Press, Chicago
- des Bouvrie, S., 1984, "Augustus' legislation on morals – which morals and what aims?" in *Symbolae Osloenses*, vol. 59, pp. 93-113
- Braund, S. H., 1992, "Juvenal – misogynist or misogynist?" in *The Journal of Roman Studies*, vol. 82, pp. 71-86
- Braund, S. M., (ed.), 1996, *Juvenal: Satires Book I*. Cambridge University Press, Cambridge
- Braund, S. M., 2005, "Marriage, adultery, and divorce in Roman comic drama" in Warren, S. S., (ed.), *Satiric Advice on Women and Marriage: from Plautus to Chaucer*. The University of Michigan Press, Ann Arbor. pp. 39-70

- Briscoe, J., 2008, *A Commentary on Livy Books 38-40*. Oxford University Press, Oxford
- Brown, P., 2006, *Terence: the Comedies*. Oxford University Press, Oxford
- Brunt, P. A., 1971, *Italian Manpower 225 BC – AD 14*. Clarendon Press, Oxford
- Brunt, P. A., and Moore, J. M., (eds.), 1967, *Res Gestae Divi Augusti*. Oxford University Press, Oxford
- Buckland, W. W., 1970, *The Roman Law of Slavery: the Condition of the Slave in Private Law from Augustus to Justinian*. Cambridge University Press, Cambridge
- Burton, P. J., 2000, "The last republican historian: a new date for the composition of Livy's first pentad" in *Historia: Zeitschrift für Alte Geschichte*, vol. 49, no. 4, pp. 429-446
- Bushala, E. W., 1971, "The motif of sexual choice in Horace, 'Satire' 1.2" in *The Classical Journal*, vol. 66, no. 4, pp. 312-315
- Cadoux, T. J., 2005, "Catiline and the Vestal Virgins" in *Historia: Zeitschrift für Alte Geschichte*, vol. 54, no. 2, pp. 162-179
- Cairns, F., 1979, "Propertius on Augustus' marriage law (II, 7)" in *Grazer Beiträge*, vol. 8, pp. 185-204
- Cameron, A., 1968, "The first edition of Ovid's *Amores*" in *The Classical Quarterly*, vol. 18, no. 2, pp. 320-333
- Cantarella, E., 1991, "Homicides of honour: the development of Italian adultery law over two millennia" in Kertzer, D. I., and Saller, R. P., (eds.), *The Family in Italy from Antiquity to the Present*. Yale University Press, New Haven. pp. 229-244
- Cantarella, E., (trans. by Cuilleán C. Ó.), 1992, *Bisexuality in the Ancient World*. Yale University Press, New Haven
- Carey, C., 1995, "Rape and adultery in Athenian law" in *The Classical Quarterly: New Series*, vol. 45, no. 2, pp. 407-417
- Carradice, I., 1983, *Coinage and Finances in the Reign of Domitian, AD 81-96*. British Archaeological Reports, Oxford
- Christenson, D. M., (ed.), 2000, *Plautus: Amphitryo*. Cambridge University Press, Cambridge



- Cloud, J. D., 1989, "Satirists and the law" in Braund, S. H., (ed.), *Satire and Society in Ancient Rome*. Exeter University Publications, Exeter. pp. 49-67
- Cohen, D., 1991, "The Augustan law on adultery: the social and cultural context" in Kertzer, D. I., and Saller, R. P., (eds.), *The Family in Italy from Antiquity to the Present*. Yale University Press, New Haven. pp. 109-126
- Cole, S. G., 1984, "Greek sanctions against sexual assault" in *Classical Philology*, vol. 79, no. 2, pp. 97-113
- Coleman, R., (ed.), 1977, *Vergil Eclogues*. Cambridge University Press, Cambridge
- Corbeill, A., 1996, *Controlling Laughter: Political Humour in the Late Roman Republic*. Princeton University Press, Princeton
- Corbeill, A., 2002, "Ciceronian invective" in May, J. M., (ed.), *Brill's Companion to Cicero: Oratory and Rhetoric*. Brill, Leiden. pp. 197-217
- Cornell, T., 1981, "Some observations on the « crimen incesti »" in *Le Délit Religieux dans la Cité Antique*. École Française de Rome, Rome. pp. 27-37
- Craig, C., 2004, "Audience expectations, invective, and proof" in Powell, J., and Paterson, J., (eds.), *Cicero the Advocate*. Oxford University Press, Oxford. pp. 187-213
- Crawford, M., (ed.), 1996, *Roman Statutes: Volume Two*. University of London, Institute of Classical Studies, London
- Crook, J. A., 1967, *Law and Life of Rome*. Thames and Hudson, London
- Croom, A. T., 2000, *Roman Clothing and Fashion*. Tempus, Stroud
- Curran, L. C., 1970, "Nature, convention, and obscenity in Horace, *Satires* 1.2" in *Arion*, vol. 9, no. 2, pp. 220-245
- Daube, D., 1972, "The *lex Julia* concerning adultery" in *Irish Jurist*, vol. 7, pp. 373-380
- Davis, P. J., 1995, "*Praeceptor amoris*: Ovid's *Ars Amatoria* and the Augustan idea of Rome" in *Ramus*, vol. 24, no. 1, pp. 181-195
- Davis, P. J., 1999, "Ovid's *Amores*: a political reading" in *Classical Philology*, vol. 94, no. 4, pp. 431-449

- Davis, P. J., 2006, *Ovid and Augustus: a Political Reading of Ovid's Erotic Poems*. Duckworth, London
- Dessen, C., 1968, "The sexual and financial mean in Horace's *Serm.*, I, 2" in *The American Journal of Philology*, vol. 89, no. 2, pp. 200-208
- Dettmer, H., 1997, *Love by the Numbers: Form and the Meaning in the Poetry of Catullus*. Peter Lang, New York
- Dixon, S., 1988, *The Roman Mother*. Croom Helm, London
- Dixon, S., 2001, *Reading Roman Women: Sources, Genres, and Real Life*. Duckworth, London
- Dorey, T. A., 1961, "Adultery and propaganda in the early Roman empire" in *University of Birmingham History Journal*, vol. 8, pp. 1-6
- DuQuesnay, I. M. Le M., 1984, "Horace and Maecenas: the propaganda value of *Sermones* I" in Woodman, T., and West, D., (eds.), *Poetry and Politics in the Age of Augustus*. Cambridge University Press, Cambridge. pp. 19-58
- Earl, D., 1967, *The Moral and Political Tradition of Rome*. Thames and Hudson, London
- Edwards, C., 1993a, *The Politics of Immorality in Ancient Rome*. Cambridge University Press, Cambridge
- Edwards, C., 1993b, Review of Mette-Dittmann (1991), in *Gnomon*, vol. 65, no. 8, pp. 739-741
- Evans, H. B., 1978, "Horace, *Satires* 2.7: Saturnalia and satire" in *The Classical Journal*, vol. 73, no. 4, pp. 307-312
- Evans, R., 2008, *Utopia Antiqua: Readings of the Golden Age and Decline at Rome*. Routledge, London
- Evans Grubbs, J., 1993, "Constantine and imperial legislation on the family" in Harries, J., and Wood, I., (eds.), *The Theodosian Code: Studies in the Imperial Law of Late Antiquity*. Duckworth, London. pp. 120-142
- Evans Grubbs, J., 1995, *Law and Family in Late Antiquity: the Emperor Constantine's Marriage Legislation*. Clarendon Press, Oxford
- Fantham, E., 1991, "*Stuprum*: public attitudes and penalties for sexual offences in Republican Rome" in *Echos du Monde Classique*, vol. 35, pp. 267-291

- Fayer, C., 2005, *La Familia Romana: Aspetti Giuridici ed Antiquari Concubinato Divorzio Adulterio. Parte Terza. "L'erma" di Bretschneider*, Rome
- Fear, T., 2000, "The poet as pimp: elegiac seduction in the time of Augustus" in *Arethusa*, vol. 33, no. 2, pp. 217-240
- Ferrill, A., 1980, "Augustus and his daughter: a modern myth" in Deroux, C., (ed.), *Studies in Latin Literature and Roman History II*. Latomus, Brussels. pp. 332-346
- Field, Jr., J. A., 1945, "The purpose of the *lex Iulia et Papia Poppaea*" in *The Classical Journal*, vol. 40, no. 7, pp. 398-416
- Fraenkel, E., 1957, *Horace*. Clarendon Press, Oxford
- Frank, R. I., 1975, "Augustus' legislation on marriage and children" in *California Studies in Classical Antiquity*, vol. 8, pp. 41-52
- Gale, M. R., 1997, "Propertius 2.7: *militia amoris* and the ironies of elegy" in *The Journal of Roman Studies*, vol. 87, pp. 77-91
- Galinsky, K., 1981, "Augustus' legislation on morals and marriage" in *Philologus*, vol. 125, no. 1, pp. 126-144
- Galinsky, K., 1996, *Augustan Culture: an Interpretive Introduction*. Princeton University Press, Princeton
- Gardner, J. F., 1986, *Women in Roman Law and Society*. Croom Helm, London
- Gardner, J. F., 1998, *Family and Familia in Roman Law and Life*. Clarendon Press, Oxford
- Garnsey, P., 1967, "Adultery trials and the survival of the *quaestiones* in the Severan age" in *Journal of Roman Studies*, vol. 57, pp. 56-60
- Garnsey, P., 1970, *Social Status and Legal Privilege in the Roman Empire*. Clarendon Press, Oxford
- Garthwaite, J., 1990, "Martial, Book 6, on Domitian's moral censorship" in *Prudentia*, vol. 22, no. 1, pp. 13-22
- Gebhardt, U. C. J., 2009, *Sermo Iuris: Rechtssprache un Recht in der augusteischen Dichtung*. Brill, Leiden
- Gibson, R. K., 2003, *Ovid: Ars Amatoria Book 3*. Cambridge University Press, Cambridge

- Gibson, R. K., 2007, *Excess and Restraint: Propertius, Horace, and Ovid's Ars Amatoria*. Institute of Classical Studies, University of London, London
- Goette, H. R., 1989, *Studien zu römischen Togadarstellungen*. Philipp von Zabern, Mainz am Rhein
- Goodyear, F. R. D., 1981, *The Annals of Tacitus Books 1-6 Volume II: Annals 1.55-81 and Annals 2*. Cambridge University Press, Cambridge
- Goold, G. P., 1983a, *Catullus*. Duckworth, London
- Goold, G. P., 1983b, "The cause of Ovid's exile" in *Illinois Classical Studies*, vol. 8, no. 1, pp. 94-107
- Gray-Fow, M., 1986, "Pederasty, the Scantinian law, and the Roman army" in *Journal of Psychohistory*, vol. 13, no. 4, pp. 449-460
- Green, R. P. H., (ed.), 1991, *The Works of Ausonius*. Clarendon Press, Oxford
- Green, S. J., 2004, *Ovid, Fasti 1: a Commentary*. Brill, Leiden
- Greene, E., 1994, "Sexual politics in Ovid's *Amores*: 3.4, 3.8, and 3.12" in *Classical Philology*, vol. 89, no. 4, pp. 344-350
- Grelle, F., 1980, "La 'correctio morum' nella legislazione flavia" in *Aufstieg und Niedergang der römischen Welt*, vol. 2.13, pp. 346-365
- Griffin, J., 1985, *Latin Poets and Roman Life*. Duckworth, London
- Griffin, J., 1993, "Horace in the thirties" in Rudd, N., (ed.), *Horace 2000: a Celebration. Essays for the Bimillennium*. Duckworth, London. pp. 1-22
- Hallett, J. P., 1973, "The role of women in Roman elegy: counter-cultural feminism" in *Arethusa*, vol. 6, no. 1, pp. 103-124
- Harries, J., 2007, *Law and Crime in the Roman World*. Cambridge University Press, Cambridge
- Harris, E. M., 1990, "Did the Athenians regard seduction as a worse crime than rape?" in *The Classical Quarterly*, vol. 40, pp. 370-377
- Helm, R., (ed.), 1984, *Die Chronik des Hieronymus: Third Edition*. Akademie-Verlag, Berlin
- Hernández, A. Á., 2006, "La *moecha* (= Lesbia) del poema 42 de Catulo" in *Euphrosyne (nova série)*, vol. 34, pp. 267-278

- Hough, J. N., 1934, "The use of Greek words by Plautus" in *The American Journal of Philology*, vol. 55, no. 4, pp. 346-364
- Hough, J. N., 1947, "Terence's use of Greek words" in *The Classical Weekly*, vol. 41, no. 2, pp. 18-21
- Housman, A. E., (ed.), 1938, *D. Iunii Iuvenalis: Saturae*. Cambridge University Press, Cambridge
- Humphreys, S., 1985, "Law as discourse" in *History and Anthropology*, vol. 1, no. 2, pp. 241-264
- Hurley, D. W., (ed.), 2001, *Suetonius: Divus Claudius*. Cambridge University Press, Cambridge
- Hutchinson, G., (ed.), 2006, *Propertius Elegies Book IV*. Cambridge University Press, Cambridge
- Jones, A. H. M., 1972, *The Criminal Courts of the Roman Republic and Principate*. Blackwell, Oxford
- Jones, B. W., 1992, *The Emperor Domitian*. Routledge, London
- Jones, F., 2007, *Juvenal and the Satiric Genre*. Duckworth, London
- Joshel, S. R., 1992, "The body female and the body politic: Livy's Lucretia and Verginia" in Richlin, A., (ed.), *Pornography and Representation in Greece and Rome*. Oxford University Press, Oxford. pp. 112-130
- Joshel, S. R., 1997, "Female desire and the discourse of empire: Tacitus' Messalina" in Hallett, J. P., and Skinner, M. B., (eds.), *Roman Sexualities*. Princeton University Press, Princeton. pp. 221-254
- Kaster, R. A., (ed.), 1995, *C. Suetonius Tranquillus: de Grammaticis et Rhetoribus*. Clarendon Press, Oxford
- Kaster, R. A., 2006, *Marcus Tullius Cicero: Speech on Behalf of Publius Sestius*. Clarendon Press, Oxford
- Kehoe, P. H., 1984, "The adultery mime reconsidered" in Bright, D. F., and Ramage, E. S., (eds.), *Classical Texts and their Traditions. Studies in Honor of C. R. Trahman*. Scholars Press, Chico. pp. 89-106
- Keith, A., 2008, *Propertius: Poet of Love and Leisure*. Duckworth, London
- Kennedy, D. F., 1992, "'Augustan' and 'anti-Augustan': reflections on terms of reference" in Powell, A., *Roman Poetry and Propaganda in the Age of Augustus*. Bristol Classical Press, London. pp. 26-58

- Kennedy, G., 1972, *The Art of Rhetoric in the Roman World*. Princeton University Press, Princeton
- Kenney, E. J., 1969, "Ovid and the law" in *Yale Classical Studies*, vol. 21, pp. 243-263
- Kleiner, D. E. E., 1978, "The great friezes of the Ara Pacis Augustae: Greek sources, Roman derivatives, and Augustan social policy" in *Mélanges de l'école Française de Rome*, vol. 90, no. 2, pp. 753-785
- Knox, P. E., (ed.), 1995, *Ovid Heroides: Select Epistles*. Cambridge University Press, Cambridge
- Knox, P. E., 2009, "A poet's life" in Knox, P. E., (ed.), *Companion to Ovid*. Wiley-Blackwell, Chichester. pp. 3-7
- Kroll, W., 1929, *C. Valerius Catullus: Herausgegeben und Erklärt*. Druck von B. G. Teubner, Leipzig
- Kunkel, W., 1962, *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit*. Verlag der Bayerischen Akademie der Wissenschaften, Berlin
- Langlands, R., 2006, *Sexual Morality in Ancient Rome*. Cambridge University Press, Cambridge
- Last, H., 1934, "The social policy of Augustus" in Cook, S. A., Adcock, F. E., and Charlesworth, M. P., (eds.), *Cambridge Ancient History Volume X: the Augustan Empire, 44 BC to AD 70. First Edition*. Cambridge University Press, Cambridge. pp. 425-464
- Lenaghan, J. O., 1969, *A Commentary on Cicero's Oration De Haruspicum Responso*. Mouton, The Hague
- Levick, B., 1983, "The senatus consultum from Larinum" in *Journal of Roman Studies*, vol. 73, pp. 97-115
- Levine, P., 1985, "Catullus c.67: the dark side of love and marriage" in *Classical Antiquity*, vol. 4, no. 1, pp. 62-71
- Lilja, S., 1983, *Homosexuality in Republican and Augustan Rome*. Societas Scientiarum Fennica, Helsinki
- Luce, T. J., 1965, "The dating of Livy's first decade" in *Transactions and Proceedings of the American Philological Association*, vol. 96, pp. 209-240
- Luck, G., 1974, "The woman's role in Latin love poetry" in Luck, G., Anderson, W. S., Reckford, K. J., Segal E., and Galinsky, G. K., (eds.), *Perspectives of Roman Poetry: A Classics Symposium*. University of Texas Press, Austin. pp.15-32

- Lyne, R. O. A. M., 1980, *The Latin Love Poets: from Catullus to Horace*. Clarendon Press, Oxford
- MacCormack, G., 1975, "Wine drinking and the Romulan law of divorce" in *Irish Jurist*, vol. 10, pp. 170-174
- Maltby, R., 1985, "The distribution of Greek loan-words in Terence" in *The Classical Quarterly*, vol. 35, no. 1, pp. 110-123
- Manning, C. E., 1970, "Canidia in the *Epodes* of Horace" in *Mnemosyne*, vol. 23, no. 4, pp. 393-401
- Marshall, A. J., 1990, "Women on trial before the Roman senate" in *Echos du Monde Classique*, vol. 34, pp. 333-366
- McDermott, W. C., 1970, "The sisters of P. Clodius" in *Phoenix*, vol. 24, no. 1, pp. 39-47
- McDonald, M., and Walton, J. M., 2007, "Playwrights and plays" in McDonald, M., and Walton, J. M., (eds.), *The Cambridge Companion to Greek and Roman Theatre*. Cambridge University Press, Cambridge. pp. 327-330
- McDonnell, M., 1987, "The speech of Numidicus at Gellius, N.A. 1.6" in *The American Journal of Philology*, vol. 108, no. 1, pp. 81-94
- McGinn, T. A. J., 1991, "Concubinage and the lex Iulia on adultery" in *Transactions of the American Philological Association*, vol. 121, pp. 335-375
- McGinn, T. A. J., 1992, "The 'SC' from Larinum and the repression of adultery at Rome" in *Zeitschrift für Papyrologie und Epigraphik*, vol. 93, pp. 273-295
- McGinn, T. A. J., 1998a, *Prostitution, Sexuality, and the Law in Ancient Rome*. Oxford University Press, Oxford
- McGinn, T. A. J., 1998b, "Feminae probrosae and the litter" in *The Classical Journal*, vol. 93, no. 3, pp. 241-250
- McKeown, J. C., 1987, *Ovid: Amores. Text, Prolegomena and Commentary in Four Volumes. Volume 1: Text and Prolegomena*. Francis Cairns, Leeds
- McKeown, J. C., 1998, *Ovid: Amores. Text, Prolegomena and Commentary in Four Volumes. Volume 3: a Commentary on Book Two*. Francis Cairns, Leeds
- Mette-Dittmann, A., 1991, *Die Ehegesetze des Augustus: eine Untersuchung im Rahmen der Gesellschaftspolitik des Princeps*. Franz Steiner Verlag, Stuttgart

- Milnor, K., 2005, *Gender, Domesticity, and the Age of Augustus*. Oxford University Press, Oxford
- Morgan, T., 2007, *Popular Morality in the Early Roman Empire*. Cambridge University Press, Cambridge
- Mueller, H.-F., 1998, "Vita, Pudicitia, Libertas: Juno, gender, and religious politics in Valerius Maximus" in *Transactions of the American Philological Association*, vol. 128, pp. 221-263
- Nicolet, C., 1984, "Augustus, government, and the propertied classes" in Millar, F., and Segal, E., (eds.), *Caesar Augustus: Seven Aspects*. Clarendon Press, Oxford. pp. 89-128
- Nisbet, R., 2007, "Horace: life and chronology" in Harrison, S., (ed.), *The Cambridge Companion to Horace*. Cambridge University Press, Cambridge. pp. 7-21
- Nisbet, R. G. M., and Hubbard, M., 1980, *A Commentary on Horace: Odes Book One*. Clarendon Press, Oxford
- Nörr, D., 1981, "The matrimonial legislation of Augustus: an early instance of social engineering" in *The Irish Jurist*, vol. 16, pp. 350-364
- Oakley, S. P., 1997, *A Commentary on Livy Books VI-X Volume One*. Clarendon Press, Oxford
- Oakley, S. P., 1998, *A Commentary on Livy Books VI-X Volume Two*. Clarendon Press, Oxford
- Oakley, S. P., 2005, *A Commentary on Livy Books VI-X Volume Four*. Clarendon Press, Oxford
- Olson, K., 2002, "Matrona and whore: the clothing of women in Roman antiquity" in *Fashion Theory*, vol. 6, no. 4, pp. 387-420
- Ormand, K., 2009, *Controlling Desires: Sexuality in Ancient Greece and Rome*. Praeger, London
- Pagán, V. E., 2012, "Introduction" in Pagán, V. E., (ed.), *A Companion to Tacitus*. Blackwell, London. pp. 1-12
- Parkin, T., 2007, "Augustus' marriage legislation and Brunt's *Italian Manpower*." Unpublished, paper given at the Oxford BruntFest conference March 2007
- Paul, G. M., 1985, "Sallust, 'Catiline' 14.2" in *Phoenix*, vol. 39, no. 2, pp. 158-161
- Pollmann, K., 2005, "Marriage and gender in Ovid's erotodidactic poetry" in Smith, W. S., (ed.), *Satiric Advice on Women and Marriage: from Plautus to Chaucer*. The University of Michigan Press, Ann Arbor. pp. 92-110



- Powell, J. G. F., 2007, "Invective and the orator: Ciceronian theory and practice" in Booth, J., (ed.), *Cicero on the Attack: Invective and Subversion in the Orations and Beyond*. The Classical Press of Wales, Swansea. pp. 1-23
- Powell, J. G. F., 2010, "Juvenal and the *delatores*" in Kraus, C. S., Marincola, J., and Pelling, C., (eds.), *Ancient Historiography and its Contexts*. Oxford University Press, Oxford. pp. 224-244
- Purcell, N., 1994, "Women and wine in ancient Rome" in McDonald, M., (ed.), *Gender Drink and Drugs*. Berg, Oxford. pp. 191-208
- Raditsa, L. F., 1980, "Augustus's legislation concerning marriage, procreation, love affairs and adultery" in *Aufstieg und Niedergang der Römischen Welt*, vol. 2.13, pp. 278-339
- Ramsey, J. T., 1984, *Sallust's Bellum Catilinae*. Scholars Press, Chico
- Reynolds, R. W., 1946, "The adultery mime" in *The Classical Quarterly*, vol. 40, no. 3, pp. 77-84
- Riccobono, S., 1945, *Acta Divi Augusti I*. Ex Officina Typographica R. Academiae Italicae, Rome
- Richardson, Jr., L., (ed.), 1977, *Propertius Elegies I-IV*. University of Oklahoma Press, Norman
- Richlin, A., 1981a, "The meaning of *irrumare* in Catullus and Martial" in *Classical Philology*, vol. 76, no. 1, pp. 40-46
- Richlin, A., 1981b, "Approaches to the sources on adultery at Rome" in Foley, H. P., (ed.), *Reflections of Women in Antiquity*. Gordon and Breach, London. pp. 379-404
- Richlin, A., 1993, 'Not before homosexuality: the materiality of the *cinaedus* and the Roman law against love between men' in *Journal of the History of Sexuality*, vol. 3, no. 4, pp. 523-573
- Robinson, O. F., 1997, *The Sources of Roman Law: Problems and Methods for Ancient Historians*. Routledge, London
- Rudd, N., 1976, *Lines of Enquiry: Studies in Latin Poetry*. Cambridge University Press, Cambridge
- Rudd, N., 1986, *Themes in Roman Satire*. Duckworth, London
- Rudd, N., 1993, "Horace as a moralist" in Rudd, N., (ed.), *Horace 2000: a Celebration. Essays for the Bimillennium*. Duckworth, London. pp. 64-88

- Russell, B. F., 2003, "Wine, women, and the polis: gender and the formation of the city-state in archaic Rome" in *Greece and Rome*, vol. 50, pp. 77-84
- Rutledge, S. H., 2009, "Writing imperial politics: the social and political background" in Dominik, W. J., Garthwaite, J., and Roche, P. A., (eds.), *Writing Politics in Imperial Rome*. Brill, Leiden. pp. 23-61
- Saller, R. P., 1988, "Pietas, obligation and authority in the Roman family" in Kneissl, P., and Loseman, V., (eds.), *Alte Geschichte und Wissenschaftsgeschichte: Festschrift für Karl Christ zum 65. Geburtstag*. Wissenschaftliche Buchgesellschaft, Darmstadt. pp. 393-410
- Saller, R. P., 1999, "Pater familias, mater familias, and the gendered semantics of the Roman household" in *Classical Philology*, vol. 94, no. 2, pp. 182-197
- Sawer, G., 1965, *Law in Society*. Clarendon Press, Oxford
- Scafuro, A., 1989, "Livy's comic narrative of the Bacchanalia" in *Helios*, vol. 16, no. 2, pp. 119-142
- Scafuro, A. C., 1997, *The Forensic Stage: Settling Disputes in Graeco-Roman New Comedy*. Cambridge University Press, Cambridge
- Sebesta, J. L., 1994, "Symbolism in the costume of the Roman woman" in Sebesta, J. L., and Bonfante, L., (eds.), *The World of Roman Costume*. The University of Wisconsin Press, Madison. pp. 46-53
- Sebesta, J., 2005, "The *toga praetexta* of Roman children and praetextate garments" in Cleland, L., Harlow, M., and Llewellyn-Jones, L., (eds.), *The Clothed Body in the Ancient World*. Oxbow Books, Oxford. pp. 113-120
- Sehling, E., 1883, "Das Stafsystem der lex Iulia de adulteriis" in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*. H. Böhlau Nachf., Weimar. pp. 160-163
- Severy, B., 2003, *Augustus and the Family at the Birth of the Roman Empire*. Routledge, London
- Shackleton-Bailey, D. R., 1985, "More on Cicero's speeches (*post reditum*)" in *Harvard Studies in Classical Philology*, vol. 89, pp. 141-151
- Sharland, S., 2010, *Horace in Dialogue: Bakhtinian Readings in the Satires*. Peter Lang, Oxford
- Sharrock, A. R., 1994, "Ovid and the politics of reading" in *Materiali e Discussioni per l'analisi dei testi Classici*, vol. 33, pp. 97-122

- Skidmore, C., 1996, *Practical Ethics for Roman Gentlemen: the Works of Valerius Maximus*. University of Exeter Press, Exeter
- Skinner, M. B., 2007, "Introduction" in Skinner, M. B., (ed.), *A Companion to Ovid*. Blackwell, Oxford. pp. 1-9
- Smith, Jr., W. S., 1980, "Husband vs. wife in Juvenal's sixth satire" in *The Classical World*, vol. 73, no. 6, pp. 323-332
- Smith, W. S., 2005, "Advice on sex by the self-defeating satirists: Horace *Sermones* I.2, Juvenal *Satire* 6, and Roman satiric writing" in Smith, W. S., (ed.), *Satiric Advice on Women and Marriage: from Plautus to Chaucer*. The University of Michigan Press, Ann Arbor. pp. 111-128
- Stewart, R., 1994, "Domitian and Roman religion: Juvenal, *Satires* two and four" in *Transactions of the American Philological Association*, vol. 124, pp. 309-332
- Sullivan, J. P., 1976, *Propertius: a Critical Introduction*. Cambridge University Press, Cambridge
- Sullivan, J. P., 1979, "Martial's sexual attitudes" in *Philologus*, vol. 123, no. 2, pp. 288-302
- Sullivan, J. P., 1991, *Martial: the Unexpected Classic. A Literary and Historical Study*. Cambridge University Press, Cambridge
- Syme, R., 1939, *The Roman Revolution*. Clarendon Press, Oxford
- Syme, R., 1958, *Tacitus: Volume Two*. Clarendon Press, Oxford
- Syme, R., 1978, *History in Ovid*. Clarendon Press, Oxford
- Syme, R., 1979, "Livy and Augustus" in Badian, E., (ed.), *Ronald Syme: Roman Papers I*. Clarendon Press, Oxford. pp. 400-454
- Syme, R., 1984a, "The crisis of 2 BC" in Birley, A. R., (ed.), *Ronald Syme: Roman Papers III*. Clarendon Press, Oxford. pp. 912-936
- Syme, R., 1984b, "Juvenal, Pliny and Tacitus" in Birley, A. R., (ed.), *Ronald Syme: Roman Papers III*. Clarendon Press, Oxford. pp. 1135-1157
- Syme, R., 1991, "Dynastic marriages in the Roman aristocracy" in Birley, A. R., (ed.), *Ronald Syme Roman Papers VI*. Clarendon Press, Oxford. pp. 338-345
- Talbert, R. J. A., 1984, *The Senate of Imperial Rome*. Princeton University Press, Princeton

- Tatum, W. J., 1999, *The Patrician Tribune: Publius Clodius Pulcher*. The University of North Carolina Press, Chapel Hill
- Thomas, J. A. C., 1961, "Accusatio adulterii" in *Iura: Rivista Internazionale di Diritto Romano e Antico*, vol. 12, pp. 65-80
- Thomas, R. F., (ed.), 2011, *Horace: Odes Book IV and Carmen Saeculare*. Cambridge University Press, Cambridge
- Thomsen, O., 1992, *Ritual and Desire: Catullus 61 and 62 and other Ancient Documents on Weddings and Marriage*. Aarhus University Press, Aarhus
- Todd, S., 2007, *A Commentary on Lysias, Speeches 1-11*. Oxford University Press, Oxford
- Tracy, V. A., 1976, "The leno-maritus" in *The Classical Journal*, vol. 72, no. 1, pp. 62-64
- Treggiari, S., 1981, "Concubinae" in *Papers of the British School at Rome*, vol. 49, pp. 59-81
- Treggiari, S., 1991, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian*. Clarendon Press, Oxford
- Treggiari, S., 1996, "Social status and social legislation" in *Cambridge Ancient History Volume X: the Augustan Empire, 43 BC to AD 69. Second Edition*. Cambridge University Press, Cambridge. pp. 873-904
- Veyne, P., 1985, "Homosexuality in Ancient Rome" in Ariès, P., and Béjin, A., (eds.), (trans. by Foster, A.), *Western Sexuality: Practice and Precept in Past and Present Times*. Blackwell, Oxford. pp. 26-35
- Vinson, M. P., 1989, "Domitia Longina, Julia Titi and the literary tradition" in *Historia: Zeitschrift für Alte Geschichte*, vol. 38, no. 4, pp. 431-450
- Wallace-Hadrill, A., 1981, "Family and inheritance in the Augustan marriage laws" in *Proceedings of the Cambridge Philological Society*, vol. 27, pp. 58-80
- Wallace-Hadrill, A., 1982, "The Golden Age and sin in Augustan ideology" in *Past and Present*, vol. 95, pp. 19-36
- Wallace-Hadrill, A., 1983, *Suetonius: the Scholar and his Caesars*. Duckworth, London
- Wallace-Hadrill, A., 1985, "Propaganda and dissent? Augustan moral legislation and the love poets" in *Klio*, vol. 67, pp. 180-184

- Walsh, P. G., 1989, *Livy: his Historical Aims and Methods. Second Edition*. Bristol Classical Press, Bristol
- Wardle, D., 1994, *Suetonius' Life of Caligula: a Commentary*. Latomus, Brussels
- Wardle, D., 1998, *Valerius Maximus: Memorable Deeds and Sayings Book 1*. Clarendon Press, Oxford
- Watson, A., 1975, *Rome of the XII Tables: Persons and Property*. Princeton University Press, Princeton
- Watson, A., 1987, *Roman Slave Law*. The John Hopkins University Press, London
- Watson, A., (ed.), 1998, *The Digest of Justinian*. The University of Pennsylvania Press, Philadelphia
- Watson, P., 1985, "Axelson revisited: the selection of vocabulary in Latin poetry" in *The Classical Quarterly*, vol. 35, no. 2, pp. 430-448
- Watson, P., 2002a, "The originality of Martial's Language" in *Glotta*, vol. 78, no. 1, pp. 222-257
- Watson, P., 2002b, "*Praecepta amoris*: Ovid's didactic elegy" in Boyd, B. W., (ed.), *Brill's Companion to Ovid*. Brill, Leiden. pp. 141-165
- Weissler, B., 2012, "Government and the bedroom" in *Yale Undergraduate Law Review*, vol. 2, no. 2, accessed online at <http://yulr.org/government-and-the-bedroom/> on 24/10/2012
- Williams, C. A., (ed.), 2004, *Martial: Epigrams Book Two*. Oxford University Press, Oxford
- Williams, C. A., 2010, *Roman Homosexuality: Second Edition*. Oxford University Press, Oxford
- Williams, G., 1962, "Poetry in the moral climate of Augustan Rome" in *The Journal of Roman Studies*, vol. 52, no. 1, pp. 28-46
- Williams, G., 1968, *Tradition and Originality in Roman Poetry*. Clarendon Press, Oxford
- Williams, G., 2009, "Politics in Ovid" in Dominik, W. J., Garthwaite, J., and Roche, P. A., (eds.), *Writing Politics in Imperial Rome*. Brill, Leiden. pp. 203-224
- White, P., 1993, *Promised Verse: Poets in the Society of Augustan Rome*. Harvard University Press, Cambridge

- White, P., 2002, "Ovid and the Augustan milieu" in Boyd, B. W., (ed.), *Brill's Companion to Ovid*. Brill, Leiden. pp. 1-26
- Woodman, A. J., 1988, *Rhetoric in Classical Historiography: Four Studies*. Croom Helm, London
- Wyke, M., 1987, "The elegiac woman at Rome" in *Proceedings of the Cambridge Philological Society*, vol. 33, pp. 153-178
- Wyke, M., 2002, *The Roman Mistress: Ancient and Modern Representations*. Oxford University Press, Oxford
- Zanker, P., (trans. by Shapiro, A.), 1988, *The Power of Images in the Age of Augustus*. University of Michigan Press, Ann Arbor