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Between bedroom and courtroom: legal and literary perspectives on  
slaves and the freed in Augustus' adultery legislation

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### **Declaration of Own Work**

This thesis has been composed by the candidate, the work is the candidate's own and the work has not been submitted for any degree or professional qualification except as specified.

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## ABSTRACT

This thesis offers an investigation into the roles of slaves and freedmen and the extent of their involvement in the Romans' legal and literary discourse on adultery and the legislation introduced to address it – the *lex Iulia de adulteriis coercendis*. It also seeks to assert their place more firmly within the context of the Roman *familia* and explore what this means in the context of the adultery statute. This thesis reasserts the position of slaves and freedmen within the Roman *familia* as a whole and, more specifically, as individuals deserving and requiring of consideration within the context of the analysis of the adultery statute and other social legislation.

A multi-disciplinary approach has been adopted in this thesis to address the multiple avenues apparent in the investigation. A detailed analysis of the primary extant source of the statute, found in Justinian's *Digest*, was carried out to determine the extent of the inclusion of the servile and freed in adulterous relationships and how much consideration was shown to them by the legal writers, or jurists. As a corollary to this analysis, a range of literary works, from Ovid, the Elder Seneca, Quintilian, Tacitus and Suetonius, was examined to provide a counterpoint to the legal perspective on the inclusion of slaves and freedmen within adulterous relationships, and, subsequently, the *familia*.

Re-assessing the roles of slaves and freedmen within adulterous relationships and the legislation aimed at controlling this crime also necessitates another reassessment – namely, that of the motivations behind the introduction of the statute itself. Notoriously difficult to determine, this thesis posits, in conclusion, that, rather than being an instrument of the moral indignation of the contemporary Roman population, the adultery legislation was instituted as an instrument of economic control to counter the potential dilution of the wealth of the elite of Rome by illegitimate children. Slaves and freedmen were, then, a crucial element of a deceptively complex piece of legislation typically assumed to affect and address members of the Roman elite only.





# CHAPTER ONE: INTRODUCTION

## 1.1 INTRODUCTION

‘Slave caught committing adultery!’ – at first glance, although this appears to be an unlikely scenario, this was not true for ancient Rome. Take, for instance, the gregarious, larger-than-life freedman Trimalchio, known as the host of the most fabulous dinner party in Latin literature, found in Petronius’ *Satyricon*. Within the vivid, sometimes unbelievable, depiction of his feast, Trimalchio mentions in two separate instances that he had sex with both his former master *and* his former mistress on numerous occasions, seemingly as part of his regular duties. He describes himself as having “battered” his mistress (in a sexual sense), and as being “the favourite of his master”.<sup>1</sup> Understandably, modern scholarship has focussed attention on the aspect of these relationships that one calls today sexual abuse.<sup>2</sup> The sexual abuse of slaves is an important part of the the study of slavery, especially in modern slavery studies, where the evidence from masters and slaves for sexual encounters and relationships is much more abundant than in ancient times. Most famous amongst this evidence is, perhaps, the diary of Thomas Thistlewood, written in schoolboy Latin, starting in 1750 and lasting throughout his 37 years in Jamaica, listing his sexual encounters with his numerous slaves.<sup>3</sup> Understanding the sexual domination of slaves by their masters, fully and properly, is a crucial element of the modern study of slavery. At the same time, at Rome, sexual relations between masters and slaves (and freedmen) could have a quite different aspect to them – namely, the potential to commit adultery, legally speaking. Of course, that potential existed also in modern times. But, as this thesis will show, studying the involvement of slaves and the freed in the context of adulterous relationships at Rome opens a completely new, and necessary, window onto their roles

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<sup>1</sup> Pet. *Sat* 75.

<sup>2</sup> See Grubbs (1993) and McGinn (1991) for just two examples of how sexual relationships between slaves and the mistresses/masters are treated in modern scholarship. Bauman (1993, 551) in his article discussing the rape of Lucretia, does recognise that her alleged relationship with a slave would have been classified as adultery but does not address the involvement of the slave any further.

<sup>3</sup> Walvin (2007, 118) who notes that “in his 37 years in Jamaica, his [Thistlewood’s] diary recorded sexual intercourse with 138 women.”

in the *familia*, and slave agency and identity more generally, that is perhaps unique amongst the societies that exploited slaves on a large scale.

It is important to emphasize, at this point, that this thesis does not deny the sexual abuse to which slaves, and freedmen, at Rome were subjected. However, it is my contention that to understand *Roman* slavery, the institution must be studied within the social practices and expectations of *Rome*. By examining the range, by which I mean the different facets of their involvement, and the nature, or underlying reasons for, the involvement of slaves and freedmen with adulterous relationships, it is possible to evaluate the various and varied roles that slaves and the freed would have taken up, as well as the consequences of this role-taking for a modern understanding of slave agency and slave identity in Roman society. This will also allow for a more complete appreciation and understanding of how the new adultery statute promulgated by Augustus would have affected these servile individuals. At first glance, to do so may seem to be a ‘tilting at windmills’ approach. This legislation was supposedly drafted with the aim of controlling those at the upper levels of the hierarchy in Rome, not those who were below them.<sup>4</sup> However – as will be seen repeatedly in this thesis – because of the nature of their roles and their position within the *familia*, slaves and freedmen were inescapably entangled with the intimate lives of their owners and patrons and were, thus, also entangled by the enactment of the new law introduced by Augustus, the *lex Iulia de adulteriis coercendis*, a statute that was supposed to punish those who violated their marriage and committed adultery. Introduced alongside a piece of legislation designed to encourage marriage and, hopefully, children, especially amongst the senatorial and equestrian classes at Rome, at first glance, there does not appear to have been any scope for the involvement of the servile and freed under the remit of this law. Yet, it is one of the central contentions of this thesis that since slaves and freedmen were part of the same *familia* as their owners and patrons they need to be included in discussions of the effects and implications of the adultery legislation in order to fully comprehend its impact and ramifications on society at large, as well as on the individual members of the *familia*.

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<sup>4</sup> The motivation and purpose of the adultery statute will be discussed in detail in the concluding chapter to the thesis.

## 1.2 CONTEXTUALISING THE LEX IULIA DE ADULTERIIS COERCENDIS

Augustus' law was not introduced into a legal and societal vacuum. There were legal precedents in the form of earlier legal innovations that were intended to be used to address situations where women had, or were suspected of, committing adultery; similarly, it is important to stress that Roman social *mores* and perceptions of adultery that will be examined subsequently in this thesis were not generated as a result of the introduction of the adultery statute. Simply put, there is a historical context for the introduction of the *lex Iulia de adulteriis coercendis* that should be appreciated before an in-depth examination of its effect on the servile and freed members of Roman society can be fruitfully discussed. The following brief summary of the contemporary legal, societal and cultural factors that were in place in Roman society before and during the ushering in of this new law will serve to anchor the forthcoming discussion in a common understanding of the milieu into which the adultery law was propagated. This section will first cover the legal structures that were already in place before Augustus brought about this *lex Iulia*. Highlighting the Roman approach to and ways of dealing with adultery that were embedded before the introduction of Augustus' *lex* in this way will make the drastic nature of the changes brought about by the adultery statute more apparent.

### 1.2.1 LIFE BEFORE THE *LEX*: THE LEGAL APPROACH TO ADULTERY BEFORE AUGUSTUS' ADULTERY STATUTE

Romans committed adultery before the *lex Iulia de adulteriis coercendis* was instituted by the, relatively, newly-minted emperor in 18/17 BCE. Introduced within the wider paradigm of his 'social legislation', the adultery statute sought to, at least superficially, bring forth into the public arena a transgression that, previously, had been addressed within the relative boundaries of the *familia*.<sup>5</sup> While not a statute dealing with adultery,

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<sup>5</sup> For discussions that use the term 'social legislation', as well as for examination of the impact, see Bowditch (2009), Caldwell (2004), Cohen (2008), Field (1945), Frank (1975), Gardner (2010), Gorrie (2004), Evans-Grubbs (1993), McDonough (2004), McGinn (2004), Osgood (2006), Rawson (1974), Syme (1987), Treggiari (1971), and Wiedemann (1975) for discussions that use the term 'social legislation' and also for examination of its impact. For example, Bowditch, discussing poems written

the Twelve Tables, Rome's first legal codification, from around 450 BCE, helps to throw into relief the substantial difference that the *lex Iulia de adulteriis coercendis* represented: in the Twelve Tables, for instance, a husband's power over his wife is firmly enshrined in Table 5, which – its fragmentary state aside – suggests that a wife is expected to remain fully under her husband's power also in a locational sense, i.e. with regard to being in the house; the Table suggests that a woman's presence in her husband's house (and bed) is essential for the continued validity of their marriage.<sup>6</sup> By contrast, later legal developments take on a much more intrusive character regarding how (and by whom) this aspect of the private lives of the Romans should be handled, culminating in the Augustan adultery legislation. Seen in a broader perspective, this seemingly abrupt intrusion into the 'private lives' of the Romans inhabitants was, in fact, part of Augustus' wider programme of legislative reform that was – perhaps rather idiosyncratically – intended, as has been argued by some scholars, to restore Rome to its 'Golden Age'. However, within this discussion of the 'origin story' of the adultery statute, it is necessary to first address the legal antecedents for the legislation. It is generally accepted by Roman lawyers and legal historians that a formalised Roman law against adultery was introduced in 18/17 BCE in conjunction with the introduction of Augustus' specialised jury-courts, or *quaestio perpetua*.<sup>7</sup> Bauman (1993) introduced an argument for the adultery statute to actually have drawn more heavily on the work of the emperor's predecessors than previously believed.<sup>8</sup> Essentially, he argued that the *lex Iulia de adulteriis coercendis* drew heavily on laws enacted by Sulla during his dictatorship in 78-67 BCE that mirrored the somewhat lush lifestyle of Augustus.<sup>9</sup> If his argument is accepted, it is not unreasonable to draw parallels between the reigns of Augustus and his predecessor, Sulla. Strong, moralistic overtones are seemingly behind both instances of a formalised legislative attempt at

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by Propertius before the enactment of Augustus' legislation in 18 B.C., argues that these poems anticipate the "early and formative period of Augustan social ideology and its relation to urban renewal" and the "encroachment of the state into the private domains of family and sexuality" (Bowditch (2009), 402-403); whilst Wiedemann (1975) examines the general attitude to Augustus' legislative changes through the lens of Ovid's poem *Tristia* 2.

<sup>6</sup> Twelve Tables 5.5: for discussion, see Crawford (1996), 555-721.

<sup>7</sup> Bauman (1993), 563.

<sup>8</sup> Bauman (1993), 563-4. Bauman does mention an earlier attempt from a decade ago, however, it was rejected due to strong opposition.

<sup>9</sup> Bauman (1993), 564. Extant copies of Sulla's laws no longer exist but they are referenced indirectly by Plut. *Comp. Lys. Et Sul.* 3,2).

controlling the private lives of the Romans. Bauman's work is also useful for another reason. In its recounting of the rape of Lucretia, it touches upon the pre-classical perceptions of adultery and women that were prevalent before the establishment of, even, the Republic or the Empire; namely, that the shame associated with adultery, especially for accused women, seems to have been present for centuries within Rome and the societies that preceded it.<sup>10</sup> Adultery and shame, especially for women, are, then, perhaps unsurprising partners in Rome. It is also useful at this juncture to draw attention to another crucial element of the tale of Lucretia's woe. Although the opprobrium of being accused of adultery undoubtedly motivates her, the inclusion of the dead slave as her putative paramour was seemingly horrific enough to force her to stop *physically* resisting the assault. The presence of slaves and freedmen in the legal and literary sources concerning adultery will be discussed in depth subsequently in this thesis; however, their presence is highlighted here to demonstrate at this point that these servile individuals in Rome were accepted as valid participants in adultery centuries before the introduction of Augustus' statute, and that their following inclusion within an examination of the statute itself is not special to that particular legislation.

Some scholars, such as Nörr, for example, argue that "his [Augustus'] approach to reforms in the state and in society was dominated by a desire to restore such favourable conditions as were believed to have existed in the past [and that] this accounts for the introduction of the monarchy, which, indeed, was masked as a restoration of the Republic ...[and also explains] Augustus' quest to halt the decline in the size of families, to combat non-marriage and childlessness, and ... to improve the standard of morality".<sup>11</sup> This instance of the moralistic, Golden Age approach to the adultery legislation needs to be highlighted at this stage to provide a baseline of the contemporary scholarly interpretations of the statute and its influence on how the historical and social contexts surrounding the introduction of the adultery law have been interpreted – and what this means for achieving a closer, more nuanced consideration of the purpose of the *lex Iulia de adulteriis coercendis*.

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<sup>10</sup> See Hemelrijk and Woolf (2013), Milnor (2008), Perry (2013) and Purcell (1986) for analyses of the roles and perceptions of women in Rome.

<sup>11</sup> Nörr (1981), 350-351.

Understanding the control and influence exercised by the *paterfamilias* on the *familia* is an important element of understanding the social conventions and historical context of the society into which the adultery statute was enacted and, thus, how this piece of legislation affected all members of the *familia*, especially the servile and the freed. The overwhelming prevalence of this power and how it could be used by one person to wield an extreme, at least to modern perceptions, level of influence in the lives of any of those who were caught in its purview is, perhaps, a challenging concept to fully grasp. However, recognizing and acknowledging how the continuous influence of one individual can maintain a sometimes immoderate level of power on individuals who have attained all other nominal markers of adulthood for their culture and society is a necessary concept to grapple with in order to attain a through appreciation of the historical context and social milieu into which this legislation was introduced. The pervasive nature of the involvement and power of the *paterfamilias* can be traced, with a reasonable degree of certainty, to the Rome of the Twelve Tables, or around 450 BCE, as previously mentioned.<sup>12</sup> This is when Roman fathers, supposedly, had the power of life and death over all members of their *familia*, including the infants, and when they also maintained control over their property and wealth.<sup>13</sup> However, while the role of the *paterfamilias* has, naturally, changed as the Roman Empire developed and the legal framework expanded, his presence as an individual who exerted considerable control over the lives of his *familia* remained. Although, as will be seen in the subsequent chapters in this thesis, while the *paterfamilias* did retain some elements of control and influence in regard to accusations of adultery within his *familia*, the introduction of the new legislature meant that they had unwillingly relinquished their ability to mete out punishments against their wayward daughters and sons to the powerful, busy ‘adultery courts’.<sup>14</sup> This role was usurped by Augustus when he introduced the adultery statute.

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<sup>12</sup> Johnson (2004), 30.

<sup>13</sup> Johnson (2004), 30; Crook (1967b).

<sup>14</sup> See Garnsey (1967) and Marshall (1990) for an examination of the courts used to prosecute adultery charges.

### 1.2.2 POETRY AND POLITICS: CONTEMPORARY CONTEXTS FOR THE *LEX IULIA DE ADULTERIIS COERCENDIS*

Attitudes towards and perceptions of adultery contemporaneous to the introduction of the Augustan legislation can also be found in literary works such as the poems of Ovid. While his work is discussed in greater detail in Chapter Five, it would be worthwhile at this juncture to touch upon how he represented adultery in his work to perhaps gain an appreciation of how those outside of the legal arena related to and perceived adultery. His works, in particular the *Amores* and the *Ars Amatoria*, were seen as openly promoting adultery and, thus, he was seen as a ‘teacher of foul adultery’, whose subsequent writing in exile has been considered by modern scholars as either a mournful pleading for forgiveness and return, or a subtle attack on the actions of the emperor, an opinion shared by others in Rome.<sup>15</sup> While this section of the thesis is not the appropriate arena for a discussion of the motives behind Ovid’s work and the themes in his poetry, they are highlighted here for a specific reason as they can aid in providing a social and historical context surrounding the introduction of the adultery statute. That he was able, and was sufficiently driven, to write works that featured adultery so heavily indicates that it was an issue prominent in the minds of the inhabitants of Rome, or at least those who comprised the audience for his work, perhaps due to the actions of the emperor? However, his exile, around the time of the amendments to Augustus’ other social legislation that was supposed to strengthen marriage in Rome, indicates that perhaps such blatant opposition to the statute was not to be tolerated any longer. It is important at this point to address Ovid’s depictions of the servile in the *Amores* and the *Ars Amatoria* as they provide yet another avenue into the social context surrounding the arrival of the adultery statute. Sharrock argues that “Ovid’s amatory works put private life on display – or rather, show us how private life is always already on display, a fiction played out for real, a reality fantasized”.<sup>16</sup> The salient factor from this short discussion of these specific works of the poet is that they

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<sup>15</sup> Ov, *Tr.* 4.10. Davis (1999) and Wiedemann (1975) discuss the purported intent behind Ovid’s work from exile, *Tristia* 2.

<sup>16</sup> Sharrock (2002b), 150. In addition to the expected portrayals of slaves, Sharrock also highlights Ovid’s use of slavery imagery to indicate a lover enslaved to his mistress and being willing to subject himself to the punishments associated with the servile: “iron and savage fires” (Sharrock 1994: 26;58). The poet’s use of slavery metaphors in this manner reinforces the subordinate position from which slaves were viewed by Ovid in this work.



demonstrate, yet again, that the servile population of Rome, at least those slaves present when the adultery legislation was enacted, were considered by their contemporaries to be a valid, believable component of any discussion or depiction of adultery. Socially, at least, adultery and the servile populations of Rome were common bedfellows.

Finally, it would be worthwhile to briefly discuss Augustus' career before the promulgation of the adultery legislation to further ground the statute within the prevailing social, political and cultural changes of the contemporary Roman society. After Caesar was assassinated in 43 BCE and he was named as his heir, Octavian fought to avenge his great-uncle's death and eventually defeated Antony and Cleopatra at the Battle of Actium in 31 BCE, which enabled him to become the ruler of Rome. While he also created a standing army and fought other battles during his reign to expand the boundaries of Rome, the *princeps* did not rest on his laurels and introduced a number of political and social changes, in addition to the adultery legislation, that all shared a broad, overarching theme of 'moral' reform.<sup>17</sup> Striving further towards his ostensible goal of improving domestic social cohesion in the Empire, he also brought about legislation that encourage married couples to have more children, made divorce a more challenging prospect and punished married men over a certain age with additional taxes. Foregrounding the full context of the social and political reforms undertaken at the same time as the *lex Iulia de adulteriis coercendis* creates a more rounded picture of the social milieu into which the adultery statute was introduced.<sup>18</sup>

This short exposition of the historical, political and social milieu present when the *lex Iulia de adulteriis coercendis* was introduced has drawn attention to two main factors that should be borne in mind in regard to the subsequent, more in-depth discussion of the statute. The first is that legal remedies and social structures were already in place when Augustus enacted the law, so, to a certain extent, this law condensed and formalised existing attitudes toward adultery and its punishment, while introducing some substantial novelties as well. The second is that slaves can be considered to be

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<sup>17</sup> A more detailed examination of the motivations behind Augustus' introduction of the legislation such as the adultery statute can be found in the conclusion to this thesis.

<sup>18</sup> See Cook, Adcock and Charlesworth (1979).

part of the contemporary discussion surrounding adultery before the enactment of the statute: the extent of their involvement in adultery, the roles they adopted, and the repercussions and punishments that they attracted, are the focus of this thesis. The extensive legal discussion in the Digest allows for meaningful analysis of slaves' and freedmen's roles, and offers a basis for comparison with the literary discussion, such as Ovid's above mentioned poetry, to gain a firmer foothold on the effect of the statute on slaves and freedmen, at least in the Romans' legal and literary conceptualisation of their roles in adultery.

### 1.3 THE SOURCES

Establishing and demonstrating this involvement will require evidence from a variety of sources. Legal sources are, necessarily, an important avenue for investigation. Hampered by the lack of extant sources for the statute itself, there, nevertheless, remains sufficient evidence to explore this question. The primary source for legal investigation are the juristic writings compiled in Justinian's *Digest*.<sup>19</sup> These extracts provide a basis for establishing the presence of slaves and freedmen from the perspective of those immersed in the legal practices surrounding the effects of the adultery legislation. But, to fully understand the roles of the slaves and the freed and the impact of this legislation on the slaves and freedmen of the *familia*, another perspective is needed as well.

Literary evidence, from the fields of history, biography, rhetoric and poetry, provides the opportunity for another frame of reference from which to examine the involvement of slaves and freedmen with adultery, and, in consequence, the *lex Iulia de adulteriis coercendis*. While the authors chosen for my investigation of this evidence span a chronological period from just prior to the promulgation of the statute until approximately a century and a half later, the majority of jurists whose work is assembled in the *Digest* are further removed chronologically from the enactment of the adultery law, and so their interpretation of the involvement of the servile and the

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<sup>19</sup> Legal evidence for the adultery statute will be examined in more detail in the third chapter. See Johnston (1999, 14-22) for a discussion on the structure and composition of the *Digest*.

freed will have necessarily been affected by the intervening years and changing social *mores*. The Roman authors chosen for this work are, in reverse chronological order, Suetonius, Tacitus, the Elder Seneca, Quintilian, and Ovid – who wrote for a different audience than did the jurists. Consequently, these writers would have been motivated by different goals and so their depictions of the affected individuals will, necessarily, reflect a different point of view and, perhaps, adhere more closely to the attitudes enjoyed by wider Roman society toward the involvement of slaves and freedmen within adulterous relationships than that of the jurists. Therefore, their perspectives on the prominence, or lack thereof, of slaves and freedmen within adulterous relationships will help to create a more multifaceted depiction than what could be achieved by relying solely on the legal sources. Utilising such a disparate range of evidence has necessitated the creation of a framework with which to process and analyse the depiction of these servile and freed individuals across both legal and literary sources in like fashion to provide reliable points of comparison, and it is to this approach that we now turn.

#### **1.4 THE ‘GRAMMATICAL APPROACH’**

Due to the nature of my research and the argument being examined in this thesis, it became apparent early in the research process that some type of analytical framework or methodology was required in order to approach the evidence in a systematic manner that would allow for meaningful, comparable insights into the nature of the varied depictions of the slaves and freedmen. It is worth noting at this juncture that, while the purpose of the chosen framework was to impose a certain amount of ‘order’ on the evidence, it is not supposed to be a rigid theoretical paradigm. As will be demonstrated below, the boundaries of the selected categories are fluid and flexible, reflective of the nature of the activities of the slaves and freedmen themselves, and are intended merely to be a guide rather than an unyielding barrier.

The framework used in this thesis is called the ‘grammatical approach’ because it uses grammatical terms to categorise the two main types of interactive roles

experienced by slaves and freedmen in regard to adulterous relationships: subject; and object. This approach is the basis from which to throw into relief the different actions performed by or experienced by slaves and freedmen. This will also help to analyse how their actions in these roles can highlight the impact the adultery legislation had on them. As in a sentence, a *subject* can be defined as the individual or party that *performs* the action of the verb; while an *object* can be defined as the individual or party who *receives* the action of the verb. By comparison, slaves and freedmen entangled in adulterous relationships in Rome performed roles analogous to those parts of a sentence. As one would expect, they are found in the role of the ‘object’, i.e. as either the recipient of the action being described or a figure that, while being mentioned in a legal or literary extract, is not the main focus and can safely be described as a secondary or ‘background’ player. But – and this is one of the main reasons for using this ‘grammatical approach’ – it will be argued that slaves and freedmen are often found in the role of the ‘subject’, or driver of the action within an illicit affair being described in either a legal or literary source. This role can be either that of an adulterer or the main focus of the action as described by either the jurist or another author. Between these two ‘grammatical’ categories lie a great number of cases that share elements of both, or that are less easy to identify. This last group is perhaps the least tangible, yet has the potential to make a significant difference to the outcome of the present investigation. This last group incorporates also what I call the ‘hidden’ roles occupied by the slaves and the freed within the context of depictions of adulterous relationships. These encompass descriptions of adulterous relationships or individuals where, while slaves and freedmen are not mentioned directly, it is not unfeasible to assume their presence because of their involvement in the daily routines of the *familia*.<sup>20</sup> As has already been mentioned, these ‘grammatical’ categories are not intended to be followed rigidly but are, rather, intended as a guide for approaching

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<sup>20</sup> While subsequent chapters will expand on the varying roles of slaves and freedmen, it is sufficient at this juncture to describe these ‘hidden’ roles as primarily those of where the slaves and freedmen would be serving or assisting their owners and patrons with the usual tasks of their daily lives. For example, Sarah Pomeroy described the training offered to female slaves: “Female slaves were given special training in the wealthy Roman home and worked as clerks, secretaries, ladies’ maids, clothes folders, hairdressers, haircutters, mirror holders, masseuses, readers, entertainers, midwives, and infirmity attendants” (Pomeroy 1975, 192). Male slaves could, of course, also have worked as clerks and secretaries and they could also occupy the role of watchman or door-keeper, a role of particular interest that will be explored in greater detail in Chapter Five.

both the legal and literary evidence. As will be seen, this approach allows slaves and freedmen to be ‘rescued’ from their mere allocation to an object role in much modern scholarship, thereby raising important questions about the level of agency found amongst Rome’s servile and freed populations.

## 1.5 METHODOLOGY

We have already established that both legal and literary sources are necessary for the intended goal of establishing a more nuanced understanding of the inclusion of slaves and freedmen within adulterous affairs. Given that there is a large amount of evidence concerning adultery from ancient Rome, the first question that needs to be addressed is how the sources were approached and which were deemed to be the most appropriate in terms of answering the question. The legal evidence was, perhaps, relatively simple to identify. Justinian’s *Digest* is the primary source of legal evidence for adultery. The juristic writings in Book 48, Title 5 on adultery provided a wealth of legal discussion from which it was possible to form meaningful insight into how adultery was portrayed within the legal sphere.<sup>21</sup> The literary source material, however, had to be identified in a different manner. The authors were chosen to represent a broad chronological span so that differences in attitudes towards and depictions of slaves and freedmen within adulterous relationships, if indeed there were any, could be ‘tracked’ and analysed. Although some of the authors chosen have multiple works attributed to them, only one example was chosen for each writer for the purposes of this study (with the exception of the one chosen poet, Ovid). This is because the literary sources are intended to provide a snapshot of the perspective of these authors to counterbalance that of the jurists, so a comprehensive analysis of all of their works would be unnecessary.<sup>22</sup>

The following questions were put to the legal sources:

I. what is adultery;

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<sup>21</sup> Further detail into the nature of the legal evidence will be provided in Chapter Three.

<sup>22</sup> Ovid was the exception here as the works chosen as examples of his views are so closely linked to the topic of love and relationships that to exclude one or the other would be a futile endeavour.

- II. who commits adultery;
- III. who cannot commit adultery;
- IV. what are the punishments;
- V. who gets punished;
- VI. who initiates the punishment; and
- VII. who is not punished under the terms of the statute.

These particular questions were chosen in order to eliminate, as much as possible, any preconceptions about the nature of the crime, who was committing it, and the nature of the penalties and how they were enforced. As discussed in detail in the relevant sections of this thesis, the evidence, as allocated to one or more of these questions, and the results are shown in the Appendix. This also allowed for the grammatical approach to be applied more efficiently as the direct, or indirect, involvement of slaves and freedmen was already highlighted. A rather different method, however, had to be adopted in relation to the literary sources. Here, due to the volume of material, key words, adapted for each author based on the nature of the material, were entered into a search engine to generate a list of passages that were germane to the research goal of determining the extent, if it existed at all, of the involvement of slaves and freedmen in adultery, and how this was portrayed in the literary sources.<sup>23</sup> This ‘master list’ of passages was then treated in a similar fashion to the legal evidence where each was analysed and any depictions of slaves and freedmen and their roles within adulterous relationships was evaluated through the lens of the ‘grammatical approach’. While analysis of these sources is crucial to establishing the validity of the main argument of this thesis, its purpose and significance can, however, only be clarified after first reviewing how other scholars have treated slaves and freedmen within the context of depictions of adultery and the *familia*, indeed if they were considered at all. It is to this review of modern scholarship that we turn next.

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<sup>23</sup> Further detail regarding the terms used and results generated are provided in Chapter Four (legal depictions of slaves and freedmen involved in adultery) and Chapter Five (literary depictions of slaves and freedmen involved in adultery).

## 1.6 MODERN LIMITATIONS: SCHOLARSHIP ON THE ROMAN FAMILIA, THE ADULTERY STATUTE, AND THE INTERACTIONS OF SLAVES AND FREEDMEN BETWEEN THE TWO

There does not exist a single work or works that deal in focus with the question pursued in this thesis. Yet, modern scholarship on the Roman *familia*, the *lex Iulia de adulteriis coercendis* and the interactions of slaves and freedmen between those two entities is vast. These are topics that have generated interest from scholars and the general public alike for generations. Interest in these subjects has resulted in research that explores and addresses a wide variety of questions and issues surrounding how they interact with and are affected by each other. However, as will be demonstrated by the following discussion of the modern contribution, there are distinct gaps in the current scholarship, notably addressing such questions as how slaves and freedmen, for example, were impacted by the promulgation of the adultery law and how their activities within the *familia* would have affected their interaction with the statute. Delving into the sources that address adultery and Augustus' accompanying legislation or that tackle questions surrounding the structure, behaviours and habits of the Roman *familia* demonstrates that these sources do not always engage with all elements of Roman society, and miss out on certain groups of individuals, namely the servile and the freed. This is not to say that slaves and freedmen are unknown topics of inquiry for modern scholars as, on the contrary, slaves and freedmen in Rome are familiar areas of study for classicists, ancient historians and other scholars.<sup>24</sup> Rather, it is the intention of this chapter to highlight a disparity in the secondary sources that has been allowed to accumulate in the research of the impact of laws, such as the adultery statute, on the lives of the slaves and freedmen of Rome.

The puzzling nature of this disparity is suitably exemplified by a recent work by Myles Lavan: an examination of his 2013 monograph on the governing of the Roman Empire provides a useful jumping off point for this discussion.<sup>25</sup> Within his

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<sup>24</sup> The scale of modern research on ancient, especially Roman, slavery, can be gleaned from the massive bibliography of modern contributions compiled under the auspices of the Mainz Academy: Bellen and Heinen (2003). See Csillag (1968; 1976); Fayer (2005); Gebhardt (2009); Kunkel (1962); Mette-Dittmann (1991); Mommsen (1899); Sehling (1883); Stump (1988).

<sup>25</sup> Lavan (2013).

study examining how the elite of Rome governed ‘their’ empire, two chapters address specifically how Roman culture was entangled with slaves and freedmen, at both a tangible and metaphorical level. The second chapter of the book discusses the pervasive nature of the rhetoric of the master/slave/freedman relationship. It also addresses the overarching Roman attitudes to slavery and traces the use of slavery as a metaphor for empire. The third chapter is, perhaps, more revelatory in regard to the present discussion. In it, Lavan maintains that slavery is constructed as “a moral condition by associating it with submissiveness and silence” [what I call the *object* role] by references to the enslavement of the senate in the *Agricola*, and that “these traits imply the loss of the ability – and even the will – to resist [which] is a vision of the servile condition...”.<sup>26</sup> He continues this theme when he argues that this weakening of a slave’s agency is “an emasculating condition [that] plays an important role in ancient ideologies of slavery”.<sup>27</sup> While these two quotations do not as such address the involvement of slaves and freedmen with the adultery of their owners and patrons, they do speak to the overall pervasiveness of the Roman attitude and approach to slavery. As Lavan contends, he saw a clear, one-sided view of the roles of slaves and of slavery as a concept – seemingly without exception. Certainly, freedmen and slaves played such submissive – object-like – roles at all levels of Roman society and were noted by ancient authors of both the legal and literary sources in this way, including those that reference adultery. But if this was indeed the only conceptualisation of slaves in Roman antiquity, this thesis would find it impossible to identify slaves in what I call subject-roles in adultery.

Beyond the particular conceptual focus explored in Lavan’s work, there is, of course, a plethora of sources that examine adultery and the adultery legislation in the Roman Empire and those that look at slavery and the *familiae*. However, there are very few, if any, works that study the effect of the adultery legislation on slaves and freedmen. As will be seen, the approach in these works share the conceptual perspective adopted by Lavan. The purpose of the following discussion of the literature, therefore, is to create a broader foundation from which this disparity in the

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<sup>26</sup> Lavan (2013), 132.

<sup>27</sup> Lavan (2013), 133.



secondary sources, and thus approaches to the primary legal and literary evidence can be addressed. Before this overview of the secondary sources covering the adultery legislation, slaves, freedmen and the *familia* can be carried out, however, it is first necessary to discuss the methodology used in this section of the chapter. Firstly, it is important to note that, due to the volume of works discussing these topics, especially those that mention adultery, it will not be possible to include every author and source in the present discussion but, instead, select authors and works will be chosen to highlight both the nature of the works in each subject area and any changes in thought and approach surrounding the topics. Secondly, this chapter will examine first the secondary sources associated with adultery and Augustus' adultery legislation, followed by looking at those works that discuss slaves and the *familia*. The unnecessary lacuna in the secondary literature *between* adultery, slavery and the *familia* must be more fully understood before approaches to redress it can be discussed.

The multitude of scholarship that addresses slavery and adultery and any intersections can be organised into the following four separate categories, or questions, that touch upon the limits imposed unwittingly on this topic by modern scholars.

- i. There is a disconnect or lacuna in the modern scholarship that does not acknowledge the impact of the adultery legislation on slaves and freedmen. This is seen in the works of authors such as des Bouvrie, Galinsky, and Richlin;<sup>28</sup>
- ii. Slaves and freedmen are often relegated to the periphery of the Roman *familia* with regard to discussions and analysis of the impact of *any* legislation, including the adultery statute, which is in contrast to the

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<sup>28</sup> See des Bouvrie (1984), Galinsky (1981) and Richlin (1981). Other authors also have works that can be included in this category: Daube (1963; 1972; 1991); Joshel (2009); McGinn (1991; 1992; 1997; 1998; 2002; 2003; 2004); Raditsa (1980), Sivan (1999), for example, provides a useful comparison between late Roman and rabbinic methods for detecting adultery and offers a perspective on how Roman attitudes towards adultery have changed and perhaps even influenced other communities and legal systems. It does not, however, mention slaves or freedmen in relation to the adultery. Bauman (1968), on the other hand, does hint at the involvement of freedmen with adultery prosecutions when he mentions the 'fifth decurions' who were used to prosecute adultery cases of those from the sub-equestrian class (p.84-85). It is possible that this group could include freedmen but it is not explicitly stated and there are no other mentions of slaves.

prominence of their roles in other depictions of the *familia* by modern scholars, as for instance in the work of Edwards.<sup>29</sup>

- iii. Status, both legal and social, and the authority imbued upon the *familia* and the *paterfamilias* is a strong area of focus in the work of modern scholars. Notable contributors include Dixon, Evans-Grubbs, and Gardner.<sup>30</sup>
- iv. The study of the roles and social interactions and networks of slaves and freedmen, vital for understanding how and when legislation would have affected the servile and freed, as attempted by Bradley, George, Mouritsen (especially regarding the freed).<sup>31</sup>

Although the analyses of these four areas have produced important results, there remains little confluence between the various discussions. This has created a situation where the different analytical strands have inadvertently created a disconnect between areas of Roman scholarship that should experience more overlap. As a result, the impact of a piece of legislation such as the *lex Iulia de adulteriis coercendis* on the freed and servile members of Roman society has been underestimated due to the lacunae created by the direction taken by the modern scholarship.

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<sup>29</sup> See Edwards (1993). The discussions that fall into this category are many, and its exponents do not share the same approach or agenda. For instance, authors in this category include Hiller (2003), who supports Saller's view of the multi-generational component of Roman *familiae*; Leen (2000-1) argues, as does Saller, that the *domus* and *familia* were also used to symbolize status and prestige (2000-1, 142). Cantarella (2003), however, disagrees with Saller's view of the Roman *familia* as comprised solely of 'affectionate' relations between its members, and, instead, argues that they were also affected by "a powerful anxiety about the relationships between fathers and sons" (Cantarella 2003, 298). Martin (1996) disagrees with the fundamental methodology employed by Saller and Shaw (1984) in their article on tombstone inscriptions and their implications for the nature of relationships between members of Roman *familiae* and argues that their methodology is not suitable for studying familial structures in Rome (Martin 1996, 42). Saller (1984; 1999); Severy (2003); Treggiari (1975; 1991)

<sup>30</sup> See Dixon (1984; 1988; 1991; 1992; 2001a; 2001b; 2011); Evans-Grubbs (1993; 1995; 2002; 2010; 2011); Gardner (1986; 1989; 1991; 1993; 1998; 2011). See also Mouritsen (2011b), who has looked at slave and freedmen marriages and the inherent difficulties involved in gathering evidence for these relationships and in analysing these sources. (However, because servile and freed marriages were not the target of the adultery legislation, they will not be the main focus of the discussion for this thesis.) Further Rawson (1966), (1974), (1986), (1991), (1997), (2003); and Parker (2007).

<sup>31</sup> See Bradley (1984); George (2010); Mouritsen (2004; 2005; 2011). Modern scholars who have addressed specific, other aspects of this topic include further Lintott (2002); de Quiroga (1995); and Weaver (1967; 1972; 2005).

In sum: as has been demonstrated by this brief discussion, there is a vast amount of modern scholarship that addresses the topics of slavery, adultery and the legal and social issues surrounding them. What is not as apparent are works that address the intersections, or those areas where, in classical Rome, these ideas and individuals would have interacted and been affected by each other: it is this breach that this thesis is designed to address.

## 1.7 CONCLUSION

This brief overview attempted to highlight key contributions to the modern discourse on slaves and freedmen, the *familia* and adultery – and especially the most significant “meeting points” of these topics in the debate. We have seen that, regardless of the scholarly focus, slaves emerge as marginal, especially at those “meeting points”, and freedmen rarely fare better unless assumed to be prominent members of the Imperial *familia*. The underlying reason for this can be seen in the broader conceptualisation of submissiveness and marginality within Roman slavery studies: this, in essence, was already shown in the introduction to this chapter in the recent work of Lavan. But, as this thesis will show, the intersections between these areas are actually more significant than modern scholarship currently admits. And that by focussing on the “meeting point” between all three topics, slaves and freedmen, the *familia*, and adultery, with a conscious focus on the servile and freed elements of that story, a new picture emerges of a more complex and richer understanding of the servile condition. The consequence of such a new picture for our understanding of the Augustan legislation on adultery will become clear at the end of this thesis. But before filling this gap in the modern discourse, it is, first, necessary to define what I mean by *familia* – i.e., which of the many *Roman* conceptualisations of *familia* I have adopted for the purpose of this thesis – and how the conceptualisation of this social group, both by Romans and modern scholars, has a bearing on our understanding of the adultery legislation and the involvement of the servile and freed.



## CHAPTER TWO: JUST A LARGER FAMILY? - EXPLORING THE ROMAN MEANING OF *FAMILIA*

### 2.1 INTRODUCTION

An exploration of how the Romans themselves understood and used the term *familia* may appear, at first glance, to be a redundant exercise. Scholars of the Roman *familia* have produced many in-depth analyses that discuss the structure and composition of the *familia*, its role within the wider Roman society and how it was affected by factors such as Augustus' adultery legislation.<sup>32</sup> Yet, as will presently be seen, there are issues with the way some scholars, especially social historians, have used the term and concept. For instance, Rawson (1986) defines the *familia* as a "conjugal family plus dependents, for instance a man, his wife and their unmarried children, together with the slaves and sometimes freedmen and foster children who lived in the same household".<sup>33</sup> She thus defines the *familia* as a) consisting of blood relatives, and b) individuals, not connected by agnatic descent, who reside at the same place as the blood relatives. Other scholars, such as Bradley (1991) and Parkin and Pomeroy (2007), have, on the other hand, stressed, on the basis of an examination of the legal sources for example, that the Romans used the term *familia* in a more encompassing manner than has been implied by scholars such as Rawson. Parkin and Pomeroy, for instance, regard it as "a group of persons subject by nature or law to the power of the male head of the group; e.g. children and descendants derived by nature and those derived from law, such as wives and slaves".<sup>34</sup> Here, the *familia* is not defined by a place of residence, but entirely by an understanding of a relationship of power. But it is possible to take matters further still. For example, Herlihy wrote "*familia* [...] originally meant a band of slaves [but] the word was easily extended to all persons – wives and children, natural or adopted – who were under the *patria potestas* [and that] the word applied to groups of people possessing some organization, or at least some similarity, in their styles of life".<sup>35</sup> He also recognizes that "the second principle

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<sup>32</sup> See authors such as Dixon (1991), (1992), Gardner (1989), McGinn (2004), Rawson (1986) who have written extensively on the topic of the Roman *familia*.

<sup>33</sup> Rawson (1986), 8.

<sup>34</sup> Parkin and Pomeroy (2007), 72.

<sup>35</sup> Herlihy (1991), 2-3.

meaning of *familia* was property” and that “the word in its original sense implied an authoritarian structure and hierarchical order, founded on but not limited to relations of marriage and parenthood”.<sup>36</sup> However, perspectives such as Herlihy’s are generally the exception in modern discussions of Roman society: as was seen, Roman social historians often operate with a more restrictive concept of *familia*, which also lurks behind many of the approaches we have seen in the previous chapter. These more constrained definitions of *familia* raise three important issues in regard to the study of Roman society. The first is the artificial and singular approach taken by modern scholars that so closely links the Roman term *familia* with modern conceptions of the family to the exclusion of other interpretations. The second is the apparent lack of acknowledgement that *familia* was also used to refer to property, which did not necessarily include people. The third point concerns the realization that slaves and freedmen were considered to be part of their *familiae*, albeit with a difference in status from a *paterfamilias* and his relatives, and not necessarily related to questions of domicile.

The inclusion of persons who are not relatives (in the modern sense) in the *familia* is, in itself, not a novel concept in Roman social history. However, despite the acknowledgement that slaves and freedmen could be included in variations of the term, analysis of the effect of the Augustan adultery legislation on Roman *familiae* is inclined to use a variation of Rawson’s definition and to ignore other possibilities. This means that both slaves and freedmen in the (broader) *familia*, headed by their owner or patron, as well as other types of *familiae*, such as those comprised solely of slaves and freedmen, and the roles of these individuals, are not included in examinations of the impact that this legislation had on *familiae*.<sup>37</sup> As a result, the importance of the roles of slaves and freedmen to a discussion of the composition of Roman *familia*, and, perhaps more importantly for this work, the effect of the adultery

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<sup>36</sup> Herlihy (1991), 3, 4.

<sup>37</sup> That slaves and freedmen could have had ‘families’ is a reality acknowledged by Mouritsen, (2011b), who argues that these informal “companionships... [did not] ...exist in the eyes of the law” (2011b, 129) and, further more, that the evidence for slave families “comes in fact from those who had escaped servitude rather than the slaves themselves” (2011b, 130). While not the focus of this work, it remains useful to acknowledge that slaves experienced these types of relationships as well as their owners and patrons.

statute on it, is not fully understood. As stated in the first chapter, this work aims to dismantle the artificial barriers erected between the study of the roles of slaves and freedmen within the *familia* and how they were affected by the introduction of the adultery legislation, which inhibits a full and frank discussion of its impact on the *familia* – as well as that of the motivations behind the legislation: the inclusion and relevance of slaves and freedmen within the *familia* must be more widely acknowledged to enable a more thorough debate of how the legislation affected *all* members of the *familia*. To advance this thesis, this chapter will explore the classical Roman perception and usage of the term *familia* through a survey of its use in contemporary legal and literary sources. The effect of Augustus' adultery statute on the slaves and freedmen who were also part of the Roman *familia* cannot be evaluated before a complete picture of the ancient usage of the term is attained.

## **2.2 WHY USING THE ROMAN MEANING OF *FAMILIA* IS IMPORTANT**

Much modern understanding of the term *familia* is far removed from how the Romans themselves understood and related to this concept. The projection of modern perceptions of interpersonal relationships onto ancient society and a sometimes selective use of the primary evidence has resulted in a widely accepted interpretation of *familia* that is unduly narrow and that neglects a breadth of evidence that has the potential to clarify our understanding of how the Romans understood and engaged with both term and concept. This section will explore the reasons why being conscious of the full range of Roman meanings of *familia* is important to appreciating its place within the wider Roman society and how the servile and freed members of the *familiae* were affected by the adultery legislation.

Of the common misconceptions surrounding modern interpretations of *familia*, the most prevalent is that it can be used to represent, even in a conceptual sense, an ancient form of the traditional, modern nuclear family. As will be shown later in this chapter, the ancient sources do not use *familia* to solely describe this type of social

grouping – that is, a close-knit group of a husband, wife and their children – to the exclusion of other individuals. This interpretation of *familia* is an imposition onto the text of modern ideas that had no clear equivalent within ancient Roman society. Even the Twelve Tables, the foundation of classical Roman legal theory, did not use *familia* to mean ‘family’, in the modern sense of the word; first, its description of *familia* was bound to the use of the terms *paterfamilias* or *patria potestas*. During the Rome of the Twelve Tables, c. 450 B.C, a *familia* was considered to be the most important social unit and it was always understood as the group under the control of the head of the *familia*, the *paterfamilias*.<sup>38</sup> However, this ancient *familia* was not a singular unit comprised of a husband, wife and their children. It was a much larger group that encompassed all of the male and female descendants of a particular *paterfamilias* that were under his *potestas*, or power.<sup>39</sup> A *familia* would have ‘belonged’ to a *pater* and would have been subject to the varying forms of *potestas* the law allowed him to wield, which included *vitae necisque potestas* or the “kernel of paternal power”.<sup>40</sup> *Potestas* could also be enforced by a father over his children, a master over his slave and a relative over a ‘lunatic’ and his property.<sup>41</sup> These descriptions of *familiae* during the time of the Twelve Tables show that social relationships were dictated by an individual’s relationship to a *paterfamilias*, unless a person was a *paterfamilias* himself, and how and when the head of the *familia* chose to enforce the *potestas* granted to him by the law.<sup>42</sup> Therefore, the *idea* of nuclear families as described by modern scholars could not have existed during this time because such a self-contained, isolating, independent unit was not possible within the contemporary legal and social framework. The twin concepts of *potestas* and *paterfamilias* continued in Roman society up to and including the period into which Augustus’ marriage and manumission legislation was introduced and makes the existence of a ‘nuclear family’, as a concept, untenable in any attempt at understanding these laws, and the impact on society.

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<sup>38</sup> Watson (1975), 9. See n44, p.22 for scholarship on the structure of the Roman *familia*; and on Roman society in the fifth century, see Cornell (1995).

<sup>39</sup> Watson (1975), 40.

<sup>40</sup> Watson (1975), 42-43.

<sup>41</sup> Watson (1975), 49.

<sup>42</sup> Harders (2010) does offer an alternative to the influence of the *paterfamilias* in his role as head of the *familia*.



Another misconception about *familia* is that the Romans only used the term to refer to groups of people. It was originally used to refer to property, or any thing, *res*, over which a male authority figure had power. Slaves are one example of this type of property as they were classified as *res Mancipi*, which were any entity that could be exchanged through *mancipatio*.<sup>43</sup> Entities classified as *res Mancipi* included “land and houses on Italian soil, slaves, and animals broken to draft or burden, such as cattle, horses, mules and asses, and rustic praedial servitudes”.<sup>44</sup> All of these things were connected to farming and not considered to be ‘persons’ within Roman society, which allowed them to be classified as property. Examples of how *familia* was used solely in reference to a group of slaves can be found in Justinian’s *Institute* and the *Digest*. The following extract from the *Institute* is in regard to actions that can be taken arising from delicts, specifically actions related to wrongful acts that involved property:

But the action for property seized by force is mixed, for the fourfold award comprises the value of the property and a threefold penalty...For instance, if someone kills a slave who is lame or one-eyed but who has been wholly sound and valuable during the year, the wrongdoer is liable for the highest value the slave has had during the year, in accordance with the law...<sup>45</sup>

The above example reinforces the notion that slaves were considered to be property and that they were also regarded as an entity over which a *paterfamilias* would be able to exert power and control. *Familiae* were structured around control and slaves were just one of the elements that a male authority figure could control.

*Familia* was also used in reference to a body of slaves in the *Digest*. Book 47, section 6 contains extracts from Ulpian and Marcellus on how to react to and manage a situation where a *familia* of slaves has been accused of theft. The term is used

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<sup>43</sup> The full importance of *mancipatio* to a discussion of the Roman meaning of *familia* will be discussed later in this chapter.

<sup>44</sup> Watson (2004), 140; Gaius. 2. 14a-17

<sup>45</sup> Inst. IV.6.19: *Vi autem bonorum raptorum actio mixta est, quia in quadruplo rei persecutio continetur, poena autem tripli est ... veluti si quis hominem claudum aut luscum occiderit, qui in eo anno integer et magni pretii fuerit: tanti enim damnatur, quanti is homo in eo anno plurimi fuerit, secundum iam traditam divisionem.*

throughout this section to only refer to a body of slaves.<sup>46</sup> There is no indication that anything other than a group comprised solely of slaves was the target of the legal discussion when *familia* was used in these extracts, which is in direct contrast to some modern conceptions of what *familia* has represented within ancient Roman society.

This brief survey has shown that the Roman legal meaning of *familia* contrasts starkly with more recent interpretations that regard it as the ancient manifestation of the modern ‘nuclear family’. This disjuncture between the modern perception of *familia* and how it was perceived and understood by the Romans provides the impetus to refine the modern understanding of *familia*, based on a study of crucial ancient texts, so that it more accurately reflects the variety of entities and social groupings that were found in the contemporary written sources in antiquity – for only on this basis can the roles of slaves and freedmen within the Roman conceptualization of the *familia*, and how these roles were affected by the new adultery legislation, be properly understood. Thus, the following, more detailed, elaboration seeks to create greater sensitivity concerning the multiple and wide uses of the term *familia*. In particular, the discussion will serve as a reminder of the ‘involvement’ of slaves and freedmen in *familiae* – to make the simple point that they cannot be ignored when discussing the impact of the adultery statute on ‘the’ *familia*.

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<sup>46</sup> Dig .47.6.1 Ulpian, Edict, book 38: *Utilissimum id edictum praetor proposuit, quo dominis prospiceret adversus maleficia servorum, videlicet ne, cum plures furtum admittunt, evertant domini patrimonium, si omnes dedere aut pro singulis aestimationem litis offerre cogatur. datur igitur arbitrium hoc edicto, ut, si quidem velit dicere noxios servos, possit omnes dedere, qui participaverunt furtum: enimvero si maluerit aestimationem offerre, tantum offerat, quantum, si unus liber furtum fecisset, et retineat familiam suam...*; The praetor propounded a most valuable edict whereby to safeguard masters against the delict of their slaves, namely that if several commit a delict, masters shall not be stripped of their patrimony by being obliged to surrender them noxally or to pay damages in respect of each of them. By this edict, the ruling is given that if he indeed be willing to declare the slaves guilty, he may surrender noxally all who took part in the theft; but if he should prefer to make monetary redress, he may offer only what would be due if one freeman had committed the theft, and keep his body of slaves. Dig 47.6.5.1 Marcellus, *Digest*, book 8: *Familia communis sciente altero furtum fecit: omnium nomine cum eo qui scit furti agi poterit, cum altero ad eum modum, qui edicto comprehensus est: quod ille praestiterit non totius familiae nomine, ab hoc socio partem consequetur.* A body of slaves owned in common committed a theft with the knowledge of one of the owners; an action can be brought against him in respect of all, but against the innocent owner only to the extent stated in the edict.

## 2.3 ULPAN'S DESCRIPTION OF *FAMILIA*

As legal perspectives and machinations form a large part of the foundation of the research framework for this thesis, it follows that a logical place to search for a Roman understanding of *familia* would be in the work of Roman legal writers - and so we turn now to the writings of Ulpian, one of the most distinguished Roman jurists.<sup>47</sup> For the Romans, *familia*, as described by Ulpian, was a broadly encompassing term that incorporated the origins of its use in relation to property as well as its use as a term for describing various social groups. Because of this, he identified five different ways in which *familia* could be represented:

Let us see how the word "*familia*" should be understood. And indeed, it is understood in various ways, for it has reference to both property and persons; to property, as in the Law of the Twelve Tables where it is said, "Let the next of kin on the father's side have the estate" (*familia*). The term "*familia*" also has reference to persons, as where the same law referring to a patron and his freedman says, "From this *familia* to that." In this instance, it is established that the law has reference to individuals. The term "*familia*" has reference to every collection of persons, which are connected by their own rights as individuals, or by the common bond of general relationship. We say that a *familia* is connected by its own rights where several are either by nature or by law subjected to the authority of one; for example, the father of a *familia*, the mother of a *familia*, and a son and a daughter under paternal control, as well as their descendants; for instance, grandsons, granddaughters, and their successors. He is designated the father of a *familia* who has authority over the household, and he is properly so called even if he has no son, for we do not merely consider his person, but also his right. Then we also style a minor the *paterfamilias*, when his father dies, and each of the persons who were under his control begins to have a separate household, and all obtain the title of *paterfamilias*. The same thing happens in the case of a son who is emancipated, for he also has his own *familia* when he becomes independent. We say that the *familia* of all the agnates is a common one, because even though the head of the household may be dead, and each of them has a separate *familia*, still, all who were under the control of him alone are properly said to belong to the same *familia*, as they have sprung from the same house and race. We are also accustomed to apply the

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<sup>47</sup> Ulpian's juristic contribution has been studied perhaps most significantly by Honoré (1982; 2002).

term "*familia*" to bodies of slaves, as we explained, according to the Edict of the Praetor, under the Title of Theft, where the Praetor mentions the *familia* of collectors of the revenue. In this instance, all slaves are not meant, but only those are designated who were appointed for this purpose, that is to say, for the collection of taxes. In another part of the Edict all slaves are included; as in the case of unlawful assemblies, and property taken by force, and also where suit for the annulment of a contract can be brought, and the property is returned in a worse condition through the act of the purchaser or his *familia*; and finally, in the case of the interdict *Unde vi*, the term *familia* embraces not only all the slaves, but also the children. The word "*familia*" also applies to all those persons, who are descended from the last father, as we say the Julian *Familia*, referring, as it were, to persons derived from a certain origin within our memory. The woman is the beginning and the end of her *familia*.<sup>48</sup>

The five types of *familia* identified in this extract, an estate, the ‘collection of persons’, a body of slaves, those persons descended from the last father, such as the Julian *Familia*, and the *materfamilias* reveal the foundation of the Roman people’s understanding of *familia* and how modern understandings of it do not address the entirety of the Roman experience of the concept. Ulpian explicitly stated that *familia* could be used to refer to property in the opening lines of the extract where he referenced the Twelve Tables, which said, “Let the next of kin on the father’s side

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<sup>48</sup> Dig 50, 16, 195, Ulpian, Book 46: *Familiae appellatio qualiter accipiatur, videamus. et quidem varie accepta est: nam et in res et in personas deducitur. in res, ut puta in lege duodecim tabularum his verbis "adgnatus proximus familiam habeto". ad personas autem refertur familiae significatio ita, cum de patrono et liberto loquitur lex: "ex ea familia", inquit, "in eam familiam": et hic de singularibus personis legem loqui constat. Familiae appellatio refertur et ad corporis cuiusdam significationem, quod aut iure proprio ipsorum aut communi universae cognitionis continetur. iure proprio familiam dicimus plures personas, quae sunt sub unius potestate aut natura aut iure subiectae, ut puta patrem familias, matrem familias, filium familias, filiam familias quique deinceps vicem eorum sequuntur, ut puta nepotes et neptes et deinceps. pater autem familias appellatur, qui in domo dominium habet, recteque hoc nomine appellatur, quamvis filium non habeat: non enim solam personam eius, sed et ius demonstramus: denique et pupillum patrem familias appellamus. et cum pater familias moritur, quotquot capita ei subiecta fuerint, singulas familias incipiunt habere: singuli enim patrum familiarum nomen subeunt. idemque eveniet et in eo qui emancipatus est: nam et hic sui iuris effectus propriam familiam habet. communi iure familiam dicimus omnium adgnatorum: nam etsi patre familias mortuo singuli singulas familias habent, tamen omnes, qui sub unius potestate fuerunt, recte eiusdem familiae appellabuntur, qui ex eadem domo et gente proditi sunt. Servitutium quoque solemus appellare familias, ut in edicto praetoris ostendimus sub titulo de furtis, ubi praetor loquitur de familia publicanorum. sed ibi non omnes servi, sed corpus quoddam servorum demonstratur huius rei causa paratum, hoc est vectigalis causa. alia autem parte edicti omnes servi continentur: ut de hominibus coactis et vi bonorum raptorum, item redhibitoria, si deterior res reddatur emptoris opera aut familiae eius, et interdicto unde vi familiae appellatio omnes servos comprehendit. sed et filii continentur. Item appellatur familia plurium personarum, quae ab eiusdem ultimi genitoris sanguine proficiscuntur (sicuti dicimus familiam Iuliam), quasi a fonte quodam memoriae. Mulier autem familiae suae et caput et finis est.*

have the estate (*familia*).”<sup>49</sup> In this first type, the term ‘estate’ can be interpreted in a number of ways. It either refers to an entire estate, including infrastructure and any livestock, as well as slaves, or it could refer solely to slaves. Essentially, ‘estate’ in this context refers to something that can be passed down and moved between generations. It can be inferred from either interpretation, however, that there is a male authority figure that would have held the *potestas* over these *familiae*. The presence of the male authority figure, or *paterfamilias*, is the common theme connecting the other types of *familiae* described by Ulpian.

People, and the various roles they played within the *familia*, are the focus of the remainder of the extract, which showed how the Roman perceptions of *familia* had expanded from its original purpose as a word to describe property. Perhaps the most prominent type of *familia* discussed by Ulpian is the one described as “every collection of persons, which are connected by their own rights as individuals, or by the common bond of general relationship”.<sup>50</sup> These ‘collections of persons’ can be broken down into seemingly disparate, though still connected, groups. The first is a “*familia* that is connected by its own rights where several are either by nature or by law subjected to the authority of one”.<sup>51</sup> Ulpian further expands this description when he stated “a *paterfamilias* is one who has authority over the household (and that...only) individuals connected by agnatic descent lines are considered a *familia*”.<sup>52</sup> These are all descriptions of what the Romans considered to be a *familia*.

There is an inherent contradiction within these descriptions that speaks to how the Romans perceived individuals and their role within the wider society: individuals are always referred to in reference to a group. For example, a man could be the *paterfamilias* of a *familia* and even if a young man became *sui iuris* upon the death of his *paterfamilias* he was then considered to be the *paterfamilias* of his own *familia* where the agnatic descent lines would be traced from him and he would possibly also have authority over a collection, or *familia*, of slaves. Ulpian also acknowledged what

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<sup>49</sup> Dig 50, 16, 195, Ulpian, Book 46.

<sup>50</sup> Dig 50, 16, 195, Ulpian, Book 46, Edict.

<sup>51</sup> Dig 50, 16, 195, Ulpian, Book 46, Edict.

<sup>52</sup> Dig 50, 16, 195, Ulpian, Book 46, Edict.

had already been demonstrated by other legal sources, namely that *familia* was also used to refer to bodies of slaves. It is especially important that this was included in his explanation of *familia* as it helps to reinforce the notion that the Romans had adopted an expansive view of *familia* that could include more than one permutation of the term. The value attributed by the Romans to agnatic descent lines is also crucial to understanding the Roman conception of *familia*. This can be seen in the fourth type of *familia* mentioned in the extract, which is “all those descended from the last father [...] persons derived from a certain origin within our memory”.<sup>53</sup> Although this type of *familia* may appear to be similar to the ‘collection of persons’, it differs in one crucial aspect, namely the importance placed on the connection with the male ancestor. The importance attributed to this relationship is another example of the role played by endemic male hegemony in ancient Roman society and the *familia*.

The last type of *familia* mentioned in Ulpian’s extract, that of a woman being both the end and beginning of her own *familia*, while seemingly distinct from the other types of *familia*, is still able to provide a deeper understanding of how the Romans saw the *familia*. This ‘crowd of one’ is yet further evidence against the idea that a *familia* was an ancient precursor to the modern nuclear family. A Roman woman, when married, was always in the *potestas* of either her husband or, as the law and custom gradually changed, her father.<sup>54</sup> A ‘self-contained’ unit of mother, father and their children would not have been possible with the societal and legal restrictions that were enforced upon these women. The actual term ‘beginning and end of her own *familia*’ also reflects the contradictions inherent in the roles that ancient Romans played within their *familia* and society as a whole. Whilst the duties and responsibilities of an individual, such as a *paterfamilias*, are reinforced in the legislation, and thus considered very important, the underlying connection to the whole is always present as a Roman citizen was always legally bound to another, and was either responsible to or responsible for this person, be it either a parent, child, slave or freedman. What should have become clear by now is that the ‘nuclear family-interpretation’ of *familia* was not viable within the existing legal framework and social structure of the time.

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<sup>53</sup> Dig 50, 16, 195, Ulpian, Book 46, Edict.

<sup>54</sup> The development of the law and custom is discussed in Treggiari’s *Roman Marriage* (1991).

Yet, other legal sources reveal a variety of different permutations that are equally important for the ensuing discussion of the adultery law, to which we must now turn.

## 2.4 *FAMILIA*, AN ESTATE OR PLACE OF SIGNIFICANCE

Despite the initial emphasis on its role as a representation of property within ancient Roman society, *familia* also came to be used to denote the interpersonal relationships shared by both citizen and non-citizen participants in society. However, the importance of the male authority figure, the *paterfamilias*, remained prominent throughout these other manifestations of *familia*. Perhaps inevitably, due to the precedent seen in the previous extract, the various types of *familia* mentioned in the remainder of the legal sources to be examined in this section are all oriented, to some degree or another, around a paradigmatic male authority figure. Whilst this may not be entirely surprising given the patriarchal nature of classical Roman society, discerning a more nuanced picture of the nature of these relationships helps us to understand more completely the Roman perception of *familia*. In this, the significance of the role of slaves within the *familia* as a legitimate component of discussions of *familia* that do not always refer to property is inescapable. It can be observed, however, throughout the legal sources that slaves were conceived of, in regard to the *familia*, as something other than mere property in certain circumstances. Ulpian's description of *familia*, although broad in scope, is not the only extant description that remains and there are other descriptions within the legal sources that help to illuminate the Roman meaning of *familia*.

The influence and authority of a male authority figure and the joining together of a somewhat disparate group of individuals are two of the common threads that can be seen to link the various forms of *familia* known for ancient Rome. By examining these factors from a variety of legal sources, a more refined understanding of *familia* is reached so that it is possible to bridge the gaps between the two extremes found on the spectrum between property and people. One example of this is when the term was used to refer either to an estate or another place of significance, as can be seen in the below passages from Theophilus and Gaius:

Again the person named as heir cannot be a witness nor can anyone in his power nor his father, if the heir be in his power, nor anyone else in the father's power; for the whole transaction which is undertaken for the execution of a will is today regarded as a matter between testator and heir. All the law on this matter had been confused and the ancient lawyers, who rejected the *familiae emptor* [purchaser of the estate] and those linked with him in a relation of power as testamentary witnesses, granted to the heir and those with whom he was related by power, to be witnesses of wills; though the lawyers, who allowed this, were insistent that the right should not be abused. We, however, correcting this practice and converting their exhortations into a legal requirement, in accordance with the rule for the old purchaser of the estate, properly give no right of any sort to witness the will to the heir himself who now holds the place of the old purchaser of the estate, nor to anyone linked to him by the relationship mentioned: accordingly, we did not allow any old constitution on the former practice to be inserted in our Code.<sup>55</sup>

The proceedings are as follows: the testator, as in other mancipation, takes five Roman citizens above puberty to witness and a scale-holder, and, having previously written his will on tablets, formally mancipates his *familia* to someone. In the mancipation the *familiae emptor* utters these words: 'I declare your *familia* to be subject to your directions and in my custody, and be it brought to me with this bronze piece and' (as some add) 'this bronze scale, to the end that you may be able to make a lawful will in accordance with the public statute.' Then he strikes the scale with the bronze piece and gives it to the testator as the symbolic price. Next the testator, holding the tablets of his will, says as follows: 'According as it is written in these tablets and on this wax, so do I give so do I bequeath, so do I call to witness, and so, *Quirites*, do you bear me witness.' This utterance is called the *nuncupare* [nuncupation] meaning to declare publicly; and the testator is considered by these general

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<sup>55</sup> Theophil. Inst Iust 2, 10, 10: *Sed neque heres scriptus neque is qui in potestate eius est, neque pater eius, qui habet eum in potestate, neque frater, qui in eiusdem patris potestate sunt, testes adhiberi possunt quia totum hoc negotium quod agitur testamenti ordinandi gratia, creditur hodie inter heredem et testatorem agi. Licet enim totum ius tale valde conturbatum fuerat, et veteres, qui familiae emptor et eos qui per potestatem ei coadunati fuerant testamentariis testimoniis repellebant, heredi et his qui coniuncti ei per potestatem fuerant concedebant testimonia in testamentis praestare, licet hi qui id permittebant hoc iure minime abuti debere eos suadebant; tamen nos, eandem observationem corrigentes et quod ab illis suum est in legis necessitatem transferentes, ad imitationem pristinae familiae emptoris merito nec heredi, qui imaginem vetustissimi familiae emptoris optinet, nec aliis personis quae ei, ut dictum est, coniunctae sunt, licentiam concedimus sibi quodammodo testimonia praestare; ideoque nec eiusmodi veterem constitutionem nostro codici inseri permisimus.*



words to declare and confirm the specific dispositions which he has written on the tablets of his will.<sup>56</sup>

These two examples ostensibly portray *familia* as an estate or other place of significance within the context of a discussion on how the provisions in certain wills should be enacted. Although it is being used here to refer to a property, such as an estate, it is also being used in a different sense than can be seen in the previous extract from Ulpian. The emphasis here is instead placed on the male authority figure and how he related to and interacted with the *familia*. This is perhaps unsurprising as the extracts both concern a discussion on the correct way to honour the wishes of a testator in a will.<sup>57</sup> *Familia* is used throughout these extracts to refer to the object acquired by the purchaser and an estate itself, which would have been comprised of both slaves and other *res Mancipi*. For example, Theophilus used the phrase '*familiae emptor*' to represent the purchaser of an estate on three separate occasions.<sup>58</sup> Such repetition reinforces the notion that *familia* as property remained a steadfast idea within Roman society. It is interesting to note, however, that there was a distinction made between *familia* and *pecunia* in the passage from Gaius.<sup>59</sup> It would seem that the economic value of this form of *familia* was metaphorically divided from the entity itself. Thus, it appears that the Romans were able to separate the idea of *familia* as property by reinforcing the idea that the *familia* was separate from the earnings they generated. This phrase would appear to negate the argument that *familia* was only applicable to those individuals who were related to a *paterfamilias* through natal or adoptive ties. The phrase *familiae emptor* is repeated in the example from Gaius, in both the

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<sup>56</sup> Gaius. Inst 2, 104: *Eaque res ita agitur: qui facit adhibitis, sicut in ceteris Mancipationibus, v testibus ciuibus Romanis puberibus et libripende, postquam tabulas testamenti scripserit, Mancipat alicui dicis gratia familiam suam. In qua re his uerbis familiae emptor utitur: familiam pecuniamque tuam endo mandatela tua custodelaque mea quo to iure testamentum/ facere possis secundum legem publicam, hoc aere (et ut quidam adiciunt) aeneaque libra esto mihi empta. Deinde aere percutit libram, idque aes dat testatori uelut pretii loco. Deinde testator tabulas testamenti tenens ita dicit: haec, ita ut in his tabulis cerisque scripta sunt, ita do, ita lego, ita testor, itaque uos quirites testimonium mihi perhibetote; et hoc dicitur nuncupatio. Nuncupare est enim palam nominare; et sane quae testator specialiter in tabulis testamenti scripserit, ea uidetur generali sermone nominare atque confirmare.*

<sup>57</sup> Theophil. Inst Inst 2, 10, 10.

<sup>58</sup> Theophil. Inst Inst 2, 10, 10: *...qui familiae emptorem et eos qui per potestatem ei coadunati fuerant testamentaris testimoniis repellebant...ad imitationem pristinae familiae emptoris merito nec heredi, qui imaginem vetustissimi familiae emptoris optinet).*

<sup>59</sup> Gaius. Inst 2, 104: *Familiam pecuniamque tuam endo mandatela tua custodelaque mea (esse aio, eaque,) quo tu iure testamentum/ facere possis secundum legem publicam, hoc aere (et ut quidam adicunt) aeneaque libra esto mihi empta.*

aforementioned passage and its immediate predecessor within the text, and is used within the text to refer to a ‘purchase of an estate’.<sup>60</sup> *Familia* was also used in the same extract to represent the estate of the *paterfamilias*. The overriding theme of these passages is of *familia* as property. The ‘complications’ of interpersonal relationships were not present and the original conception of *familia* as property is once more reinforced.

## 2.5 *FAMILIA*, A COLLECTION OF SLAVES

Exercising the power and authority of the *paterfamilias* has emerged as one of the major trends of this examination of how the ancient Romans understood and related to *familia*. The need to assert one’s place within the hierarchy of elite Roman society can also be observed in the legal sources that regarded a *familia* as being comprised of a group of people as well as those that treated the *familia* merely as property. *Familiae* were not a static element of ancient Roman society. The ‘nuclear family’ model of *familia* that has been promoted in the field of Roman social history fails to account for the growth and decline of the *familia*, namely how members would have joined or left the group.<sup>61</sup> Having a ‘nuclear family’ as the prevalent mode of social organization in the private lives of classical Roman society does not allow for the existence of *mancipatio* and *agnatio*, both methods of movement to and from a *familia* for slaves, women and free citizens, respectively.

*Mancipatio* was the method by which slaves were moved from the authority of one *paterfamilias* to another through a ceremony thought to have originated before money was introduced into Roman society, and *agnatio* was a means by which suitable individuals could be moved from one *familia* to another to provide an ailing *paterfamilias* with an heir to prevent his *familia* from being extinguished.<sup>62</sup> Both of these forms required the impetus of a male authority figure in order for an individual

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<sup>60</sup> Gaius. *Inst* 2, 103: *Namque olim familiae emptor, id est qui a testatore familiam accipiebat mancipio*

<sup>61</sup> See Huskinson (2011), Noy (2011), Parkin (2011), and Saller (1984; 2011) for a sample of the work carried out on the Roman ‘family’.

<sup>62</sup> Nicholas (1969), 63.

or group to be moved between *familiae*. What is especially relevant for the present discussion on the Roman meaning of *familia* is how the ancient Romans classified those elements of society that were considered appropriate subjects for *mancipatio*. Only those entities that were considered to be *res Mancipi* were supposed to be conveyed by *mancipatio*. As has been previously mentioned in this chapter, these included land, oxen, horses, mules, asses, slaves and rustic praedial servitudes.<sup>63</sup> The agricultural connotations of those items that were foregrounded as *res Mancipi* cannot be ignored; Watson went so far as to claim that “these animals were included and not others, because they were the animals that were broken in”.<sup>64</sup> Every element of the *res Mancipi*, apart from the land, has its origins in the farming legacy that helped to create Rome and can rightfully be considered property. The importance of slaves and property to achieving a more nuanced appreciation of the Roman meaning of *familia* is thus inescapable. Although Ulpian’s passage does briefly refer to one interpretation of *familia* as a “body of slaves”, other legal sources more tacitly expressed the importance of slaves, their relevance for maintaining the power of the *paterfamilias* and how *familia* was used in certain situations to refer solely to a collection of slaves.<sup>65</sup> The latter aspect is especially important for the wider question of how they were affected by the adultery legislation, and how, in turn, this affected the *familiae* to which they belonged. One example of this type of usage is from a cited passage from Labeo in the *Digest* and refers to the divisions constructed between household slaves and those who cultivated the land:

And Labeo says that the beneficiary is entitled to live on the estate and that he can debar the owner from entering it, but he cannot debar a tenant or the owner’s *familiam*, that is to say, such of his slaves as are there for the purpose of cultivating the land...if the owner sends his *familiam urbanum* on to the land, such slaves can be debarred on the same grounds...<sup>66</sup>

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<sup>63</sup> Watson (1975), 136; Gaius, *Institutes*, 2.14a-17.

<sup>64</sup> Watson (1975), 136

<sup>65</sup> Dig 50, 16, 195, Ulpian, Book 46, Edict.

<sup>66</sup> Dig 7, 8, 10. Ulpian, Sabinus book 17: *Et Labeo ait habitare eum in fundo posse dominumque prohibiturum illo uenire: sed colonum non prohibiturum nec familiam, scilicet eam, quae agri colendi cause illic sit: ceterum si urbanum familiam illo mittat, qua ratione ipse prohibetur, et familiam prohibendam eiuem rationis est.*

It is evident from this example that the author intended the audience to associate *familia* in this instance strictly with a group of slaves, urban or rural. When discussing the estate, unlike the previous examples, the term *familia* is not used. It is clear in this instance that the only form of *familia* that is to be understood from this example is that of a group of slaves. This passage belies the modern day conception of *familia* as a term that could only refer to a nuclear group structured around family ties gained through (blood) relationships, let alone a nuclear family.

## 2.6 *FAMILIA*: SLAVES ‘UNDER THE SAME ROOF’

*Familia* was also used to refer to those slaves who laboured together, i.e. what I call here, simply, ‘under the same roof’. Within Ulpian’s discussion of wills, *familia* is used accordingly in three separate instances:

...*senatus consulta* have been introduced concerning the questioning on public authority of the *familiam* who have been killed.<sup>67</sup>

...but because their *familia* are mingled and there is only one house, the senate resolved that the same punishment was appropriate in the case of their own slaves.<sup>68</sup>

There is no questioning of the *familia*.<sup>69</sup>

There is a clear trend running through these three examples whereby *familia* was only being used in conjunction with the idea of slaves labouring under the same roof. Although the Roman conception of a household could be considered quite fluid and elastic, it is apparent that in this example the author was referring to the collection of slaves that would have been possessed by an elite or wealthy Roman and who would have been a recognizable unit in the household. This is because the use of the term *familia* is contrasted with the following examples of *filius familias* and *patres familias*, which are clearly referring to the master’s natal relatives.

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<sup>67</sup> Dig 29, 5, 1, Ulpian, book 50, Edict: *Ideo senatus consulta introducta sunt de publica quaestione a familia necatorum habenda.*

<sup>68</sup> Dig 29, 5, 1, Ulpian, book 50, Edict: *Sed quia commixta familia est et una domus est, ita vindicandum atque in propriis servis senatus censuit.*

<sup>69</sup> Dig 29, 5, 1, Ulpian, book 50, Edict: *Non haberi de familia quaestionem.*

The term *dominus* [master] covers a *filius familia* [son-in-power] and the other children.<sup>70</sup>

...Silanianum relates not only to the *paterfamilias* ['father' or head of the family] but also to children.<sup>71</sup>

These quotes further reveal the widespread application of *familia* as a term to describe a social group throughout classical Roman society and the power and authority inherent in the position of *paterfamilias*. The ubiquity of *familia* as a term used to describe both property and people is revealed because the authors have used it in these extracts to refer to social players as diverse as slaves and heads of households.

Jurists were not the only writers to conceptualize this type of *familia*. To use one of many possible examples, Quintilian, a writer of rhetoric to whom we shall turn in greater detail in Chapter Five, for example, used the term to refer to a group of slaves, or servants, that were employed within a particular household and would have had their ownership transferred, alongside the *domus*, as part of the dowry exchange.<sup>72</sup> If it had such a narrow definition, as some modern scholars would prefer to believe, it could not have been utilized in this situation to refer to such varied social groups.<sup>73</sup> The power and authority of the *paterfamilias* are portrayed in these extracts in both overt and subtle ways. The overt nature of the portrayal can be seen in the way that the only exceptions to the questioning of the slaves can be gained from being connected to a *paterfamilias* through natal bonds; the assumption being that such a relationship would presumably absolve an individual of the requirement to be questioned. The somewhat more 'subtle' portrayal of the *paterfamilias* can be seen in the implication reinforced throughout the passages that the male authority figure is the central individual in a Roman *familia* and that all decisions, rules and power should

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<sup>70</sup> Dig 29, 5, 1, Ulpian, Edict, book 50: *Domini appellatione et filius familias ceterique liberi*.

<sup>71</sup> Dig 29, 5, 1, Ulpian, Edict, book 50: *Silanianum non solum ad patres familias, uerum ad liberos quoque pertinent*.

<sup>72</sup> Quint, *Decl* 347.5. It is worth noting at this juncture that, while there is some debate surrounding the authorship of the *Declamations* (as currently they are only attributed to Quintilian rather than definitively known to be his work) the specific author of the *Declamations* is not especially relevant in regard to this analysis. Rather, it is the approximate timeframe in which they were composed and the inclusion of slaves and freedmen in various contexts that is relevant.

<sup>73</sup> Other examples of similar uses of *familia* can be seen in Dig 39, 4, 1 Ulpian, Edict, book 55 and Dig 39, 4, 1, 5 Ulpian, Edict, book 55.

flow through and from him. Although the concept is not unique within the culture of ancient Rome, it is not explicitly stated within the above extract. The duality of this portrayal of patriarchal authority forces the question of why the legal writers would choose, or indeed feel it necessary, to depict it in this way. One possible explanation is that if the jurists accepted, or at least recognized, the notion of the primacy of male authority figures being thoroughly entrenched within classical Roman society, it is reasonable to assume that it was their practice to conceptualize and discuss the constituent elements of this power, such as the pervasive presence of slaves and freedmen, without having to refer overtly to them.

## 2.7 *FAMILIA*, SLAVES IN THE ‘GOVERNMENT HOUSEHOLD’

*Familia* was also used to refer to groups of slaves who fell under the authority of the governing bodies, in addition to those groups owned by private individuals. One example of this can be seen in the *Digest*, where Paul wrote about the duties of the Prefect of the City Guard:

In the times of our ancestors, a triumvirate had charge of guarding against fires. They were called nightmen on account of the fact that they worked while others slept. On occasion, aediles and tribunes of the plebs took a hand in this work. There was, however, a team of *familia publica* stationed around the portals and city walls, whence they could be called out at need. There had also been *familia privata* for putting out fires either for payment or gratis. In the end, the deified Augustus preferred to take the care of this matter into his own hands.<sup>74</sup>

The Latin word for slave, *servus*, nor any other of the terms used to signify slaves, for example, *mancipia*, was not used at any point in the Latin text of the above extract. This indicates that the freedom to apply the term *familia* as a group comprised solely of slaves, in certain situations, was an accepted concept within classical Roman

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<sup>74</sup> Dig 1.15.1. Paul, Duties of Prefect of the City Guard, sole book : *Apud vetustiores incendiis arcendis triumviri praerant, qui ab eo quod excubias agebant nocturni dicti sunt: interveniebant nonnumquam et aediles et tribuni plebis. Erat autem familia publica circa portam et muros disposita, unde si opus esset evocabatur: fuerant et privatae familiae, quae incendia vel mercede vel gratia extinguere. Deinde diuus Augustus maluit per se huic rei consuli.*

society, also in the context of publicly owned slaves.<sup>75</sup> As has been observed up to this point and also demonstrated in the above text, the term *familia* is malleable and sometimes the reader must ascertain the meaning in each instance from the context and content of the discussion. So, in this extract from Paul, the actions and responsibilities of the *familiae* being discussed are clearly meant to invoke the idea of slaves comprising the membership of the *familiae* and performing the fire-fighting tasks. Paul's use of *familia* in this example is also illuminating because it shows how the *familia* was treated in Roman society away from the spheres of the domestic household or rural estate. A *paterfamilias* acting as the sole male authority for a private household or *familia* has, to date, been the primary model utilized in this work when discussing the composition of a *familia* and its relationship and interactions with the *paterfamilias*. The various paradigms for *familia*, for instance, *familiae* made up only of slaves or those that included the spouse, biological and adoptive children of the *paterfamilias* have all been influenced by this archetype of the *paterfamilias*. These would all have been affected by social changes such as new legislation. An understanding of the power and influence of this paradigm can be utilized in order to achieve a fuller understanding of the role of the *familia* in ancient Roman society. However, it is important to remember that the imperial bureaucracy and the emperor himself stood as a metaphorical *paterfamilias* for Roman society, especially in the early years of the Principate. It follows that there may be no structural, i.e. conceptual, difference in the case just discussed from the standard model of the *paterfamilias*. Either way, this final example corroborates the point of this survey that the term *familia* is flexible, and that it encompasses a much wider range of meanings than often postulated by modern scholars.

## 2.8 CONCLUSION

Modern scholars of Roman social history often misinterpret or misrepresent the Roman term *familia*. This misunderstanding has resulted in the common misnomer that *familia* strictly referred to, in the Roman society of the early imperial period and beyond, what modern-day commentators would describe as a 'nuclear family'. There

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<sup>75</sup> On slaves owned publicly by, for example, towns, see Weiss, *Sklave der Stadt* (2004).

are abundant primary legal sources, however, that contradict this modern viewpoint and offer an alternative perspective on how the term *familia* was understood and related to by the Romans of the early imperial period. This has of course long been recognized by legal historians. But as will become clear in the following chapters, it is important to be conscious of the mutability of the term *familia*, and how the context in which it appears can change the understanding of who (and what) was referred to – especially regarding the analysis of the roles taken by slaves and the freed in adulterous acts as defined by the law. It is this variety of meanings that this chapter sought to address by returning to the legal sources found in Justinian’s *Institute* and *Digest*, and Gaius’ *Institutes*, and exploring the variety of *familiae* to be found in them.

As we saw, Ulpian’s description of *familia* from the *Digest* (Dig 50, 16, 195 Ulpian, *Edict*, book 46) identified five different types of *familia* that reflected the spectrum of its development from a term that referred solely to property, such as a rural estate, to one that encompassed the various ‘social players’ that surrounded a *paterfamilias*, including slaves, freedmen, and his relatives, as well as, for example, the rural estate. The variety in the *familiae* found in this example alone and the significance of this breadth of meanings of *familiae* serve as a counter-point to the problematic modern-day conception of *familia* discussed at the start of this chapter. The remainder of this chapter, using Ulpian’s description of the five types of *familia* as a foundation, explored in greater detail three different types of *familia* that differ from the model promoted by some modern scholars. The use of *familia* as a reference to a rural estate, or other similar place of significance, was discussed further and the importance of the *paterfamilias* and his influence in relation to the place of *familia* in Roman society was explored, and the notion that *familia* originated and, indeed, continued to be a term intrinsically linked to the Roman idea of property was reinforced. Property, according to Roman laws, also included slaves. Whilst the concept of slaves serving as property is nothing new, it was vital in this chapter to discuss the strong connections between slaves and the term *familia* in order to build the framework for the following exploration of how Augustus’ adultery law affected all types of *familiae* – and, more crucially, all potential members of the *familiae*. As the legal sources clearly show, *familia* was in widespread use as a collective noun to



refer to, or include, a group of slaves. Its presence was seen throughout all of the legal sources used, and it is clear that a *familia* comprised solely of slaves was an accepted idea for Romans and formed an integral part of the composition of the overall perception of *familia*. The existence of a government-owned group of slaves, or *familia publica*, was covered separately because it is further evidence for the argument that *familia* was a term that was regularly applied to various social groups throughout Roman society, such as the public fire-fighters. Whilst the legal sources are not the only texts that allow wide and diverse interpretations of *familia*, a focus on these alone has shown sufficiently the extent of the uses of *familia* by the Romans and how they related to one of the key components of their social organization. What is particularly important for present purposes is that the inclusion of slaves and freedmen in multiple concepts of *familia* is beyond doubt: slaves and freedmen must, therefore, not be left out of modern investigations into social issues that affect the *familia*. – such as adultery and any legislation aimed at addressing it. As a comprehensive review of the perception and role of the term has been achieved, it is now time, then, to explore the adultery legislation in greater detail – taking, naturally, as the starting point, the wide and full meanings of *familiae* that the Romans were able to formulate – because only on this basis can we hope to gain a rounded understanding of the effect of Augustus’ adultery legislation on (all members and parts of) the *familia*.







# CHAPTER THREE: ADULTERY WITHIN A *FAMILIA* – THE *LEX IULIA DE ADULTERIIS COERCENDIS* AND THE *FAMILIA*

## 3.1 INTRODUCTION

The *lex Iulia de adulteriis coercendis*, referred to repeatedly in this thesis as either the ‘adultery law’ or ‘adultery statute’, was a deceptively complicated piece of legislation. Introduced by Augustus as part of his ‘social legislation’, what appears to be a seemingly straightforward statute decrying adultery within Roman marriages, also offers an insight into the complex relationships between freeborn, freed and enslaved members of the *familia*.<sup>76</sup> Moreover, a focus on this ‘wider’ *familia* serves to question the contention that morality was the sole motivation behind Augustus’ enactment of the ‘social legislation’.<sup>77</sup> As was seen in Chapter One, previous scholarship has generally concentrated on the free members of the *familia* when discussing this law: the reason is, typically, due to an overtly narrow view of the composition and nature of the Roman *familia*, as discussed earlier in this thesis. The result, as will be shown, is a distorted understanding of both the law and adultery in general. This chapter will lay the foundations for this thesis’ central contention that the adultery law drastically affected servile and freed members of the *familia* as much as it impacted the free. However, to fully appreciate the impact of this legislation on these members of the *familia*, it will first be necessary to attain a deeper understanding of the nature of adultery and the accompanying crime *stuprum*, as they are portrayed in the jurist’s writing compiled in the *Digest*. Furthermore, some brief considerations are in place regarding the nature of the existing source material for the law; this will emphasize the limitations of all analyses of this law imposed by the source material, highlighting in turn the need to compare and contrast the legal evidence with other, literary evidence – as will be done in Chapters Four and Five. Augustus’ law on adultery was a

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<sup>76</sup> See note X in Chapter One for further discussion of the term ‘social legislation’.

<sup>77</sup> A fresh perspective on the motivations behind this statute cannot be offered before a thorough analysis of the evidence is carried out and an understanding of the interweaving relationships is achieved. A suggestion for further lines of inquiry into the possible motivations surrounding the promulgation of this statute will, then, be offered in the Conclusion.

multifaceted piece of legislation and any attempt to understand it more completely should aim to take a similarly multi-faceted approach.

### 3.2 THE NATURE OF THE EVIDENCE

An extant copy of the *lex Iulia de adulteriis coercendis* is not currently known to exist.<sup>78</sup> Justinian's *Digest* contains commentaries from jurists that draw on the statute and, in some instances, purport to directly quote the original legislation.<sup>79</sup> A survey of the particular section of the *Digest* that covers the adultery law, Dig 48.5, shows that certain jurists, namely Papinian and Ulpian, dominated the commentaries preserved in this compilation. Whilst it is natural to expect the loss of any number of extracts due to time, or the specific focus of those who compiled the *Digest*, it remains striking that the works of two jurists dominate the opinions preserved in this section. In particular, these two jurists commented on the punishments enacted as a result of this statute, who could initiate the legal process of an accusation and consequently a trial, and, finally, on who was and was not punished under the terms of the legislation.<sup>80</sup> Although it is nearly impossible to know the precise motivations of those who compiled the *Digest*, it is fair to say that the compilers of this work were unable, or unwilling, to retain the majority of the remaining legal evidence, also with regard to the law under discussion here, and clearly adopted a highly selective approach to what they chose to retain.<sup>81</sup> Therefore, any analysis of how adultery was treated within the relevant extracts from the *Digest* and how the servile and freed, in turn, were mentioned in regard to juristic descriptions of these crimes must bear these constraints in mind: we are, as is so often the case, in possession of only a small amount of the evidence that once existed – and what we have may have a distorted focus.

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<sup>78</sup> For modern discussions of the text, see Crawford (1996b).

<sup>79</sup> See Appendix for a full list of the jurist's mentioned in the *Digest* section on adultery.

<sup>80</sup> For a summary of Dig 48.5 according to these categories, see Appendix.

<sup>81</sup> See Johnston (1989) and Kaser (1972) for a discussion on the compilation of the *Digest*.

### 3.3 WHAT IS ADULTERY?

The process of understanding the nature of the crime of adultery and how its repercussions affected various members of the *familia* is hampered by numerous challenges. Foremost amongst these is, perhaps, somewhat unexpected if one takes into account that an entire law was created to legislate against it; more specifically, uncertainty surrounding exactly what the Romans of the early Empire considered to be adultery. Both the jurists' commentaries and the scant original passages from the statute found in Dig 48.5 do not provide a substantial definition of adultery. Such scarcity of definitions is a common theme of Roman legal writing and is not unique to the adultery law. When the source material does approach the idea of 'defining' adultery, it generally does so from the perspective of the individuals involved rather than classifying the nature of the act itself. Modestinus, one of the jurists preserved in Dig 48.5, broached the topic of adultery by claiming it was an act "committed with a married woman".<sup>82</sup> Papinian, too, maintained that adultery was committed with a married woman, and that the term itself was "derived from children conceived with another (*alter*)"; and that it should not "be conflated with other crimes and can be charged separately".<sup>83</sup> In these instances, the focus is not on the act itself but on those committing it, which is a consistent theme that occurs throughout the commentary on this statute. Romans clearly had definite preconceptions about how they

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<sup>82</sup> Dig 48.5.35 pr-1: *Stuprum committit, qui liberam mulierem consuetudinis causa, non matrimonii continet, excepta videlicet concubina. Adulterium in nupta admittitur: stuprum in vidua vel virgine vel puero committitur. Stuprum* is committed by someone who keeps a freewoman for the sake of sexual relations not marriage, unless indeed she is a concubine. Adultery is committed with a married woman; *stuprum* is committed with a widow, a virgin, or a boy. Modestinus also discusses the crime of *stuprum*, and how it differs from adultery, within this passage. Whilst *stuprum* is relevant to a discussion of the overall effects of the adultery law, I do consider it to be a separate crime from adultery so it will be discussed in a subsequent section.

<sup>83</sup> Dig 48.5.6.1: *Lex stuprum et adulterium promiscui et καταχρηστικώτερον appellat. sed proprie adulterium in nupta committitur, propter partum ex altero conceptum composito nomine: stuprum vero in virginem viduamve committitur, quod Graeci φθοράν appellant.* The law refers to *stuprum* and adultery indiscriminately and with rather a misuse of terms. But properly speaking adultery 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; the Greeks call it corruption. Dig 48.5.6.3: *Maritus etsi duo reos ex alio crimine habeat, poterit iure viri tertium accusare, quoniam ea causa non cedit in numerum ceterarum.* Although a husband may [already] have charged two persons with some other offense, he can by his husband's right accuse a third, since the case [of adultery] is not counted with the others.

conceptualized adultery but were either reluctant or had no cause to express their concept of the actual act openly.

That said, there is one glaring omission in both of these ‘definitions’ of adultery that may progress the analysis one step further; namely, any indication of the social status of the male adulterer.<sup>84</sup> If the social role of the male adulterer is not identified, the focus logically falls onto the female. Richlin (1983) followed a similar line of reasoning to the jurists in the *Digest* when she argued that both the legal and literary material shared “the point of view of the cuckolded husband [and that] adultery is ...either a wife’s betrayal of her husband or as one man’s cuckolding another; the marital status of the adulterer is immaterial”.<sup>85</sup> Here, Richlin deliberately designates the ‘intruder’ into the marriage as the adulterer even though both the wife and the illicit lover would be seen to be committing adultery under the terms of the adultery statute. Therefore, if the one constant throughout the discussions of adultery is that it involved a married woman rather than the nature of the act itself, the plausible conclusion is that, within the crime of adultery, it is not the fact that adultery has happened but with whom it has been committed that is important: the elusive definition of adultery implied by the adultery statute itself and the true purposes of the law can be resolved by looking to those who were the focus of the jurists’ writing – the married Roman women.

The comments of Papinian and Modestinus, however, are not the only discussions within Dig 48.5 that delve into the nature of adultery. Papinian wrote “if a person below the age of majority commits adultery, he is liable under the *lex Iulia* because the ability to commit this type of crime begins from puberty”.<sup>86</sup> Such a statement gives the impression that the Romans conceived of the criminal act of adultery as referring to the physical act itself rather than an affair based on emotion.

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<sup>84</sup> Since Dig 48.5 does not contain a single scenario of a married woman committing adultery with another married woman, any adulterer mentioned in conjunction with a married woman or a widow will be assumed to be male. The use of passages around definition is deliberate in this sentence as the jurists never really define adultery; rather, they provide examples of scenarios that meet their criteria.

<sup>85</sup> Richlin (1983), 217-218.

<sup>86</sup> Dig 48.5.37: *Si minor annis adulterium commiserit, lege Iulia tenetur, quoniam tale crimen post pubertatem incipit*. If a person below the age of majority commits adultery, he is liable under the *lex Iulia*, because [the ability to commit] a crime of this nature begins from puberty.



This is not the only example that hints at a ‘between-the-sheets’ definition of adultery: Ulpian also hinted at a more tangible classification when he wrote “the words of the statute ‘shall have caught the adulterer in his daughter’ do not appear to be superfluous as the intention was that this power be available to the father only if he should catch his daughter actually engaged in the act of adultery”.<sup>87</sup> This statement is even more explicit than Papinian’s. It refers to a specific circumstance in which the most severe punishment outlined in the law is enforced. It does not mention that he is referring to a severe, or more extreme ‘version’ of adultery or that the statute acknowledged the existence of ‘degrees’ of adultery that would have warranted a less severe form of punishment. It is reasonable to conclude, therefore, that those who enacted the adultery statute considered the sexual act itself to be the only form of adultery worth prosecuting and thus the only form of adultery. This raises an interesting question: if the *lex Iulia de adulteriis coercendis* was created primarily to legislate against perceived lapses in morality as many have agreed, would they have focused solely on the physical act itself? Catching someone ‘in the act’ would surely not have happened on a regular basis, as those involved would have been careful to avoid discovery, and so the focus on the physical act, and possible, but unspoken, consequences such as an illicit pregnancy and the potential of an illegitimate child entering the line of succession, suggest an additional if not altogether different focus beyond that of a breakdown in morality. We shall return to this point in this thesis’ Conclusion.

Subsequent discussion of the evidence will emphasize that the potential consequences of the specific action alluded to by the three jurists was the overriding concern driving the enactment of the adultery legislation.<sup>88</sup> This answer can already

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<sup>87</sup> Dig 48.5.24 pr: *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: et hoc est quod solo et draco dicunt ἐν ἔργῳ*. The words of the statute “shall have caught the adulterer in his daughter” do not appear to be superfluous; 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 adultery. Labeo also approves [this interpretation], and Pomponius has written that a person caught in the actual act of love is killed. This is also what Solon and Draco say: “in the act”.

<sup>88</sup> The prescribed penalties were confiscation of half their dowries and 1/3 of their property and relegation to an island for female adulteresses; for male adulterers, the punishment was confiscation of half their property and relegation to a different island [Treggiari (1991), 290]; see also Paul § 2.26.14; Dig 24.3.36 and Dig 48.20.4 for further details of punishment associated with the adultery statute.

be found in Papinian's definition of adultery that mentions "children of an other".<sup>89</sup> Such children, who could not be definitively attributed to a *paterfamilias*, would potentially have had a claim on the property of that *paterfamilias*; the purported social shame and destruction perpetuated by adultery was, therefore, at least partially a result of illegitimate children having a legal claim on the wealth and property of a *paterfamilias*. Thus, as suggested, the key to furthering our knowledge of adultery is to examine the potential consequences of adultery; and, to ask why Augustus may have wanted to legislate against it. But, an important component of the overall puzzle that should not be overlooked is the nature and role of *stuprum*, a related crime, within the adultery law itself and the Roman society of the early Principate.

### 3.4 WHAT IS *STUPRUM*?

The inclusion of *stuprum* within discussions of the adultery law in the *Digest* presents a dilemma for modern scholars who seek to understand the legislation. The term itself is used interchangeably with adultery throughout the jurists' comments, which hampers a clear understanding of the concept when the source material itself does not appear to be certain in regard to which crime it is referring to within the text. Treggiari defined *stuprum* as "fornication with a married woman, virgin, widow, or a divorced woman of a respectable station."<sup>90</sup> Yet, this is a very broad-reaching definition that does not acknowledge the nuances evident in the *Digest*. Whilst it is not the purpose of this work to develop a new theory on the definition of *stuprum*, it is important that I detail the definition that has been adopted for the purpose of this thesis, in order to clarify my understanding of adultery. One point that is certain, then, is that *stuprum* did refer to a physical act between two adults: a person who had forcibly committed *stuprum* on either a male or a female could have been accused at any time, because he

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<sup>89</sup> Dig 48.5.6.1: *Lex stuprum et adulterium promiscui et καταχρηστικώτερον appellat. sed proprie adulterium in nupta committitur, propter partum ex altero conceptum composito nomine: stuprum vero in virginem viduamve committitur, quod Graeci φθοράν appellant.* The law refers to *stuprum* and adultery indiscriminately and with rather a misuse of terms. But properly speaking adultery 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; the Greeks call it corruption.

<sup>90</sup> Treggiari (1991, 278). See also Fantham (1991) for a discussion of *stuprum*.

was committing *vis publica*.<sup>91</sup> Modestinus contributed to this debate by describing *stuprum* as something “committed by someone who keeps a freedwoman for the sake of sexual relations not marriage...[or]...is committed with a widow, a virgin or a boy.”<sup>92</sup> Here, as it has been shown with adultery, a reference to *stuprum* referred to the physical act itself rather than a display of affection or any other type of ‘illicit’ behaviour. Essentially, these two crimes were identical on the most basic level and the only feature separating them was the social role and, potentially, the gender of the persons involved. It was not the fact that these acts had occurred that raised the ire of the Romans but rather with whom they had been committed.

Despite a superficial similarity, there was one marked difference between *stuprum* and adultery. An ability to create new life that was legitimate, at least superficially, under Roman law was one of the defining characteristics of adultery. Those liable to accusations of *stuprum* were not in a position to produce children who had the potential to disrupt the line of succession of a *familia*. While Modestinus’ virgin or widow may have been physically capable of bearing children, such a child would not have disrupted the inheritance lines of a *familia* to the same degree or at all. Papinian also saw *stuprum* as a crime committed against a virgin or a widow:

The law refers to *stuprum* and adultery indiscriminately and with rather a misuse of terms. But properly speaking adultery 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; the Greeks call it corruption.<sup>93</sup>

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<sup>91</sup> Dig 48.5.30. 9: *Eum autem, qui per vim stuprum intulit vel mari vel feminae, sine praefinitione huius temporis accusari posse dubium non est, cum eum publicam vim committere nulla dubitatio est.* There is, however, no doubt that a person who has forcibly committed *stuprum* on either a male or a female can be accused without limit of time, since it is indubitable that is is committing *vis publica*.

<sup>92</sup> Dig 48.5.35 pr-1: *Stuprum committit, qui liberam mulierem consuetudinis causa, non matrimonii continet, excepta videlicet concubina. Adulterium in nupta admittitur: stuprum in vidua vel virgine vel puero committitur.* *Stuprum* is committed by someone who keeps a freewoman for the sake of sexual relations not marriage, unless indeed she is a concubine. Adultery is committed with a married woman; *stuprum* is committed with a widow, a virgin, or a boy.

<sup>93</sup> Dig 48.5.6.1: *Lex stuprum et adulterium promiscui et καταχρηστικώτερον appellat. sed proprie adulterium in nupta committitur, propter partum ex altero conceptum composito nomine: stuprum vero in virginem viduamve committitur, quod Graeci φθοράν appellant.*

The Latin word used to describe widows is revealing. *Uidua*, meaning unmarried woman, is used here to refer to widows. This could represent the idea that a widow is being returned to an ‘unblemished’ legal status; one that once more has the *potential* to create new life rather than a married woman who presumably had already borne children. What is, perhaps, more revealing are the social roles the jurist used when describing those individuals who were subjected to *stuprum*. Widows were not absolved of liability under the adultery legislation but mentioning them together with (female) virgins confers on them the sanctity of unblemished potential normally experienced only by the latter group. One possible interpretation of *stuprum* in these circumstances is of a crime that desecrated the potential for legitimate Roman children who would maintain and strengthen the *familia*. Adultery, on the other hand, was a crime that destroyed that sanctity of something that already existed, and, together with *stuprum*, shared many of the same characteristics, which is why the jurists whose work is quoted in the *Digest* used these terms interchangeably. But, they differed fundamentally in how they were perceived by the Romans to have had an effect on the *familia*. It goes without saying that much has been made of the supposed variable nature of adultery and *stuprum*. For the sake of clarity, when the terms ‘adultery’ and ‘adulterous’ are used in this thesis they are referring specifically to relationships that meet the afore-mentioned legal criteria for adultery. With this distinction in mind, we can return to our discussion of the involvement of the servile and freed in adultery in the Roman Empire.

### **3.5 ASPECTS OF THE *FAMILIA* AND SLAVES IN THE ADULTERY LAW**

As we have seen above, slaves were an important part of the *familia*. That they mattered to the Romans, and were indeed subject to Augustus’ adultery legislation, can be seen in the numerous mentions made of them by the jurists in Dig 48.5 and those extracts aimed specifically at slaves: these texts are central to the forthcoming discussion in Chapter Four. As will be seen, Romans saw slaves as both potential adulterers and as potential witnesses for the adultery of their masters or mistresses. This section, however, will briefly deal with one specific text from the *Digest* that

might appear to suggest that slaves were *not* capable of committing adultery (and *stuprum*) themselves, and that they were not subject to punishments under the statute in ways similar to those of the freeborn elite. Once the doubt over the applicability of the law on slaves has been removed, the argument of this thesis can progress.

The text in question is a passage from the writing of Papinian who differentiated between which laws applied to free persons (either freeborn or freed) or to slaves:

The *lex Iulia* applies only between free persons who have suffered adultery or *stuprum*. But as far as female slaves are concerned, an action under the *lex Aquilia* will readily apply and that for *iniuria* is also competent, nor must the praetorian action for the corruption of a slave be refused; nor shall someone accused of this kind of offense be spared because of the many actions [possible against him].<sup>94</sup>

There are several important points that need to be explored here. The first is that Papinian is the only jurist who deliberately made a point of separating free people and slaves within a discussion of the liability associated with the adultery law. Whilst it may be possible that evidence for other jurists making the same separation once existed, it is reasonable to conclude that his opinion on the division between free and enslaved in regard to the applicability of the *lex Iulia* on adultery requires careful assessment, in place of speedy generalisation.<sup>95</sup> If, then, we take a closer look at the language of the extract, we see that Papinian's intention was not to state that slaves were, in general, unable to commit adultery or *stuprum*. The inclusion of the phrase *personas liberas* is being used to differentiate, within a sample of those who had committed these crimes, between those to whom the law applied and those to whom it did not apply, in terms of liability and related claims. But it does not exclude the possibility of slaves being involved in adulterous acts. Concerning slaves, the adultery

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<sup>94</sup> Dig 48.5.6 pr: *Inter liberas tantum personas adulterium stuprumve passas lex Iulia locum habet. quod autem ad servas pertinet, et legis Aquiliae actio facile tenebit et iniuriarum quoque competit nec erit deneganda praetoria quoque actio de servo corrupto: nec propter plures actiones parcendum erit in huiusmodi crimine reo.* The *lex Aquilia* applies where female slaves are concerned and there is a praetorian action for corruption of a slave. There is an implication here that adultery and *stuprum* with a female slave was actionable, or made an individual liable for prosecution under the adultery law, but it does not specify what indeed were those circumstances.

<sup>95</sup> If this was a more widely held belief, it would have been present in the commentaries of the other jurists.

legislation forced slaves to occupy dual roles within Roman society. As is well known, and as will be seen in great detail in the following two chapters, slaves were simultaneously classified as property with the same legal standing as livestock *and* as persons capable of entering into and bearing witness for adulterous relationships – and this (con)fusion is also behind Papinian’s statement; it does not, in any case, address the situation of male slaves.<sup>96</sup> (We shall return to the peculiar situation of the female slave in this passage in Chapter Four). It is not, then, the case that Papinian was addressing here a general rule; rather, he was concerned with a particular scenario concerning liability that might arise under the adultery law.

As this brief discussion of Papinian’s text shows, re-evaluating the evidence from a perspective that fully includes slaves and freedmen has the potential to show that a law ostensibly aimed at freeborn Roman citizens had an impact precisely upon slaves and ex-slaves, and that this can be seen through a reassessment of the evidence and an acknowledgement that slaves were also susceptible to some of the punishments contained in the adultery statute.<sup>97</sup> In order to explore more fully this very complex role, between that of slaves in the *familia* and the adultery law, it is now time to examine what punishments were enforced through the statute and whom it affected within the *familia*: this will strengthen the argument that all members of the *familia* must be taken into account.

### 3.6 THE ‘CULTURE’ OF THE ADULTERY LAW

It is, perhaps, clear at this stage that slaves and freedmen were as entangled within the adulterous relationships, and the ramifications of the new legislation introduced to reduce them, as their owners and patrons. However, what is not as clear is in what sort of milieu these servile and freed members of the *familia* were entangled.

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<sup>96</sup> See McLeod (2001) for a discussion on what constituted livestock in the Roman Empire.

<sup>97</sup> Indeed, while some authors accept that slaves were capable of entering into adulterous relationships, they maintain that slaves were outside the scope of the adultery law. Susan Treggiari, somewhat confusingly, argues that “adultery could only be committed with a person of free status” but then goes on to say that “slaves were liable as the active partners in adultery but, as passive partners in fornication, were outside the scope of the law (Treggiari 1991, 278-279; 281). This speaks to an ambiguity regarding the position of slaves in relation to the *lex Iulia* on adultery that is prevalent within the current academic mindset.

Understanding the enforcement of the penalties associated with adultery as a whole allows the specific nature of the involvement of slaves and freedmen to be appreciated with a more accurate perspective.

Elite and freeborn members of Roman society were the primary targets of this legislation: their treatment formed the bulk of the jurists' commentaries on this law. However, there is a startling disparity in the content of the discussion of punishments included in the extracts and what the law prescribed. The threat of exile and loss of property is not directly referred to in the section that discusses the punishments related to adultery. Instead, the focus is on who is allowed to enact the punishment and who is liable for receiving the punishments under the adultery law.<sup>98</sup> This once more places an emphasis on the individuals who committed the crime rather than the punishment they received. Whilst this may be due to the selection criteria applied by those who compiled the *Digest*, it remains worthwhile to examine the penalties that were prescribed under Augustus' adultery law. The legislation pertaining to adultery placed great importance on the social status of the adulterer and prescribed different penalties accordingly. They consisted of confiscation of half their dowries and 1/3 of their property and relegation to an island for female adulterers; for male adulterers, the punishment was confiscation of half their property and relegation to a different island.<sup>99</sup> But the right to punish adulterers and the type of punishments that could be meted out were not just dependent on the social status of an individual but also on the nature of the relationship to the female adulterer. Examining the nature of these penalties is even more important for the overall analysis of the impact of this statute because the first emperor chose a less severe form of exile to inflict on those accused and found guilty of adultery. Surely, if adultery were such a great threat to the 'moral fibre' and structure of Roman society, Augustus would have tried to ensure a more severe punishment in order to set an example to the Roman populace? However, if we accept that the adultery legislation was motivated by factors other than that of reasserting the strong moral character of the 'Golden Age', this apparent leniency can

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<sup>98</sup> The analytical framework applied to the primary legal sources on adultery is discussed in detail in the methodology section of the introduction to this thesis.

<sup>99</sup> Treggiari (1991), 290; Paul § 2.26.14; Dig 24.3.36 and Dig 48.20.4; Justinian's Institutes 4.18.4 claims that the Julian Law punished adulterers and homosexuals with execution.

be explained.<sup>100</sup> First, though, a brief discussion of the different types of exile, the main punishment supposedly meted out to adulterers under the law, is necessary in order to provide a contrast with what was actually discussed in the jurists' commentaries in terms of punishment for adultery.

*Exilium*, also known as *aquae et ignis interdictio*, was the most severe form of exile where a person lost their citizenship and property.<sup>101</sup> *Relegatio* could be interpreted as a "less extreme form of punishment...[as it] did not usually result in the loss of citizenship or property", and those punished could still benefit from a will, own property or possess rights over their sons (the last privilege being obviously applicable only to male exiles), although they would still have experienced a reduction of their *dignitas*.<sup>102</sup> Garnsey (1970) identified *relegatio* as a manifestation of the "authority of the *paterfamilias* over his children and wife, or that of a patron over his freedmen".<sup>103</sup> While scholars have traditionally perceived the threat of exile as a punishment reserved for the noble elite, Garnsey, however, believes that these officials had options available to them when sentencing the elite but that they generally tended to mete out punishment along strict class delineations. He contends that "the officials who administered criminal justice in the extraordinary courts of the Empire normally deported and relegated offenders of high status and found harsher punishments for criminals from the lower ranks of society".<sup>104</sup> It is this social distinction that is played on precisely in the context of adultery in Petronius' *Satyricon*, where Trimalchio recalls his relegation to a lesser office in his owner's household after having been suspected of sleeping with his mistress.<sup>105</sup>

The common theme that can be extracted from these discussions is the continuance, albeit in a somewhat altered format, of the power of the *paterfamilias*.

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<sup>100</sup> The motivations for the introduction of the adultery statute will be addressed in the conclusion of this thesis.

<sup>101</sup> Alexander (1958), Bingham (2003), 378; Cohen 2008, 207, Dyck (2003), Grebe (2010), Jameson (1975), Jones (1951), Norwood (1963), Pallarés (1993), Peachin (1994), Rogers (1966) and Russell (1948); Dig 48.22.14.1.

<sup>102</sup> Bingham (2003), 378; Garnsey 1970, 116; Dig 48.22.4; Dig 48.22.7; Dig 48.22.7.2; PS 3.4.A.9; Dig 28.1.8.1; Dig 34.5.5. praef; Dig 48.20.7.5; Dig 48.22.7.3; Dig 50.13.5; PS 3.4A.9; Dig 37.1.13.

<sup>103</sup> Garnsey (1970), 119.

<sup>104</sup> Garnsey (1970), 121; Tac. *Ann.* 14.62.4; Tac. *Ann.* 4.63; Tac. *Ann.* 13.22; Pliny, *Ep.* 8.14.12.

<sup>105</sup> Pet. *Sat.* 69: 3; the passage is discussed in Roth (2009).



While there is no doubt that the lives of those forced to leave Rome were disrupted severely, the socio-economic footprint of these individuals was not erased completely. They were still able to interact, to a limited degree, with their *familia* and their property. By making the less severe form of exile applicable to those convicted of adultery, Augustus was trying to ensure that the social classes that were most useful in maintaining the momentum of the Principate were not unduly haemorrhaging wealth and economic influence. Despite being punished for their crimes, these individuals would have been able to exert a certain level of control over their holdings. Social status and an individual's overall place in the social hierarchy both played a large part in determining the effect that the adultery law had on an individual and their *familia*. In short: there existed a careful 'grading' regarding the punishments dished out for adultery – which is important to understand more fully to appreciate the reach of the statute. Examining the primary source evidence for the statute will reveal which social groups bore the brunt of the punishment meted out by this law, if indeed it was biased towards any particular group. This will help to create a complete picture of all those affected by the adultery law and its prescribed penalties.

Any discussion of the primary evidence for the penalties enacted under the auspices of the adultery law would normally begin with an overview of the punishments themselves. But, given the focus of this thesis, this next section, however, will concentrate on the social characteristics of those affected by the punishments included in this statute. Another reason for the ostensible lack of attention afforded to the penalties, as such, in this section is that the main primary source, Dig 48.5, does not focus on the specific penalties enforced on those convicted of adultery. The significance of this apparent 'lack of concern' over the punishments dealt to those who flouted the tenets of the adultery law will be explored later but it is worth noting here. That both legal and social status affected the nature of the punishments inflicted as a result of the *lex Iulia de adulteriis coercendis* is inescapable but, to understand where slaves and freedmen fit into this social landscape, it is first necessary to understand other factors surrounding the enforcement of the adultery statute. As stated in the Introduction, this analysis is based on a thorough study of the extant primary sources

for the *lex Iulia de adulteriis coercendis*, detailed in the Appendix, conducted for the purposes of this thesis.

### 3.6.1 GENDER AND PUNISHMENT IN THE ADULTERY LAW

The question of who was punished under the adultery law is not simply answered with ‘those who committed adultery’ as the scope of this legislation is much broader. The jurists set down the punishments based on a number of different criteria and described a number of different scenarios that specified who would be liable under the statute. Gender was a significant factor in determining the punishments for adultery. Indeed, the jurists disproportionately targeted women as being adulterers; the relevant section of the *Digest* contains only three instances of men specifically being named as adulterers rather than those who may have ‘profited’ from an act of adultery. Dig 48.5.2 pr is the first to mention that both men and women can be accused of adultery rather than implying women committed adultery with an amorphous, metaphorical figure:

In the *lex Iulia* it is laid down that anyone who has to begin with the male adulterer because the woman has married again before the notification [of intended prosecution], cannot arrive at [an action against] the woman unless he has completed [the action against] the man.<sup>106</sup>

This passage clearly demonstrates that the statute regarded both men and women as being legally capable of committing adultery because they are both named as legitimate targets of the legislation. This viewpoint presents, however, an anomaly amongst the jurists’ commentaries on those who could be punished. One corollary of this observation is that women could not be charged with adultery until their male partner had first been charged and condemned. In this instance, women could not be progressed through the *quaestio de adulteriis* until their male counterpart had been convicted, yet the jurists devoted a disproportionate portion of their commentary to

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<sup>106</sup> Dig 48.5.2 pr: *Ex lege Iulia seruatur, ut, cui necesse est ab adulterio incipere, quia mulier ante denuntiationem nupsit, non alias ad mulierem possit peruenire, nisi reum peregerit ...*

ensuring that the adultery statute covered every possible hint of impropriety committed by a married woman.

Another passage that clearly mentions women and men also informs us about another important distinction, i.e. the nature of the offense of adultery as opposed to *stuprum*, as the Romans understood it:

There is, however, no doubt that a person who has forcibly committed *stuprum* on either a male or a female can be accused without limit of time, since it is indubitable that it is committing *vis publica*.<sup>107</sup>

The jurists have made a (rare) clear distinction between *stuprum* and adultery. It demonstrates that here, as per the earlier discussion in this chapter, married women could not commit *stuprum* as the jurists would have made the distinction here and, in comparison to the remainder of the *Digest*, there is no mention made of the commensurate punishment for the wife of the man who has committed the act. Responsibility for the continuation of the *familia* and its honour rested primarily upon the women but the jurors recognized that men did share some of the responsibility. The following passage demonstrates this:

If a husband, in order to blacken his wife's good name, suborns an adulterer so that he himself can catch [them in the act], both husband and wife are liable to a charge of adultery ...<sup>108</sup>

In this example, a husband who arranges the adultery of his wife is treated in the same manner as someone who also committed the offence.<sup>109</sup> The stigma of adultery and its consequences for one's place in Roman society at the time were severe enough that even arranging an adulterous relationship was enough to earn the condemnation of those who drafted the legislation. Gender was one of the determining factors that

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<sup>107</sup> Dig 48.5.30.9: *Eum autem, qui per uim stuprum intulit uel mari uel feminae, sine praefinitione huius temporis accusari posse dubium non est, cum eum publicam uim committere nulla dubitatio est.*

<sup>108</sup> Dig 48.5.15.1: *Si uir infamandae uxoris suae causa adulterum subiecerit, ut ipse deprehenderet, et uir et mulier adulterii crimine tenentur ....*

<sup>109</sup> It is necessary here to make a distinction from profiting after the fact, i.e. a husband attempting to profit after discovering that his wife has committed adultery, and the offence noted above. Profiting from adultery was a concern of the jurists and will be dealt with in a later section.

drove who was punished by the adultery law and it is clear, from the small number of passages that state that men were liable for charges of adultery, that imperial Roman women bore the majority of the blame and responsibility for adultery even though it could not happen without a man. The jurists even went so far as to cover any conceivable occasion where a woman may be presented with the ‘opportunity’ to have an illicit affair. Whilst this may be a consequence of social developments that occurred contemporaneously with the lives of the jurists, it remains a valid area of exploration due to the paucity of extant evidence of the statute itself.

Identifying those individuals who can be charged under the terms of the adultery statute can usually be organized along gender lines, with the language of the *Digest* being unambiguous as to the sex of the accused and accuser. However, there are two passages that combine this usual clarity of gender with a seemingly unnecessary ambiguity about those involved. The following passages from Ulpian ostensibly use a gender-neutral term to refer to people who cannot be accused of adultery at a particular point in time but then either include a description that could only refer to a man, given the social customs and habits of the time, or specifically mention ‘male or female’, thus rendering the use of ‘person’ superfluous. In the first example, Ulpian stated that a person who was away on public business and working for the state could not be charged with adultery as long as he was not deliberately evading the charges, and, in the second example, a person, male or female, could not be accused of adultery after a five-year period had elapsed from the date of the offense.<sup>110</sup> Initially, it may seem unnecessary for the jurist to have used the term

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<sup>110</sup> Dig 48.5.16.1-2: 1. *Legis Iuliae de adulteriis capite septimo ita canetur: ‘ne quis inter reos referat eum, qui tum sine detrectatione rei publicae causa aberit’: neque enim aequum uisum est absentem rei publicae causa inter reos referri, dum rei publicae operatur.* 2. *Necessario adicitur sine detrectatione: ceterum si quis euitandi criminis id egit, ut rei publicae causa abesset, nihil illi commentum hoc proficiat;* .1. Dig 48.5.30.5-7: 5. *Sex mensuum haec fit separatio, ut in nupta quidem ex die diuortii sex menses computentur, in uidua uero ex die commissi criminis: quod significari uidetur rescripto ad Tertullum et Maximum consules. Praeterea si ex die diuortii sexaginta dies sint, ex die uero commissi criminis quinquennium praeteriit, debuit dici nex mulierum posse accusari, ut, quod dantur sex menses utiles, sic sit accipendum, ne crimen quinquennio continuo sopitum excitetur.* 6. *Hoc quinquennium obseruari legislator uoluit, si reo uel rea stuprum adulterium uel lenocinium obiciatur. Quid ergo, si aliud crimen sit quod obiciatur, quod ex lege Iulia descendit, ut sunt qui domum suam stupri causa praebuerunt et alii similes? Et melius est dicere omnibus admissis ex lege Iulia uenientibus quinquennium esse praestitutum.* 7. *Quinquennium autem ex eo die accipiendum est, ex quo quid admissum est, et ad eum diem, quo quis postulatus postulatae est, et non ad quo iudicium de adulteriis exercetur.*

‘person’ and then clarified the gender of the individual being discussed. This initial ambiguity can be explained if one takes a closer look at the original Latin used in these extracts. The word *reo*, or forms of it, is used in both cases, which, rather than a generic synonym for person, actually refers to a defendant or culprit in a lawsuit. This translation allows for a more complete understanding of the passages and helps to explain the jurists’ apparent dismissal of the importance of gender within the adultery statute. The relevance of gender to the administration of the adultery statute is evident throughout the jurists’ commentaries.

### **3.6.2 SPECIAL CIRCUMSTANCES: ENSURING WIVES COULD BE CONVICTED OF ADULTERY IN ANY CIRCUMSTANCES?**

It will be argued later in this thesis that the social stigma and possible interruption to the distribution of wealth within a *familia* posed by an illegitimate child borne out of adultery was a significant concern for Romans of the early Imperial period.<sup>111</sup> This concern with both social mores and ensuring the continuous, and correct, flow of wealth within a *familia* helps to explain why the jurists had such an apparently detailed and almost obsessive approach when they commented on circumstances that, to a modern conception of adultery, would otherwise not normally be associated with the possibility of an adulterous relationship. Some of these passages reveal a surprising consideration for the feelings and personal circumstances of married women in certain situations – especially in the light of the afore-mentioned statement. This duality in how a social group could be perceived and treated by the law is a theme that has already been identified earlier in this study, in the interplay between slaves and the adultery statute.

Violence was a mitigating factor when determining the liability for adultery of married women. Its function could be seen to balance out the negative effects of an adulterous relationship. In other words, accusations of adultery were rendered superfluous if violence, or the threat of it, could be shown to be a factor in a

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<sup>111</sup> See, generally, Saller (1987) for discussion on the importance of ensuring a ‘clean’ line of succession in the *familia*.

‘relationship’. Ulpian believed that even being captured by an enemy was sufficient for a reprieve from an accusation of adultery if violence was not involved:

If anyone should prove clearly that his wife committed adultery when she was in enemy hands, it will be said as a concession that he can make the accusation by a husband’s right; but the husband will be able to claim [satisfaction] for adultery only if she was not subjected to violence by the enemy; if, however, a woman is subject to violence, there no grounds for her to be condemned for adultery or *stuprum*.<sup>112</sup>

It is clear, once more, from this passage that the term ‘adultery’ has more connotations of the physical act itself rather than any emotional involvement on the part of the wife and the unknown enemy, although it is not an impossibility. There also seems to be an established assumption that wives will be unfaithful to their husbands in these scenarios, as it seemed to be deemed necessary for jurists such as Ulpian to address the issue. The implications of rape and its effect on the male relatives of the married woman was amplified by their ability to make the rapist liable for *iniuria* “on behalf of the woman’s father, husband or brother...on the theory that the rapist had insultingly implied that the responsible male was too feeble or too timid to protect the victim”.<sup>113</sup> The use of the term ‘vindicated’ creates the impression that the occurrence of an adulterous relationship seemed to have been almost automatically presumed and it only remained for the husband to validate his pre-existing assumptions before the appropriate punishment could be enacted. The presence or absence of violence and the difference it made to the guilt of a wife accused of adultery is important to our understanding of the perception of adultery within early imperial Roman society. It appears to serve the function of a coercive element as it is portrayed as the only possible factor that could override the innate decision-making ability of a married woman whose default position was to betray her husband. However, the use of the word ‘violence’ raises two questions: what is the threshold of violence necessary to vacate the guilt of an adulterous relationship and what about other forms of coercion that may have forced women into ‘betraying’ their husbands?

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<sup>112</sup> Dig 48.5.14.7 *Si quis plane uxorem suam, cum apud hostes esset, adulterium commisisse arguat, benignius dicetur posse eum accusare iure uiri: sed ita demum adulterium maritus vindicabit, si vim hostium passa non est: ceterum quae vim patitur, non est in ea causa, ut adulterii vel stupri damnetur.*

<sup>113</sup> Dripps (1992), 1782.

Incest was not the barrier to an accusation and conviction of adultery in imperial Rome that some may presume it to have been. The jurists included incest in two different scenarios in conjunction with an accusation of adultery. The first example deals with who had the legal right to allege that adultery had been committed in certain situations:

If, however, she should be a woman with whom incest has been committed or one who, though she has the disposition to be a wife, is not able to be a wife [through some impediment], it must be stated that she cannot be accused by a husband's right but she can by the right of a third party.<sup>114</sup>

The jurists acknowledge the suffering and negative effects of incest here and a woman's 'inability' to be a wife, perhaps associated with the incest although it is not explicitly stated, thus cannot be punished by her husband. However, this does not prevent a third party from bringing a charge of adultery against the wife. This pronouncement seems to be simultaneously harming and protecting the marriage. A husband is not obligated to bring a charge of adultery against his wife, and is thus not liable to a charge of *lenocinium*, but a third party from outside the marriage was still allowed to threaten the relationship by alleging that adultery had occurred. The next passages from the jurists show that incest and adultery were, sometimes, treated in a very similar fashion. This correlates with a thesis suggested earlier in this study, that one of the concerns shared by the Romans in regard to adultery was that it increased the possibility of illegitimate children disrupting the inheritance of a *paterfamilias*, because either transgression could result in a child:

If adultery be committed along with incest, as, for example, [by a man] with his stepdaughter, daughter-in-law, or stepmother, the woman also will suffer a similar punishment...<sup>115</sup>

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<sup>114</sup> Dig 48.5.14.4 : *Sed et si ea sit mulier, cum qua incestum commissum est, vel ea, quae, quamvis uxoris animo haberetur, uxor tamen esse non potest, dicendum est iure mariti accusare.*

<sup>115</sup> Dig 48.5.39.pr: *Si adulterium cum incesto committatur, ut puta cum privigna nuru noverca, mulier similiter quoque punietur: id enim remoto etiam adulterio eveniret.*

A woman, therefore, will suffer the same penalty as males [do] only in that case where she has committed an act of incest forbidden by the *ius gentium*; for if it is only the observance of our own law [the *ius civile*] that is at issue, the woman will be excused from the charge of incest.<sup>116</sup>

The first passage equates incest with adultery. It is difficult to extract a moral perspective on which aspect of the incestuous relationship was treated as objectionable but the common element shared by both crimes is that both shared a potential to result in an illegitimate child. The second passage sets out the circumstances where a charge of incest could not have been applied against a woman, namely if she has an incestuous relationship with an individual covered by the *ius civile*. However, charges remained a possibility for those incestuous relationships where the male partner fell under the jurisdiction of the *ius gentium*, laws that were applicable to both Romans and non-Romans. Discrimination against foreigners would appear to be the primary aim of this particular juristic interpretation as it is the factor that determines the validity of an incest charge. Punishing those whose crime did not fit into the strict legal definition of adultery was not limited to the above groups. Indeed, jurists seemed also to take umbrage against those who could be seen to have benefitted from the adulterous act itself.

### **3.6.3 PUNISHED FOR MAKING A PROFIT? THE PUNISHMENT OF THOSE WHO ‘BENEFIT’ FROM ADULTERY**

Punishing men and women who supposedly ‘benefitted’ from adultery was a priority for the jurists, and, presumably, those who originally enacted the legislation. Commentaries on this transgression constitute the largest percentage of passages within the ‘who gets punished’ section of my analysis of Dig 48.5. Such emphasis on the punishment of individuals for what appears to be the tacit acceptance, or even approval, of adultery, when they may not even have participated in the illicit act, demonstrates yet again that moral indignation may not have been the only motivating

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<sup>116</sup>Dig 48.5.39.pr: *Si adulterium cum incesto committatur, ut puta cum priuigna nuru nouerca, mulier similiter quoque punietur...*; Dig 48.5.39.2: *Quare mulier tunc demum eam poenam, quam mares, sustinebit, cum incestum iure gentium prohibitum admiserit: nam si sola iuris nostri obseruatio interveniet, mulier ab incesti crimine erit excusata.*



factor that influenced the enactment of the adultery statute. The commentaries of the jurists will reveal that punishing those who may seek to extend the potentially harmful effects of an adulterous affair was perceived to be as much of a priority as penalizing those who had actually committed adultery.

Ulpian adopted a broad approach in the following extract when he outlined what constituted a ‘profit’ under the terms of the statute and in which circumstances it would be applicable:

Anyone who makes a profit out of his wife’s adultery is punished; for it is no small crime to have *pandered*\* for one’s wife. A [husband] is seen as having made a profit out of his wife’s adultery if he has accepted anything in return for her committing adultery; and he is not to be exempt [from punishment] according to whether he accepted something on a number of occasions or only once; for a man is rightly to be regarded as having made a profit out of his wife’s adultery if he has anything in return for allowing his wife to commit adultery in the manner of a whore. 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 credulity, his position seems to be outside [the scope of] the statute.<sup>117</sup> [\*my translation]

Firstly, it is necessary to discuss the language used within this extract. The phrase ‘pandering’, or *lenocinium*, implies an element of cooperation or foreknowledge on the part of the partner.<sup>118</sup> The word ‘cooperation’ is used here, as it is extremely improbable that a husband or wife would deliberately choose to inform their partner that they had betrayed their marriage vows for the chance to achieve some form of nebulous profit. This implies that, rather than an act of betrayal against a spouse, adultery was sometimes viewed as a viable source of income, not an entirely impossible situation given that jurists devoted multiple commentaries to the topic,

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<sup>117</sup> Dig 48.5.30. 3-4: *Qui quaestum ex adulterio uxoris suae fecerit, plectitur: nec enim mediocriter deliquit, qui lenocinium in uxore exercuit. Quaestum autem ex adulterio uxoris facere videtur, qui quid accepit, ut adulteretur uxor: sive enim saepius sive semel accepit, non est eximendus: quaestum enim de adulterio uxoris facere proprie ille existimandus est, qui aliquid accepit, ut uxorem pateretur adulterari meretricio quodam genere. Quod si patiatu uxorem delinquere non ob quaestum, sed negligentiam vel culpam vel quondam patientiam vel nimiam credulitatem, extra legem positus videtur.*

<sup>118</sup> The term ‘partner’ is used here because, although many of the commentaries are written with the assumption that it is the wife who has committed adultery, it was possible for the positions to be reversed., This is seen in Dig 48.5.34.2, which states that “If a wife accepts a bribe for the adultery of her husband, she is liable under the *lex Iulia* as though she were an adulteress”.

which were preserved in the *Digest*. The latter part of this passage, where a seemingly oblivious husband is forgiven and not held accountable for *lenocinium*, or pandering, will be discussed in the forthcoming section on those who are *not* punished under the terms of the adultery statute.

Romans did not have to commit adultery themselves to be considered liable under the terms of the statute, as merely providing a location for it to occur was enough to cause liability, and, indeed, that activity was sometimes considered to be as egregious as profiting from the adultery. The following extract is an example of this:

He who knowingly makes available his house for the commission of *stuprum* or adultery with the *materfamilias* of another or for homosexual relations with a man, or who makes a profit from the adultery of his own wife, is punished as an adulterer, no matter what his status is. It is obvious that by the term ‘house’ any sort of residence is meant.<sup>119</sup>

This extract encompasses three main points of interest. The first is that merely facilitating an adulterous relationship by providing a place for it to happen was considered as serious a transgression as actually committing adultery.<sup>120</sup> Although it is not mentioned that this individual, who arranged a location, had profited from adultery, the person is still being treated as one who had broken both the spirit and the letter of the law. It does not appear as though the jurists, or even those who drafted the legislation, thought it appropriate to make a distinction between those who committed an act and those who allowed it to happen. This is yet another indicator of the seriousness with which adultery was regarded by the jurists and the Romans of the early Empire. The importance of the social position of the female partner, in creating the difference between adultery and *stuprum*, has previously been established and it is further reinforced in this extract by the use of the term ‘*materfamilias*’. Rather than

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<sup>119</sup> Dig 48.5.9.1: *Qui domum suam, ut stuprum adulteriumve cum aliena matre familias vel cum masculo fieret, sciens praeberit vel quaestum ex adulterio uxoris suae fecerit: cuiuscumque sit condicionis, quasi adulter punitur. Appellatione domus habitationem quoque significari palam est.*

<sup>120</sup> The importance placed on the consequences of providing a location for adultery, or *stuprum*, and essentially facilitating the crime can be seen in Dig 48.5.10, by Ulpian, where essentially the same sentiments as those portrayed in the previous commentary are displayed. Repetition of the same or similar ideas in a separate extract by different jurists is an indication of the prevalence and seriousness with which the Romans regarded a particular action or crime.

referring to the *uxor*, or wife, of another man, the maternal characteristics of the female adulterer are emphasized. This was a deliberate action on the part of Ulpian in order to reinforce the importance of the woman's role in building a *familia* and how a transgression of a marriage was really a transgression against a *familia*.

The inclusion of husbands who profit from their wife's adultery is not unexpected within an examination of those individuals who are punished for adultery. Mention of an apparent homosexual relationship with a man does seem, at first, to be an anomaly, though. A relationship between two men would not produce biological children that could disrupt the inheritance of the legitimate children. In this instance, however, it is clear that any punishment in conjunction with a relationship between two men would have been classified as punishment related to *stuprum* rather than that of adultery.<sup>121</sup> Papinian included the last sentence in order to prevent any prevarication on the part of the accused in regard to the location of the alleged adultery and their liability under the terms of the statute.

Unequivocal punishment and condemnation of those individuals who either committed adultery themselves or made it possible has been one of the overriding themes of the punishment extracts discussed up to this point. However, there are passages that show that such a unified approach may not always have been adopted. Either the original statute, or the subsequent interpretations of the jurists, appear to have built on an 'escape clause' that seemingly allowed individuals to avoid punishment by claiming to take the moral high ground. One such example of this can be found below:

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; for whoever takes anything on account of his knowledge of a *stuprum* is liable to be punished.

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<sup>121</sup> See Robinson (1995), 70-71 for a description of the differing punishments meted out on homosexual relationships, between men, by the Romans.

However, if anyone lets [an offender] go without payment, he does not fall under the statute.<sup>122</sup>

It is the last sentence of this extract that will be the focus of the following discussion and the locus of the subsequent dilemma. The major part of this passage lays out the punishment that awaited a man who accepted a bribe for concealing an act of *stuprum*, and, presumably, adultery. However, the jurist Ulpian seemingly excuses this behaviour by stating that, as long as no money has changed hands, an offence has not been committed. Again, money acts as a mitigating factor in determining the severity of a crime. Although it is unlikely that a lack of payment had the power to override the stigma of any misdeed committed under the statute, it is notable here that it is *stuprum* that is being discussed by the jurists. As discussed above, *stuprum* was an illicit sexual relationship that did not involve a married woman and thus, in theory, did not involve impugning the reputation of a married woman by associating her with the stigma of prostitution.<sup>123</sup> It is, perhaps, this absence of money in an otherwise transgressive relationship that allowed the jurists to offer this interpretation of the statute. While not dealing directly with adultery, this is just one example of the opportunities for the absolution of criminal involvement built in to the previously seemingly ‘impenetrable’ statute.

Continuing with the theme of ‘exceptions’ to the rule’ brings us to how the statute, and/or the jurists, addressed the issue of the husbands and fathers who kept individuals who committed adultery within their *familia*. Whilst initially it may appear that this interpretation of the statute is flouting one of Augustus’ stated aims of the social legislation, which was to reunite the ‘fractured’ Roman *familia*, it is actually entirely in keeping with one of the overall trends of the legislation, namely to excise elements of a *familia* that were considered to be unsuitable:

If anyone does not let go an adulterer but keeps him [by him], as it might be a son [caught] with his stepmother or a freedman or a slave

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<sup>122</sup> Dig 48.5.30.2: *Plectitur et qui pretium pro comperto stupro acceperit: nec interest, utrum moritus sit qui acceperit an alius quilibet: quicumque enim ob conscientiam stupri accepit aliquid, poena erit plectendus. Ceterum si gratis quis remisit, ad legem non pertinet.*

<sup>123</sup> Although, as the case of Vistilla demonstrated, prostitution was sometimes seen as a method of escape from punishment for adultery.

with his wife, he is punished according to the spirit of the law, even though by its letter [the adulterer] who is retained is not covered [by the statute]. Again, if a [husband] remarries a [wife] dismissed from [the house], he is not liable under the words [of the statute], but it must be said that he is to be liable to avoid the possibility of fraud.<sup>124</sup>

Here, the imperative to construct a ‘pure’ *familia* that evokes the spirit of the Golden Age can be seen. Even when an individual had not committed adultery as it was ‘defined’ under the terms of the statute, the stigma of adultery was so severe that the jurists felt that it was justified to punish those men who sought to retain even those members of the *familia* who had been in an adulterous relationship.

A reluctance to condemn the adultery of their husbands, or even accepting a reward upon the discovery of an illicit affair, did not exclude respectable married women from punishment under the terms of the statute:

If a wife accepts a bribe from the adultery of her husband, she is liable under the *lex Iulia* as though she were a [female adulterer].<sup>125</sup>

This extract is notable because it is the only instance in Dig 48.5 where a husband is specifically named as an adulterer, instead of wives being implicated in the adulterous role. Once again, the statute was punishing the individuals who were choosing to forgive an adulterer, or at least were accepting that it had happened and were unwilling to lose members of their *familia*, when they had not even engaged in an extra-marital affair.

Using the adultery statute to punish those who had not actually committed adultery was an accepted use of the legislation. One of the most frequent ways it was applied was to the act of *lenocinium*, a term that could be employed in a variety of scenarios. The first example is from the *Digest* and continues the theme of how gravely the presence of money in conjunction with adultery was regarded:

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<sup>124</sup> Dig 48.5.34.1: *Si quis adulterum non dimiserit, sed retinuerit, forsan filium in noverca vel etiam libertum vel servum in uxore, ex sententia legis tenetur, quamvis verbis non continetur. quae autem retinetur, punitur. sed si dimissam reduxerit, verbis non tenetur: sed tamen dicendum est, ut teneatur, ne fraus fiat.* My own emphasis in the brackets.

<sup>125</sup> Dig 48.5.34.2: *Si uxor ex adulterio viri praemium acceperit lege Iulia quasi adultera tenetur.* My own emphasis in the brackets.

...it is brought about that [if] a man or woman caught in adultery should buy themselves off with money or any other agreement, is condemned to the same punishment as is laid down for those condemned on a charge of *lenocinium*<sup>126</sup>

Where before *lenocinium* was mentioned in regard to a husband refusing to punish his wife for committing adultery, it is being equated here to those who attempted to evade legal sanctions by bribing either their spouses or someone in a position of power (it is not clear from the passage which scenario is being referred to). In this instance, the common factor identified is the attempt to ignore or evade the legal prohibitions specified in the adultery statute. Keeping an errant spouse within the confines of the *familia* was still regarded as a grave betrayal and was punished accordingly within the parameters of the statute. In previous examples, we saw how the jurists had felt it necessary to mention certain relationships that invoked the ‘spirit’ of the law and would not otherwise have been considered to be within the influence of the statute. *Lenocinium*, however, was most commonly defined as when husbands ‘kept’ their wives in spite of their adultery or accepted money or other rewards for ‘allowing’ the adultery to take place.<sup>127</sup> There is a counterpoint to this perspective where Ulpian also states that any husband who allows his wife to offend under the statute, yet despises their marriage and is not upset about the betrayal, is not liable for punishment under the adultery statute.<sup>128</sup> It is worthwhile to discuss the Latin in this extract as it has a bearing on the interpretation of his passage.

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<sup>126</sup> Dig 48.5.15 pr: *Ut vir feminave in adulterio deprehensi pecunia aliave qua pactione se redimerent, eadem poena damnatur, quae constituta est in eos, qui lenocinii crimine damnantur.*

<sup>127</sup> This can be seen in the following examples. Dig 48.5.2.6: For Claudius Gorgus, a man of senatorial rank, who accused his wife, was condemned for *lenocinium* by the deified Severus without any accuser when he was discovered to have kept his wife caught in adultery – *Nom Claudius Gorgus vir clarissimus uxorem accusans cum detectus est uxorem in adulterio deprehensam retinuisse, et sine accusatore lenocinio damnatus est a dvio Severo*; Dig 48.5.30 pr: The statute has punished the *lenocinium* of a husband who after catching his wife in adultery has kept her and let the adulterer go; for he ought to have avenged himself on the man and also vented his rage on his wife, who has violated their marriage – *Mariti lenocinium lex coercuit, qui deprehensam uxorem in adulterio retinuit adulterumque dimisit: debuit enim uxori quoque irasci, quae matrimonium eius violavit.*

<sup>128</sup> Dig 48.5.2.3: But he who permits his wife to offend and despises his marriage and who is not angry at the defilement is not inflicted with the punishment for adultery – *Ceterum qui patitur uxorem suam delinquere matrimoniumque suum contemnit quique contaminationi non indignatur, poena adulterum non infligitur.*

The ‘*patitur*’ has been translated by Watson to mean ‘permits’, which implies that the husband accepted and maybe even pre-approved an adulterous relationship.<sup>129</sup> However, ‘*patitur*’, from *patior*, *pati*, *passus sum*, has a broader meaning that includes ‘suffering’, ‘undergoing’, and ‘enduring’, as well as ‘permitting’ and ‘allowing’. Overall, this word creates an impression of suffering and discontent and it is this that sets this extract apart from Ulpian’s other commentary that takes the opposing viewpoint. Rather than acceptance or approval, the unhappiness on the part of the cheated spouse is regarded by the jurists as proof of his or her disapproval in the adultery of their wife or husband and thus it is sufficient for them to escape the reaches of the statute.

In order to understand *lenocinium* and its relationship to the adultery statute and, thus, to the statute’s effect on the *familia*, the definition of *lenocinium* should be widened to include any actions by or on behalf of a husband or wife that was anything less than an immediate condemnation of the act that led to retribution or an attempt to profit or benefit from the adultery; unless, though, a breakdown in the relationship can be shown to exist already, in accordance with the afore-mentioned extract from Ulpian. In order to appreciate the function of *lenocinium* within the parameters of the adultery statute, it is also important to recognize that there was a primary meaning, or sense, of *lenocinium* that is not evident in the writing of the jurists, in regard to the adultery statute, that has the capability to illuminate our understanding of it. A deeper understanding of *lenocinium* will lead to a greater understanding of Roman perceptions of sexual misconduct and, thus, how convictions under the adultery law would have affected a *familia* and been perceived by society as a whole.<sup>130</sup> By studying extracts of Ulpian’s from the *Digest* that define *lenocinium* outside the context of the adultery statute, it can be seen that the first meaning of the term was in regard to someone who had a direct *involvement* with prostitution, on an intimate level and on a regular basis.<sup>131</sup> The emphasis on ‘involvement’ is deliberate here as owning a property where prostitution was known to take place or even receiving the profits, such as the rent from a brothel, was not considered to be sufficient to warrant being charged with

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<sup>129</sup> Watson (1985).

<sup>130</sup> Riggsby (1995).

<sup>131</sup> Riggsby (1995), 425. The two extracts used by Riggsby are Dig 23.2.43.6-9 and Dig 3.2.4.2-3.

*lenocinium*.<sup>132</sup> McGinn (2003) further explores this idea and shows that the Roman elite would have been able to benefit from prostitution as long as they had a ‘middleman’ who “would have served as a kind of insulation of social respectability for the latter” and were thus not directly involved in any aspect of the business.<sup>133</sup> At this point, it would seem that the existence of a crime such as prostitution was not an issue for the elite of Roman society, rather it was the chance that one of their number was directly involved with prostitution that created alarm and concern. This naturally leads to the question of whether those who indirectly profited from prostitution suffered any social repercussions, even if they were not officially prosecuted.<sup>134</sup>

It is commonly accepted in modern society that proximity to a crime, whether physical or through other means such as enjoying the benefits, is either an indication of guilt under the law or, at the very least, something that carries the social stigma or shame of the crime. So, for example, and as was already seen in greater detail above, anyone who owned a building where prostitution occurred or who received benefits, such as rent from the building, would be treated in the same or similar manner as someone who had direct involvement with the organization of the brothel. This concept of ‘contagion’ did not apply to the elite in Roman society. According to Riggsby, “proximity to ‘lower’ occupations (pimps, prostitutes, actors and gladiators) does not bring *opprobrium*, by virtue of contrast it displays moral superiority.”<sup>135</sup> This is quite a bold position to adopt but it is one that can be reinforced with physical evidence. Andrew Wallace-Hadrill has argued that, in Pompeii at least, the Roman elite displayed their lack of concern over ‘contagion’ by mixing elite housing with commercial establishments, despite the general disdain for commerce shared by the elite.<sup>136</sup> While this evidence is only in regard to Pompeii, it is sufficient to say that a fresh perspective is needed to understand how *lenocinium* influenced the adultery statute and how adultery influenced the *familia* and Roman society as a whole. Thus far, we have established that *lenocinium* was a term originally used strictly to refer to

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<sup>132</sup> Riggsby (1995), 425.

<sup>133</sup> McGinn (2003), 18-19; Riggsby (1995), 426; Dig 5.3.27.1 and Dig 3.2.4.3.

<sup>134</sup> But note that Wallace-Hadrill (1990) has argued that prostitution on a large scale may have taken place in the rooms at the back of large, elite housing in Pompeii.

<sup>135</sup> Riggsby (1995), 426.

<sup>136</sup> Riggsby (1995), 426; Wallace-Hadrill (1990), (1992).



prostitution and those who profited directly from it – the questions that must now be asked are, how and why did the meaning of this term evolve and change in regard to the adultery statute? Riggsby believed that the jurists were “enforcing a Roman social hierarchy by restricting the civil disability to those directly involved in prostitution.”<sup>137</sup> In other words, only the pimps and prostitutes, not those individuals who probably received the majority of the profits, were legally and socially punished. However, the juristic interpretation of *lenocinium* evolved into a concept that encompassed a variety of relationships beyond the original, narrow understanding of the term. The opportunities for social disapproval and violating societal norms of directly benefitting from illicit sexual relationships had expanded and, so, the corresponding term used to describe them also had to change. Disparate though the two meanings of *lenocinium* may appear, they are connected by the common theme of the disapproval of economic gain from these illicit relationships. The jurists in Dig 48.5 addressed adultery and *lenocinium* with almost the same level of attention.

### **3.6.4 AN EXCEPTION TO THE RULE? THOSE WHO ARE NOT PUNISHED UNDER THE ADULTERY STATUTE**

Punishing adulterers for their transgressions is an unarguably large part of (what survives of) the adultery statute. There does not appear to have been many concessions made for those men and women who committed adultery; a Roman citizen involved, either directly or indirectly, in an adulterous relationship would be penalized under the terms of the statute. However, there were some scenarios where it was determined that the adultery statute could not be used against an individual under any circumstances and others where accusations, and their subsequent repercussions, were delayed. These examples must be examined as part of a larger study of the adultery statute because it allows for a more nuanced interpretation of the elite Romans' relationship between the adultery statute and their lives to be constructed. In addition, it also provides insight into the intended ‘targets’ of this legislation. Efforts to attain

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<sup>137</sup> Riggsby (1995), 426. See Bauman (1993), Bruun (1997), Davis (1999), Boëls-Janssen (2008), Flemming (1999), Levick (1972; 1983), McGinn (1998), Myers (1996), Noy (1988), Sharrock (1994), Syme (1981), Tracy (1976; 1980) and Vinson (1989) for further scholarship on *lenocinium* in Roman society.

a more complete understanding of the adultery statute and how it affected all members of the *familia* will be hampered without understanding this interaction.

Punishment under the terms of the adultery statute could be deferred or invalidated for a variety of reasons. The jurists provided a number of scenarios whereby an accusation could not be brought against an individual.<sup>138</sup> These examples can be separated into four separate categories: accusations against husbands, accusations against women, accusations against ‘people’, and accusations against adulterers.<sup>139</sup> There are two examples that specify when a husband cannot be charged with adultery: Dig 48.5.2.4 and Dig 48.5.2.7.<sup>140</sup> The first extract explains that a man who had been accused of adultery as a result of the husband’s actions could not have accused the husband of adultery in retaliation. This passage can be interpreted in two ways: the first is that it would appear that a husband had manipulated a situation where another man could be accused of adultery and this extract served to ensure that the accused could not retaliate against unjust accusations by accusing his accuser. This particular scenario is unlikely because the consequences for arranging his wife’s infidelity were, as already discussed, severe and there is also no indication in the original commentary that the ‘actions’ of the husbands were nefarious. A second interpretation is more probable, where this extract was intended to protect a husband, who had made a legitimate claim of adultery against the other man, from being accused by an individual who would have already destroyed the sanctity of the husband’s marriage, alongside his wife. This latter interpretation is more believable because

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<sup>138</sup> Examples of violence exempting a *woman* from accusations of adultery have already been discussed. It is also important to note that the jurists in the majority of these examples were not saying that the individuals involved were innocent, rather that an accusation could not be brought for whatever reason.

<sup>139</sup> The term ‘person’ is indicative of the jurists’ commentaries that use the word ‘person’ either without specifically mentioning their gender or including both men and women. ‘Adulterers’ is used within the commentaries to describe the order in which accusations can be brought against suspected adulterers and by whom.

<sup>140</sup> Dig 48.5.2.4: *Qui hoc dicit lenocinio mariti se fecisse, releuare quidem uult crimen suum, sed non est huiusmodi compensatio admissa. Ideo si maritum uelit reus adulterii lenocinii reum facere, semel delatus non audietur.* (A person who says he [committed adultery] by the *lenocinium* of the husband is indeed seeking to extenuate his offense, but a set-off of this kind is not admitted. And so if a man accused of adultery wishes to have the husband accused of *lenocinium*, he shall not be given a hearing once he has himself been accused. Dig 48.5.2.7: *Extraneus autem nequaquam lenocinium obiciens, posteaquam reus factus est, se releuabit, nec maritum poenae subiciet.* (But a third party who raises [the issue of] *lenocinium* after he has been accused shall in no way alleviate his own case, nor shall he make the husband liable to a penalty).

without this rule in place, it is likely that any charge of adultery against a man by a husband would have resulted in a series of back and forth accusations that would never have resulted in a conviction.

Women are, perhaps, one of the most prominent recipients of punishment under the terms of the adultery statute. Although the jurists' commentaries devote a significant amount of discussion to their guilt and how they should be punished for their indiscretions, there are some passages that set out circumstances whereby it is forbidden to ever accuse a woman of adultery. This apparent magnanimous attitude towards women is deceptive, however, because it is only in place as a consequence of their relationship to a man. For example, Ulpian provided the following example where a wife was 'saved' from an accusation of adultery by the nature of her relationship to her husband:

If a [wife] has been repudiated and then taken back [by her husband], not as it were within the span of the same marriage but as though another had taken place in between, we have to see whether she can be accused of the offense which she committed in the previous marriage. I think she cannot; for [the husband] cancelled the offenses of the previous marriage by marrying her again. The same has to be said if someone should wish to accuse of *stuprum* the woman whom he subsequently married; for it is too late for him to impugn the [woman's] morals, which he has endorsed by marrying her.<sup>141</sup>

By using this extract as an indicator, the sanctity of the *familia* has been refreshed and renewed by a statute that, up to this point, had done more to tear it apart than unify it. According to Ulpian, the women mentioned in these two extracts cannot be charged with adultery as their relationships with their husbands have been legitimized by the renewal of their relationship by the previously wronged husband or the endorsement of a woman accused of *stuprum* by a man who later married her. Here, it appears that the occurrence of either adultery or *stuprum*, or at least their legal definitions, was not

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<sup>141</sup> Dig 48.5.14. 9-10: *Sed et si qua repudiata, mox reducta sit non quasi eodem matrimonio durante, sed quasi alio interposito, uidendum est, an ex delicto, quod in priore matrimonio admisit, accusari possit. Et puto non posse: aboleuit enim prioris matrimonii delicta reducendo eam. 10. Idem dicendum est, si stupri uelit accusare eam quam postea duxit uxorem: sero enim accusat mores, quos uxorem ducendo probauit.*

being questioned but instead the ability and behaviour of those who would usually do the accusing. The previous two examples presume a certain level of guilt on the part of the women and also share the idea that both participants shared a certain degree of continuity in their relationship with each other. However, Ulpian also discusses those scenarios whereby a husband or father-in-law attempted to bring a charge of adultery in regard to a previous relationship in which he was not involved:

Should a person wish to accuse his own wife and state that she has committed adultery before she married him, he cannot institute an accusation under his husband's right because she did not commit the adultery when she was married to him. This can also be said of a concubine whom a man has subsequently married, or of a daughter-in-power whose father has subsequently consented to her union.<sup>142</sup>

The common theme of all three examples listed above is that an accusation of adultery had to have coincided with a time when the accuser is in a legitimate marriage with a (potential) adulterer; a woman who was currently in a legally-recognized marriage could not be held responsible for actions that occurred in her past and when she had no relationship with her current husband. This does not exclude third-party accusations from being raised in either this or the previous extract from Ulpian; however, it does significantly reduce the possibility of an adultery charge being raised and can therefore be said to reduce the opportunities for adultery charges to be brought against married Roman women.<sup>143</sup>

### 3.7 CONCLUSION

Rather than a seemingly uncomplicated matter of illicit liaisons between married Roman women and individuals who were not their husbands, we have seen in this

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<sup>142</sup> Dig 48.5.14.6: *Si quis uxorem suam velit accusare dicatque eam adulterium commisisse antequam sibi nuberet, iure viri accusationem instituere non poterit, quia non, cum ei nupta est, adulterium commisit. Quod et in concubina dici potest, quam uxorem quis postea concessit.*

<sup>143</sup> Married Roman women remained, however, the primary targets of the adultery legislation despite these concessions by the jurists.

chapter that understanding adultery, the associated crime of *stuprum*, and the various parties that were involved in these affairs is a much more complex issue. We have seen, moreover, that there are several points that need to be taken into consideration in order to build a framework upon which the more intricate and complex issues surrounding adultery can be investigated. As there is no complete extant copy of the adultery statute remaining, any subsequent scholarly research has been based, primarily, on the interpretations of the original statute by jurists such as Ulpian, Papinian and Modestinus. Adultery has been defined as an act that could only have been committed by a legally married Roman woman. *Stuprum*, on the other hand, is harder to define, primarily because the jurists in the *Digest* used it interchangeably with adultery when discussing both acts. However, as shown above, it is reasonable to define it as an illicit liaison that could not result in any children that had the potential to disrupt the line of succession in a *familia*, the significance of which will be discussed in a subsequent chapter. This chapter has also demonstrated that enforcing penalties under the terms of the adultery statute was not as straightforward as punishing the adulterer and her paramour; other factors, such as gender, and other parties, such as husbands who turned a blind eye, had the capacity to have an impact on the application of the new law. A final, and perhaps most pressing, point for this work that was covered in this chapter is that it is necessary to include slaves and freedmen alongside the free when discussing the impact of Augustus' adultery legislation: the evidence by Papinian, sometimes misunderstood to exclude slaves from such a discussion, does not actually stand in the way of their being considered. With this framework in mind, the detailed analysis of the main legal source can now begin, closely focussed on the roles of those typically given little attention in the studies of adultery – slaves and freedmen.









## CHAPTER FOUR: LEGAL PERSPECTIVES ON THE INVOLVEMENT OF SLAVES AND FREEDMEN WITH ADULTERY

### 4.1 INTRODUCTION

We have seen up to this point that slaves and freedmen were regularly mentioned by legal writers in conjunction with their discussions of the adultery legislation. And, rather than remaining solely as anonymous background players, these servile and freed members of the *familia* were directly involved with adulterous relationships in a variety of different scenarios. It is the nature of these slave and freedmen interactions, or roles, which will be highlighted in this chapter. Focussing on their three observable roles within an adulterous relationship, that of the object, the ‘hidden’ roles, and the subject, this chapter will utilise the juristic writing to investigate and understand more fully the involvement of slaves and freedmen in adulterous relationships from a legal perspective.

### 4.2 THE EXPOSED AND HIDDEN ROLES OF SLAVES AND FREEDMEN IN THE *LEX IULIA DE ADULTERIIS COERCENDIS*

The *familia* was an essential part of the structure of Roman society from its inception, and certainly also in the early days of the Principate. As has been demonstrated earlier in this work, slaves and freedmen were an integral part of this social unit and were thus, in principle, affected by the same social and legal forces, such as Augustus’ marriage legislation, as other members of the *familia*. As will be shown in this chapter, they had, in the *lex Iulia de adulteriis coercendis*, numerous exposed and hidden roles. The following source analysis of *Digest* 48.5 was carried out in order to provide a foundation for our understanding of these roles within the wider social milieu of Roman society: the relevant passages have been grouped around the set questions that they address in the Appendix. It is worth repeating at this point that some of the selected extracts from *Digest* 48.5 do not mention, specifically, slaves and freedmen; it will be contended in this chapter, however, that, in addition to their involvement in

roles that are clearly highlighted in the text, they were involved in, and affected by, adulterous relationships in other, less obvious, or ‘hidden’ roles that increased the power of the adultery statute to influence their lives.

#### **4.2.1 A GRAMMATICAL APPROACH?**

Before the various roles of slaves and freedmen are discussed, it would be worthwhile to provide a brief reminder of the ‘grammatical’ approach used to assess both the legal and literary source material used in this thesis. As is shown in the Appendix, there are 19 extracts from *Digest* 48.5 that served as the main source for legal analysis. These were then organized into categories that reflect the nature of the role that the slave, freedman, or sometimes both, played in an adulterous relationship revealed by a particular extract. I have termed my method a ‘grammatical’ approach because these un-free and freed members of Roman society occupied roles in an adulterous relationship that can be organized into two main categories, analogous to the different functions of crucial words in a sentence: the subject, or one who carries out the action or behaviour being discussed by the jurist in the extract; and the object, where the slave or freedman is the target, or object, of the main action being discussed in an extract.<sup>144</sup> Now that the analytical approach has been reviewed, let us move on to the first of the roles occupied by the servile and the freed in an adulterous relationship, i.e. that more readily focussed on by modern scholarship – the ‘object’.

#### **4.2.2 SLAVES AND FREEDMEN AS THE ‘OBJECT’**

The more commonly understood, or accepted, role for slaves and freedmen is that of the object, or recipient, of a particular action. Within this discussion of the adultery legislation, it specifically refers to those occasions where a slave or freedman is not driving the actions or behaviours being discussed in an extract, or are the recipients of the torture or penalties being discussed. The following example from Ulpian concerns

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<sup>144</sup> These categorizations are not mutually exclusive when applied to each extract but they are still a useful and worthwhile analytical tool as they help to disclose, most sharply, the roles of slaves and freedmen.

male or female slaves who were tortured for information because they belonged to a man or woman, or even their parents, who had been accused of adultery:

The statute argues that the male or female slaves of a man or woman who is the subject of a criminal investigation, or of the parent of either of them, should be put to the torture, if those slaves were given by the parents for the use of [the accused]...The reason then for making slaves public property is so that they may speak the truth without any intimidation and may not, fearing that they are going to return to the power of those accused, be obdurate under torture.<sup>145</sup>

This part of the extract reinforces two of the recurring themes of this analysis. The first is that slaves were considered part of the *familia* and thus subject to, where appropriate, the same legislation as the freed and freeborn members of the *familia*. A second theme is that slaves were clearly regarded as relevant to a discussion of the implications of the adultery statute and subject to its punishments. These themes are also reflected in the following extract from Papinian, which also views slaves as a type of evidence to be used against their masters in the light of accusations of adultery, or as ‘objects’ of the action of this particular extract:

A joint charge of incest can be brought against two persons simultaneously. I replied that interrogation under torture should be applied to slaves in respect of an accusation of incest against their masters if and only if the incest were said to have been committed in the course of an adulterous relationship.<sup>146</sup>

That the gender of the slaves described in the aforementioned extract is male is implied based upon the Roman legal perception of adultery. However, *female* slaves can also be seen to be incorporated into the ‘object’ role in conjunction with the adultery statute, as we shall presently see.

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<sup>145</sup> Dig 48.5.28.6, 11, Ulpian, *Adulteries*, book 3: *Haberi quaestionem lex iubet de servis ancillisve eius, de quo vel de qua quaereretur, parentisve utriusque eorum, si ea mancipia ad usum ei a parentibus data sint. divus autem hadrianus cornelio latiniano rescripsit et de exteris servis quaestionem haberi...ratio autem publicandorum servorum ea est, ut sine ullo metu verum dicant et ne, dum timeant se in reorum potestatem regressuros, obdurent in quaestione.*

<sup>146</sup> Dig 40.7-8, Papinian, *Replies*, book 15: *Incesti commune crimen aduersus duos simul intentari potest. De servis quaestionem in dominos incesti postulatatos ita demum habendam respondi, si per adulterium incestum esse contractum dicatur.*

Female slaves are not typically included within a discussion on Augustus' adultery statute. As they were incapable of possessing *conubium*, the right to enter a civil law marriage, they did not have the legal capacity to commit adultery.<sup>147</sup> This raises the question of why Papinian chose to include them in the extract that was discussed for quite different purposes in Chapter Three:

The *lex Iulia* applies only between free persons who have suffered adultery or *stuprum*. But as far as female slaves are concerned, an action under the *lex Aquilia* will readily apply and that for *iniuria* is also competent, nor must the praetorian action for the corruption of a slave be refused; nor shall someone accused of this kind of offense be spared because of the many actions [possible against him].<sup>148</sup>

This indicates that female slaves actually occupied a unique position within the *familia* in terms of their vulnerability regarding what common sense – but not the law – conceptualizes as adultery. But let us begin by discussing the ramifications of the legal ideas mentioned in the above extract in order to understand the connections and relevance between female slaves and adulterous, married Roman women. If we can understand these connections, it will promote a deeper understanding of the place of female slaves within the *familia* and how the legislation affected them.

To draw comparisons between female slaves and the married Roman women committing adultery, it is first necessary to understand two main threads of the extract, namely what is meant by *iniuria*, especially within the context of this statute, and the behaviours covered by and parameters of the *lex Aquilia*. *Iniuria* can be variously defined as: anything that is done contrary to justice and equity or an injury, wrong or violence; unlawful or unjust conduct; an injurious act, outrage, insult or affront; or, revenge or punishment for an inflicted injury.<sup>149</sup> Overall, the theme is one of unjust action or insult to an individual. Although the topic of delicts is complex, it is sufficient for the purposes of the current discussion to be aware that a delict is “a

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<sup>147</sup> Du Plessis (2010), 100.

<sup>148</sup> Dig 48.5.6.pr., Papinian, *Adulterers, book 1: Inter liberas tantum personas adulterium stuprumue passas lex Iulia locum habit. Quod autem servas pertinent, et legis Aquiliae actio facile tenebit et iniuriarum quoque competit nec erit deneganda praetoria quoque actio de seruo corrupto: nec propter plures actiones parcendum erit in huiusmodi crimine reo.*

<sup>149</sup> Lewis and Short (1933), 956.

wrongful act which causes damage to someone's personality, his family, or his property, and for which the victim or his heirs is entitled to compensation".<sup>150</sup> At first glance, it is hard to see here how an illicit relationship with a female slave could qualify as an act of *iniuria* as it is not an act directly inflicted on the slave's owner. However, an edict from the reign of the Emperor Hadrian and a commentary from Ulpian address the issue of the inclusion of female slaves, especially, within this delict. Within a list of cases where it would be acceptable to raise an *actio iniuriarum*, an action claiming that an *iniuria* had taken place, the Hadrian-era edict included "assaulting the slave of another without the permission of the owner".<sup>151</sup> 'Assault' can be interpreted in a variety of ways but, if interpreted within the context of a claim made in relation to a sexual relationship, it is not inconceivable that it could refer to a female slave who was either impregnated or otherwise had her time occupied in such a manner as to make her incapable of performing her duties or responsibilities. Ulpian further clarified the involvement of slaves within the delict when he stated:

If someone so inflicts an outrage upon a slave that it be done to his master, in my view the master can bring the action for insult in his own right; but if the beating was not directed to the master, the outrage perpetrated upon the slave as such should not be left unavenged by the praetor, especially if it occurred through a thrashing or through torture; for it is obvious that the slave himself feels such things.<sup>152</sup>

Here, the meaning of 'outrage', or *iniuriam*, within this context is open to interpretation but it is not implausible that it could be referring to the involvement of a female slave in a relationship with a free or freed male citizen and that it was perhaps perceived as having the same deleterious effect that a beating may have had on a male slave where the female slave in question would, potentially, have been unable to fulfil her duties, which, depending on their nature, could have had a detrimental effect on her owner. While it is not possible to determine the exact nature of an *iniuria* involving

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<sup>150</sup> Du Plessis (2010), 317.

<sup>151</sup> Du Plessis (2010), 339.

<sup>152</sup> Dig 47.10.15.35, Ulpian, *Edict*, book 77: *Si quis sic fecit iniuriam seruo, ut domino faceret, uideo dominum iniuriarum agere posse suo nomine: si uero non ad suggillationem domini id fecit, ipsi seruo facta iniuria inulta a praetore relinqui non debuit, maxime si uerberibus uero quaestione fieret: hanc enim et seruuum sentire palam est.*

a female slave, it is not unreasonable to attribute a sense of outrage or insult to a case where a female slave had been treated in this manner by a male Roman citizen, freeborn or freed.

The question then remains – how is the *lex Aquilia* relevant in this scenario if the inclusion of *iniuria* seems to indicate the involvement of emotions and moral outrage?<sup>153</sup> The answer lays in the Roman legal procedure – a defendant had to have “caused loss wrongfully, i.e. through an *iniuria*,” for a plaintiff’s loss to be considered under the *lex Aquilia*.<sup>154</sup> It is necessary, now, to include a brief explanation of this law before proceeding to a discussion of these two legal concepts and their relationship to the inclusion of female slaves within a discussion of the adultery statute. The *lex Aquilia* is one of the four ‘named’, or ‘institutional’, delicts that fall under the umbrella of the Roman law of delicts, which also includes insulting behaviour.<sup>155</sup> It was composed of multiple chapters but the third chapter is most relevant for this discussion as it covered damage to property, which included slaves, rather than outright killing.<sup>156</sup> The owner of the damaged property, be it a slave or beast of burden, had to prove that he had “suffered loss in the sense of a depreciation of the value of the object, and that the loss was ascertainable” and also that the damage was caused “directly by the defendant’s conduct”.<sup>157</sup> While the shame and loss of reputation associated with an adulterous affair may not be immediately apparent within a context of the discussion of a ‘relationship’ with a female slave and the consequences of such events, some

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<sup>153</sup> It is necessary at this point to address an issue concerning the applicability of this legislation in regard to slaves, and female slaves in particular. According to Du Plessis (2010): 327, the *lex Aquilia* applied only to property, not human beings, so a *paterfamilias* could not sue for injuries inflicted on his children and others in his *potestas*. At first, this would appear to contradict previous assertions that slaves were considered part of a *familia* and thus subject to the same legislation ostensibly aimed at the free members of a *familia*. However, it is important to remember that slaves occupied a dual role within Roman society, especially that of the early Principate. They were considered property, or *res Mancipi*, but were treated as people in respect of laws such as the *lex Iulia de adulteriis coercendis*. It is clear, therefore, that, in this instance, the *lex Aquilia* can be applied to female slaves in this example as they have not relinquished, or seen it removed by their owner, their legal status as property despite their position within the *familia*.

<sup>154</sup> Du Plessis (2010), 323.

<sup>155</sup> Du Plessis (2010), 318.

<sup>156</sup> Du Plessis (2010), 320; Dig 9.2.27.5, Ulpian, *Edict, book 18* : In the case of all other things apart from slaves or cattle that have been killed, if anyone does damage to another by wrongfully burning, breaking, or spoiling his property let him be condemned to pay to the owner whatever the damage shall prove to be worth in the next thirty days.

<sup>157</sup> Du Plessis (2010), 322, 326.

parallels can still be drawn between the actions that fall under the jurisdiction of these delicts and the adultery statute. Both involve some type of ‘damage’ or physical action to either a married woman or a female slave; both of which are, for all intents and purposes, considered to be the ‘property’ of the male citizen who would be able to bring an action under either piece of legislation.<sup>158</sup> The other major common factor between the two crimes is that both involved tangible and intangible losses for the defendants – be it either a ‘damaged’ female slave or the loss of a beloved wife or daughter, or the damage perpetuated to a *familia*’s reputation by the ignominy of the discovery of an adulterous relationship or the loss of the services provided by the female slave. While ostensibly two separate pieces of legislation whose area of influence do not converge, these laws do, in fact, overlap in some respects. The female slave, however, drew the short straw once more: the application of the *lex Aquilia*, rather than the adultery statute, brings home with force their identification as mere ‘objects’.

Female slaves were not associated typically with the adultery statute in this manner, but such an ‘aberration’, however, deserves to be considered within a larger analysis of the adultery legislation and the role of slaves. It is clear that slaves were incorporated into the adultery legislation via numerous different roles. In this instance, it is clear that female slaves occupied enough of a position within the *familia* that any form of ‘relationship’ that subsequently affected their ability to perform their normal duties and responsibilities within and for the *familia* was treated in a similar, if not identical, manner to an adulterous affair that tarnished the standing of a *paterfamilias* within Roman society. Thus, this discussion of the adultery statute reinforces the argument for a holistic view of the *familia* – one including its servile members.

Rather than being tortured for their potential knowledge about the extra-marital affairs of their masters and mistresses, the slaves and freedmen mentioned in the following extract occupied a more direct position, in closer proximity to those involved in an adulterous relationship:

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<sup>158</sup> It is not the intention of this work to contend that the *lex Aquilia* was applicable only to female slaves. However, for the purposes of this discussion, they will be the only category of slaves considered to fall under the purview of this law.

A husband is also permitted to kill his wife's adulterer, but not, as the father is, whoever it may be; for it is provided by this statute that a husband is permitted to kill a man whom he catches in adultery 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 a freedman of the husband or wife or of the father, mother, son, or daughter of either of them (and it is of no consequence whether he was the sole property of one of them or was owned jointly with someone else) or if he is a slave.* [my own emphasis].<sup>159</sup>

Here, the slave and freedman occupy a more central role in the adulterous relationship – that of the adulterer himself. Although this would normally be understood to be a role that instigates the action in a relationship (and to which we will return in due course), the typical conventions have been subverted in this extract. The adulterer has relinquished the position of instigator and is the object of the husband's punishment. The sanctity of the *familia* and the high regard with which it was perceived by the Romans can be seen in the significance implied by the jurist Macer for the relationship that a freedman, caught in the act of adultery, enjoyed with various members of a husband's or wife's *familia*. A jurist would presumably not have devoted space in his commentary detailing the significance of a particular relationship if the repercussions of such an affair would not have been felt more strongly by the relatives of the adulterers and the wider community. Even the existence of a joint ownership arrangement did not mitigate the influence of the *familia* and its ability to punish those involved in an adulterous relationship, as indicated by the clarification enclosed in the parentheses.<sup>160</sup> Here, the freedman in question, when he was a slave, did not have to be owned solely by one of the aforementioned relatives. He could have been owned

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<sup>159</sup>Dig 48.5.25, Macer, *Criminal Proceedings*, book 1: *Marito quoque adulterum uxoris suae occidere permittitur, sed non quemlibet, ut patri: nam hac lege cauetur, ut liceat uiro deprehensum domi suae (non etiam soceri) in adulterio uxoris occidere eum, qui leno fuerit quiue artem ludicram ante fecerit in scaenam saltandi candandiu causa prodierit iudicioue publico damnatus neque in integrum restitutus erit, quiue libertus eius mariti uxorisue, patris matris, filii filiae utrius eorum fuerit (nec interest, proprius cuius eorum an cum alio communis fuerit) quiue seruus erit.* It is also worthwhile highlighting here that this extract will be used subsequently in this chapter to discuss the nature of the penalties enabled by the statute but is here used to demonstrate the involvement of the slaves and freedmen.

<sup>160</sup> These parentheses would not have been in the original text but are used here for ease of reference.



by a combination of any of these individuals and still be vulnerable to the penalties dictated by the statute. While a slave would not have had any such legal ‘barriers’ that would have prevented him being killed by an enraged husband or father, a change in status from a slave to a freedman would have required certain legal restrictions to be implemented to prevent an unauthorized execution.

In addition to fulfilling the roles of adulterer or as a source of evidence for an adulterous affair, slaves also occupied less direct roles within the framework of the enforcement of the adultery statute. The following commentary from Ulpian reveals an example of one of these roles:

How do we take it that an accusation has been made, to a judge or just simply? I myself think that it is enough if someone intimates that he is going to bring a prosecution for adultery, even if he has not done so before a judge... Therefore, also if he makes the notification by means of agents, that is, [where] a master makes the notification by means of a slave, his notification will be ratified.<sup>161</sup>

Here, the slave is nothing more than a messenger who notifies the free or freed citizens of the adultery charges that have been brought against them. The slave does not play a prominent role in this instance but they are still clearly involved in the legal framework of an adultery prosecution. So far, we have seen that some of the roles occupied by slaves and freedmen within adulterous relationships meant that they were an ‘object’ within these relationships. This means that they did not drive or lead the action within the affair but, rather, helped to facilitate it or perhaps serve as a potential source of evidence if formal legal charges were brought by an aggrieved husband or father. There are, however, further, ‘hidden’, examples of slaves’ interactions with the adultery legislation where their involvement was a factor, yet was even less obvious, to which we shall now turn.

#### 4.2.3 ‘HIDDEN’ SLAVES AND FREEDMEN

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<sup>161</sup> Dig 48.5.18.pr.5, Ulpian, *Lex Iulia on Adulteries*, book 2: *Denuntiasse qualiter accipiamus, utrum ad iudicem an uero simpliciter? Ego, etsi non denuntiauit ad iudicem, sufficere credo, si adulterii se acturum denuntiauerit... Ergo et si per actores denuntiauerit, id est per seruum dominus denuntiauerit, rata erit denuntiatio.*

That slaves and freedmen were integral to the *lex Iulia de adulteriis coercendis* is something that has now been firmly established, with each commentary that mentions *servi* or *liberti* as an object to the action being included in the preceding analysis. However, this statute contains further evidence for the involvement of slaves within the adultery statute. These ‘hidden’ roles, where the nature of the participation of a slave or freedman is not immediately obvious, are not an additional category to be included alongside the roles of ‘subject’ and ‘object’. Rather, they contain examples that can be attributed to each of these categories but have been overlooked, as, while the specific terms, *servus*, *servi*, *libertus* or *liberti* etc, may not have been used, the scenarios they describe do not exclude their participation. Some of these extracts contain more than one possible instance of a slave or freedman being involved in an adulterous relationship; however, in order to remain as close to the proposed model as possible, and in order to ease the subsequent analysis, the extract will be broadly grouped by the two main categories of slave and freedman as ‘subject’, and slave and freedman as ‘object’. There will be, however, a certain degree of blurred boundaries between these two groups when an extract contains examples of both roles.

Mirroring the afore-mentioned analysis, the first extracts to be discussed cover ‘hidden’ examples where slaves and freedmen should be included where adulterers were the focus or ‘object’ of the action. The three following passages from Papinian and Ulpian are concerned with a father’s legal right to kill an adulterer and his daughter if he “caught them in the act” in his home and the more stringent rules applied to the husband:

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 son-in-power.<sup>162</sup>

The words of the statute “may kill his daughter without delay” are to be taken in this sense; that he may not, after killing the male adulterer today, spare his daughter and then kill her some days later, or vice

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<sup>162</sup> Dig 48.5. 21, Papinian, *Adulteries*, book 1: *Patri datur ius occidendi adulterum cum filia quam in potestate habet: itaque nemo alius ex patribus idem iure faciet: sed nec filius familias pater.*

versa; for he must kill both of them almost with the same blow and the one onset, possessed by an equal anger against both.<sup>163</sup>

In the fifth chapter of the *lex Iulia*, the following is laid down: that a husband, who has caught in his wife an adulterer whom he either does not wish or is not permitted to kill, may lawfully and with immunity detain him for a continuous period not exceeding twenty hours, by day and by night, for the purpose of testifying to the matter. My own view is that what is expressly laid down for a husband should also apply to a father. Even if a husband apprehends [the adulterer] elsewhere than in his own house, he can detain him. But once let go, the adulterer cannot be brought back. What, therefore, if he escapes; can he be brought back and guarded for twenty hours? And I think it may rightly be said that once brought back, he can be kept for the purpose of testifying to the matter. The addition of “for the purpose of testifying to the matter” has this effect, that it may lead witnesses to be available to give testimony for the accuser that the man charged was taken in adultery.<sup>164</sup>

Prevalent amongst all three extracts is that the word used to refer to the male adulterer is *adulterum*. This is significant because it is not a specific term that refers to the social status of the individual – the adulterer in question could be a member of the senatorial or equestrian class or be a freedman or slave. Status-specific terms have been used elsewhere in the *Digest* so, it can be argued that here, the use of *adulterum* is reflective of the broad scope of the adultery statute in that it did not distinguish, for example, between those of the elite senatorial class or the servile members of their *familia* when it came to establishing a pool of potential adulterers. While the nature of the punishments inflicted through the adultery statute have been discussed previously in this work, a brief summary of the salient points would be useful here. Fathers, specifically *paterfamiliae*, were allowed, under the terms of the statute, to kill both the male adulterer and their daughter if he, the father, caught them ‘in the act’ in their own

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<sup>163</sup> Dig 48.5.24.4, Ulpian, *Adulteries*, book 1: *Quod ait lex ‘in continenti filiam occidat’, sic erit accipiendum, ne occiso hodie adultero reservet et post dies filiam occidat, uel contra: debet enim prope uno ictu et uni impetu utrumque occidere, aequali ira aduersus utrumque sumpta.*

<sup>164</sup> Dig 48.5. 26, Ulpian, *Lex Iulia on Adulterers*, book 2: *Capito quinto legis Iuliae ita cauetur, ut uiro adulterum in uxore sua deprehensum, quem aut nolit aut non liceat occidere, retinere horas diurnas nocturnasque continuas non plus quam uiginti testandae eius rei causa sine fraude sua iure liceat. Ego arbitror etiam in patre id seruandum, quod in marito expressum est. Sed et si non in domo sua deprehenderit maritus, poterit retinere. Sed semel remissus adulter reduci non protest. Quid ergo si euaserit, an reductus custodiri uiginti horis possit? Et putem hic magis dicendum reductum retineri posse, testandae rei gratia. Quod adicitur ‘testandae eius rei gratia’, ad hoc pertinent, ut testes inducat testimonio futures accusatori deprehensum reum in adulterio.*

home and if they killed both individuals at the same time. Husbands were rather more restricted under the terms of the legislation: they were not permitted to kill their wives and could only kill the male adulterer if he occupied a particular role, i.e. actor on the stage, or was of a certain social class. While the jurists are careful to use either *servus* or *libertus* in those sections of the *Digest* where the discussion can only refer to them, the above passages do not differentiate between the potential social classes of the accused. This is because, in these instances, the jurists did not need to distinguish between social classes, as both they, and the wider Roman populace, understood that the legislation was, in this sense, applicable to all Roman men.

Another prime example of how slaves and freedmen occupied ‘hidden roles’ that were affected by the adultery statute can be seen in the following extract from Papinian that discusses how certain women were exposed to the censure and penalties of the adultery statute:

*Materfamilias* means not only a married woman but a widow. Women also are liable under this chapter of the statute in so far as they have made available their house or have accepted something for a blatant *stuprum*. A woman who to avoid the penalty of adultery has become a brothel keeper or who has hired herself out on the stage can be accused of and condemned for adultery according to the *senatus consultum*.<sup>165</sup>

Slaves and freedmen, while not named explicitly in this extract, can be seen to have roles either as an instigator, and hence as an adulterer, or a hidden role as someone who helped to facilitate an adulterous relationship by being involved in the running of the home where the adultery occurred. The reference to the woman who becomes a brothel keeper or a stage performer is not accompanied by any specific status markers to denote a member of the elite class so it is impossible to conclude that this could refer to a slave or a freedwoman, as well as a female member of the equestrian or senatorial orders. However, it is important to acknowledge the difficulties experienced

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<sup>165</sup> Dig 48.5.11, Papinian, *Adulteries*, book 2: *Mater autem familias significatur non tantum nupta, sed etiam uidua. Mulieres quoque hoc capite legis, quod domum praebuerunt uel pro comperto stupro aliquid acceperunt, tenentur. Mulier, quae euitandae poenae adulterii gratia lenocinium fecerit aut operas suas in scaenam locauit, adulterii accusari damnarique ex senatus consulto potest.*

by women who occupied these lower rungs on the social hierarchy who set about achieving a level of financial security by establishing that type of business. The ‘hidden’ role of a slave or freedman in this scenario is not immediately apparent. A woman who had the resources to make her home available for others to use for an illicit relationship would, very probably, have been rich enough, either through inheritance from her *familia* or the wealth of a current or deceased husband, to afford slaves to maintain her homes.<sup>166</sup> If this were the case, her slaves would have been facilitators of an adulterous relationship, as they would have been maintaining the home where the affair occurred. Although some female slaves had access to differing levels of wealth and some freedwomen also had access to potential sources of capital and so could have conceivably been in a position to offer a home to those wishing to have an affair, such an interpretation is unlikely to be the case. Wealth, and the accompanying physical representations of it such as sizeable houses, is associated with the elite in *Digest* 48.5 and thus it is improbable that a jurist would be commenting on the case of a female slave or freedwoman who had made her home available for adultery. Yet, the involvement of slaves belonging to the ‘home-owner’ is real and realistic – so they too may have been charged with adultery.

Facilitating an adulterous relationship is also the theme of the next extract. In a similar fashion to the afore-mentioned passage, the jurist Scaevola discussed the consequences for someone who sought to profit monetarily from an adulterous relationship:

He by whose aid and counsel, with malicious intent, it is brought about that a man or woman caught in adultery should buy themselves off with money or any other agreement, is condemned to the same punishment as is laid down for those condemned on a charge of *lenocinium*. If a husband, in order to smear his wife’s good name, suborns an adulterer so that he himself can catch [them in the act], both husband and wife are liable to a charge of adultery under the *senatus consultum* on this subject.<sup>167</sup>

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<sup>166</sup> There is much scholarship on the wealthy elite households and their slaves and freedmen; see, e.g., Hasegawa (2005); Mouritsen (2011), especially, pp. 206-247; and Scheidel & Friesen (2009).

<sup>167</sup> Dig 48.5.15.1-2., Scaevola, *Rules, book 4: Is, cuius ope consilio dolo malo factum est, ut uir feminae in adulterio deprehensi pecunia aliaue qua pactione se redimerent, eadem poena damnatur, quae constituta est in eos, lenocinii crimine damnatur. Si uir infamandae uxoris suae causa adulterum*

Once again, this extract indicates that it was possible for slaves or freedmen to occupy more than one role within an adulterous relationship and it also highlights the duality of the interactions of slaves and freedmen within these same relationships. The role of the adulterer, or instigator, in this situation is not exclusive to the freeborn as both slaves or freedmen could have had the resources, if not to make monetary payments, but to reach a mutually agreeable arrangement.<sup>168</sup> The adulterer is then moved to a somewhat more precarious position within this extract where, as it is noted by Scaevola, adulterers could also have become the object, or perhaps even the ‘passive partner’, if a husband orchestrated the relationship in order to tarnish his wife’s reputation and benefit financially.<sup>169</sup>

The above commentary is not the only instance within *Digest* 48.5 where slaves can be seen to act as either direct or indirect facilitators of an illicit relationship. These following example can be divided into two main categories: the first is a scenario where the main focus of the extract could be a slave and the second is where the slaves could be involved in a secondary capacity, such as helping to run the household that their master or mistress makes available for adultery or *stuprum*. Ulpian provides an example where slaves could be considered as the facilitators of the adulterous relationship:

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; for whoever takes anything on account of his knowledge of a *stuprum* is liable to be punished. However, if anyone lets [an offender] go without payment, he does not fall under the statute. ... What, then, if it be another charge deriving from the *lex Iulia* which he or she faces, as do those who have made their house available for the purpose of *stuprum*, or others of the same kind? It is better to say that the five year period is fixed

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*subiecerit, ut ipsi deprehenderet, et uir et mulier adulterii crimine tenentur ex senatus consulto de ea re facto.*

<sup>168</sup> It is worth noting here that any such negotiations would have taken place after the husband had acquired knowledge of the affair firsthand as slaves and freedmen were in social categories that could be killed by an angry husband without fear of legal repercussions.

<sup>169</sup> According to Lee (1956,150-151), under the terms of the *lex de fundo dotali*, husbands in the Classical period were entitled to a portion of their wife’s *dos* (a gift made to the husband on behalf of his wife on the occasion of their marriage, and usually paid by her father).

for all offenses arising under the *lex Iulia*... There is, however, no doubt that a person who has forcibly committed *stuprum* on either a male or a female can be accused without limit of time, since it is indubitable that he is committing *vis publica*.<sup>170</sup>

This extract provides two instances where it is possible for a slave to have become involved in enabling an adulterous affair. Here, it is clear that slaves or freedmen, as adulterers, could either steer the course of an adulterous relationship, to a certain extent, or be an instrument for the machinations of a more socially powerful elite.

The ephemeral nature of the power that slaves and freedmen could wield in an adulterous relationship is even clearer in the following extracts. This first extract discusses the consequences of being caught in an illicit relationship:

However, a person who has the power to kill an adulterer is all the more able lawfully to inflict rough treatment on him.<sup>171</sup>

The person being referred to here could be either the father or husband of the daughter or wife committing adultery; as stated above, the *Digest* allows a father to murder his daughter and her partner if he catches them ‘in the act’, and husbands to murder the adulterous partner of their wives if they meet certain social criteria.<sup>172</sup> This hypothetical adulterer has moved from a position of relative power (a consensual partner in an adulterous relationship) to nothing more than an object of a husband or father’s rage and it is clear that slaves and freedmen could have occupied this role. One possibility that must be considered here is that this extract describes a scenario in which a freedman could potentially be in a position to execute his patron. While this would be a hypothetical possibility, previous discussion has established that freedmen, despite their ex-servile status, were not treated in the same manner as freeborn fathers

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<sup>170</sup> Dig 48.5.30.2.6.9, Ulpian, *Adulteries*, book 4: *Plectitur et qui et qui pretium pro comperto stupro acceperit: nec interest, utrum maritus sit qui acceperit an alius quilibet: quicumque enim on conscientiam stupro accepit aliquid, poena erit plectendus...quid ergo, si aliud crimen sit quod obiciatur, quod ex lege Iulia descendit, ut sunt qui domum suam stupri causa prae-buerunt et alii similes? Et melius est dicere omnibus admissis ex lege Iulia uenientibus quinquennium esse praestitutum...Eum autem, qui per uim stuprumue intulit uel mari uel feminae, sine praefinitione huius temporis accusari posse dubium non est, cum eum publicam uim committere nulla dubitatio est.*

<sup>171</sup> Dig 48.5.23.3, Papinian, *Adulterers*, book 1: *Sed qui occidere potest adulterum, multo magis contumelia poterit iure adficere.*

<sup>172</sup> See Dig 48.5.25 pr for examples.

and husbands whose daughters and wives had also committed adultery. Any freedman who discovered his wife in bed with an elite man would have, I think, been aware of the consequences and therefore would have been more likely to pursue a charge of adultery rather than give in to any murderous impulses. Freedmen, while stripped of power in certain areas of an adulterous relationship, were still able to exert a certain measure of influence in regard to illicit affairs.

Homes and households, both in a tangible and intangible manner, are integral to understanding the adultery legislation and its relationship to the *familia*. The *domus* is where the adulterous relationships must have occurred at least occasionally and is also the conceptual ideal that was damaged when a wife or daughter had an affair. Slaves, especially, were inextricably tied up with the running of the household and were thus in a prime position both to ‘observe’, or at least be aware of adulterous relationships, and also to facilitate them. The following extracts from Papinian, Ulpian and Macer are concerned with the consequences for an individual who makes available his or her residence for the purposes of an adulterous affair:

...However, the accuser is not forbidden to accuse, along with the male or female adulterer, the person also who provided his **house** [for the act] or gave counsel so that the offences might be bought off.<sup>173</sup>

He who knowingly makes available his **house** for the commission of *stuprum* or adultery with the *materfamilias* of another or for homosexual relations with a man, or who makes a profit from the adultery of his own wife, is punished as an adulterer, no matter what his status. It is obvious that by the term ‘**house**’ any sort of residence is meant.<sup>174</sup>

And if anyone has made available the **house** of a friend, he is liable. And indeed, if anyone has provided for the commission of *stuprum* out of doors or in the baths, he ought to be covered [by the statute].

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<sup>173</sup> Dig 48.5.33.1, Marcian, *Criminal Proceedings*, book 1: *Cum alterum ex adulteris elegerit maritus, alterum non ante accusare potest, quam prius iudicium finietur, quia duos simul ab eodem accusari non licet. non tamen prohibetur accusator simul cum adultero vel adultera eum quoque accusare, qui domum suam praebuit vel consilio fuit, ut crimen redimeretur.*

<sup>174</sup> Dig 48.5.9.pr-1, Marcian, *Adulterers*, book 2: *Qui domum suam, ut stuprum adulteriumve cum aliena matre familias vel cum masculo fieret, sciens praebuerit vel quaestum ex adulterio uxoris suae fecerit: cuiuscumque sit condicionis, quasi adulter punitur. Appellatione domus habitationem quoque significari palam est.*



And if men have been accustomed to meet at a certain **house** to plan adultery even if nothing was committed at that place, nevertheless the occupier seems to have made available his **house** for the commission of *stuprum* or adultery, because without that specific discussion the adultery would not have been committed.<sup>175</sup>

*Domus*, referring to a home or household, has been used here to refer to the building in which the illicit affair has been conducted or arranged. However, if closer attention is paid to the text, such an examination reveals that it is more than just the mere ‘bricks and mortar’ of the home or house being referred to in these passages that is violated by the actions of the adulterous couples. The importance with which this violation is perceived can be seen in the language used by Marcian in the first passage. An individual who provides a home or space for an adulterous affair or for *stuprum* is also liable for prosecution under the terms of the statute. In these extracts, emphasis is placed on the provision of a home or house, *domus*, in which the illicit affairs can take place. Three separate jurists commented on the provision of homes for these relationships, which could be interpreted as an indication of the severity with which such an action was perceived and so the question remains – how were slaves and freedmen involved in this process? It is not the intention, here, to suggest that slaves and freedmen were typically in possession of grand homes that they made freely available to couples planning extramarital affairs. It is, of course, not inconceivable to imagine that a freedman would have had the resources and infrastructure available for adulterous couples, but this would have been an exception to the socio-economic structures of Roman society at the time.<sup>176</sup> This section will argue that slaves, and to a lesser extent, freedmen, would have been involved in the commonplace, mundane household activities and thus would have been ideally placed to serve as either direct or indirect enablers of the affair (besides being observers), by facilitating their entry into the home, for example. This would have allowed the slaves, especially, to occupy two roles, one of which has already been identified as part of the established

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<sup>175</sup> Dig 48.5.10. pr-2, Ulpian, *Adulteries*, book 4: *Et si amici quis domum praebeisset, tenetur. Sed et si quis in agro balneove stuprum fieri praebeisset, comprehendi debet. Sed et si in domum aliquam soliti fuerint convenire ad tractandum de adulterio, etsi eo loci nihil fuerit admissum, verum tamen videtur is domum suam, ut stuprum adulteriumve committeretur, praebeisse, quia sine colloquio illo adulterium non committeretur.*

<sup>176</sup> See Mouritsen (2011) for a discussion of the socio-economic aspects of the lives of freedmen in the Roman world.

framework. The first role made possible by their involvement with this element of the adultery is that of evidence for the affair itself. They would have been observers, perhaps not of the actual adultery itself, but likely of parts of the affair and would thus have been able to serve as witnesses to the illicit actions of those elite citizens who had violated the legislation, a role already mentioned elsewhere in the *Digest*. A second role, not immediately highlighted in the legal evidence, is that of the facilitator of the affair. A slave in this role may adopt a variety of guises ranging from something as prosaic as the slave that opens the door to the adulterous couple as they enter the home to a role with more responsibility such as the steward responsible for running the home itself. One fact that becomes immediately evident is the intertwining nature of roles of slaves within these juristic interpretations of the adultery statute. Slaves were not excluded from serving as evidence of an affair taking place, a *domus* being made available or of both transgressions, and there is nothing in the juristic commentaries in the *Digest* to contradict these scenarios. ‘Hidden’ roles for slaves and freedmen within the adultery statute have, therefore, a bipartite structure: roles mentioned elsewhere in the *Digest* but without the *servus* or *libertus* label that makes it clear to which legal category *or* legal statuses the statute or jurist was referring; and, the more obscure roles associated with the running of a household that, while not explicitly mentioned within the *Digest*, were inescapably connected to any instances of adultery or *stuprum* that occurred within an elite residence. This established, it is time to move on to the third role taken up by slaves and freedmen. This last role played by slaves and freedmen within an adulterous relationship to be considered in this analysis is perhaps the most unexpected – that of the servile and freed acting as the ‘subject’ or drivers of the action, a role already approached in the present section, but one that deserves more careful investigation.

#### **4.2.4 SLAVES AND FREEDMEN AS THE ‘SUBJECT’**

Slaves and freedmen, although usually in the subordinate position when it came to relationships involving the free elite of Roman society, can still be seen as the subject in some of the extracts from *Digest* 48.5, or, even, as the ‘instigator’. It would be worthwhile at this juncture, however, to clarify what is meant by the term ‘instigator’,

i.e. as the one actively engaging in the action being discussed in the extract. Male slaves and freedmen undoubtedly occupied a position of less influence and power when compared to their married mistress or patron and it is not the intention of this work to suggest that slaves roamed through Roman society and initiated relationships with their own mistress or any freeborn or freed married Roman woman they came across as a matter of course.<sup>177</sup> Rather, the term is used here to differentiate forcefully between slaves who were merely witnesses to or evidence of an adulterous affair, and those who participated more fully.

Even though it may be easily subsumed within the overarching idea of slaves and freedmen as the subjects or instigators of action within extracts of the adultery legislation, the idea that slaves and freedmen had variable and shifting levels of influence within the parameters of the adultery statute can still be observed in the legal sources. Let us begin the analysis of this facet of their roles by concentrating on the ideas prominently displayed throughout the following two extracts. The first passage, from Marcian, places slaves and freedmen as the focus of the action within a hypothetical adulterous relationship but also expounds on how their presence as the adulterer within a relationship can affect the punishment of the relevant husband or father:

The deified Pius wrote in a rescript that if anyone states that a slave of his own has committed adultery with her who was his wife, he should accuse the woman rather than torture his slave as a preliminary to an action against her. If anyone does not let go an adulterer but keeps him [by him], as it might be a son [caught] with his stepmother or a freedman or a slave with his wife, he is punished according to the spirit of the law, even though by its letter [the adulterer] who is retained is not covered.<sup>178</sup>

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<sup>177</sup> However, it is not possible to exclude this scenario from the realm of possibility.

<sup>178</sup> Dig 48.5.34.pr-1, Marcian, *Criminal Proceedings, book 1*: *Si quis adulterium a seruo suo commissum dicat in eam, quam uxorem habuit, divus Pius rescripsit accusare potius mulierem eum debere, quam in praeiudicium eius seruum suum torquere. Si quis adulterum non dimiserit, sed retinuerit, forsan filium in noverca uel etiam libertum uel seruum in uxore, ex sententia legis tenetur, quamuis uerbis non continetur. quae autem retinetur, punitur. sed si dimissam reduxerit, uerbis non tenetur: sed tamen dicendum est, ut teneatur, ne fraus fiat.*

It is clear that, once again, the concept of slaves acting as adulterers, and thus being subject to a law ostensibly aimed at the Roman elite and their marriages, was not an uncommon concept for the jurists to have considered. However, there is one major question that needs to be explored, namely: why would a husband not dismiss from his *familia* an individual who had disrespected his authority and position in this way, and why would legislators or jurists seek to punish such an individual instead? The latter part of this question is, perhaps, easiest to address first. Any elite Roman citizen who would keep, within his power and control, a member of his *familia* who had transgressed in such a fashion could perhaps have been regarded as someone who was tacitly supporting adultery and be thus deserving of punishment.<sup>179</sup> Jurists and the courts would not have wanted to be seen to have approved of such a situation, hence the reason for such a position to have been adopted. Answering the first half of the question is more challenging. While it is easier to understand how a father may find it difficult to dismiss one of his own children from the *familia*, similar loyalty to or affection vis-à-vis a slave or freedmen is not as easy to comprehend. One possible solution lies not in whether or not the freedmen or slaves were dismissed, but in the duration of time between discovery of the affair and ‘dismissal’ from the *familia*. Here, Marcian could have been referring to a pre-set amount of time that a husband or father had to dismiss these individuals from the *familia*. Disparity and crossover between the roles of slaves and freedmen in an adulterous relationship and the accompanying punishments, such as those described above, are seen continuously throughout *Digest* 48.5.

The next extract where slaves or freedmen can be seen to act as the subject, or instigator, in an adulterous relationship is in an extract from Papinian that discusses the various options available to freedmen whose wives were accused of adultery. There is an incongruity between a freedman’s status and the fact that he was still not entitled

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<sup>179</sup> In keeping with the theme of flexibility and uncertainty regarding the impact of the adultery statute and the legal status of the aggrieved husband, however, it is worth pointing out here that Dig 48.5.2.3 contradicts Marcian’s position here completely. Essentially, a husband who was aware of his wife’s infidelity but did not dismiss or divorce her from the *familia* because he was not ‘bothered’ by the affair escaped the opprobrium of being prosecuted for *lenocinium* under the terms of the adultery statute.

to the same legal avenues of redress as a freeborn Roman male whose wife had committed adultery.<sup>180</sup> This is highlighted particularly in the following passage:

A freedman is not readily allowed to assail his patron's reputation; but if he seeks to accuse him of adultery under a husband's right, he is to be permitted to do so in the same way as if he had suffered a very serious *iniuria*. It certainly must be weighed carefully whether he can, after surprising his patron in adultery with his wife, kill him with impunity if [the latter] falls within that class who may be killed when surprised by another. This seems harsh to us; for if the [patron's] reputation should be spared, so much more should his life.<sup>181</sup>

The subordinate status of the freedman, in this application of the adultery statute, could potentially be revealed by the use of the term *iniuria* in the first sentence. As touched on above, *iniuria* was a term used, broadly, to refer to “physical assaults and oral or written insults and abuse,...any affront to another's dignity or reputation and any disregard of another's public or private rights, provided always that the act was done wilfully and with [scornful and insulting] intent”.<sup>182</sup> It is stated elsewhere within *Digest* 48.5 that a husband may kill with impunity any male adulterer ‘caught in the act’ with his wife as long as they fell into a particular legal class.<sup>183</sup> Here, however, this right seems to be set aside in order to preserve the protected status of an elite patron from the retribution of an enraged former slave. By deliberately using that term in connection with a discussion of the adultery committed by a freedman's wife, Papinian could be trying to indicate the inferior status with which the Roman elite regarded freedmen's relationships while still acknowledging the egregious nature of the patron's behaviour. Using the term *iniuria* within this context is, therefore, an indication of the gravity with which the crime of adultery was regarded by the Romans while continuing to treat the freedman husband's outrage as somehow ‘less’ than tha

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<sup>180</sup> I assume Roman *civitas* for the hypothetical freedman in question.

<sup>181</sup> Dig 48.5.39.9., Papinian, *Questions*, book 36: *Liberto patroni famam lacessere non facile conceditur: sed si iure mariti uelit adulterii accusare, permittendum est, quomodo si atrocem iniuriam passus esset. Certe si patronum, qui sit ex do numero, qui deprehensus ab alio interfici potest, in adulterio uxoris deprehenderit, deliberandum est, an impune possit occidere. Quod durum nobis esse uidetur: nam cuius famam, multo magis uitae parcendum est.*

<sup>182</sup> Nicholas (1962), 216.

<sup>183</sup> See page 111, n237 for the *Digest* reference listing those who could be legally killed by an enraged husband.

experienced by a freeborn Roman man.<sup>184</sup> This tells us three things: 1) freedmen and slaves were not excluded from consideration when the adultery statute was interpreted by jurists; 2) they were, however, treated as ‘second-class citizens’ in the adultery statute; and 3) that, overall, the adultery statute, ostensibly, privileged the Roman elite if it was felt necessary to single out the retribution available to freedmen compared to their patrons.

The inclusion of freedmen within the scope of the adultery statute and their disparate treatment, despite the change to their legal status, in relation to elite Roman men is further highlighted in the following passage:

If a person who has obtained the *ius anulorum* has committed adultery with his patron’s wife or with his patroness, or with the wife of the father, or the mother, or with the wife of the son, or the daughter, of him whose freedman he was, ought he to be punished as a freedman? And if he be *caught in the act* [my own emphasis] can he be killed with impunity? I favour the view that he should be liable to the punishment of freedmen, because in the *lex Iulia* on the punishment of adulteries it was agreed for the preservation of marriages that [such persons] should be treated as freedmen and it is not right that the position of patrons should be worse on account of the benefit [of the *ius anulorum*].<sup>185</sup>

The implications of this extract for the treatment of freedmen within the adultery statute and their status, both within their *familia* and that of their patron, and the wider Roman society, are significant and deserve particular attention. In order to do this, there are several points within the extract itself that need to be clarified and highlighted.<sup>186</sup>

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<sup>184</sup> This can be seen, in particular, in that the penalties for *iniuria*, particularly *atrox iniuria* – an especially ‘savage’ insult – were did not represent “compensation in the ordinary sense, but rather solace for injured feelings or affronted dignity” Nicholas (1962), 217.

<sup>185</sup> Dig 48.5.43, Tryphoninus, *Disputations*, book 2: *Si is, qui ius anulorum impetravit, adulterium commisit in patroni uxorem aut in patronam suam, aut in eius eive, cuius libertus patris aut matris, filii filiaeve fuit: an ut libertus puniri debeat? et si deprehensus sit in adulterio, an impune occidatur? et magis probo subiciendum poenae libertinorum, quoniam lege iulia de adulteriis coercendis ad tuenda matrimonia pro libertinis eos haberi placuit et deteriore causam per istud beneficium patronorum haberi non oportet.*

<sup>186</sup> The association of the wearing of gold rings with membership in the equestrian order was already established before Augustus began his reign so it was not a tradition started by the new emperor. Although Dio (53.30.2) relates an anecdote where Augustus, after falling gravely ill in 23 B.C., passes his gold ring to Agrippa in what is meant to be interpreted as a symbolic transfer of power, Simpson

The first aspect that should be looked at more closely is the order in which the individuals who are named as committing adultery with the freedman, and their roles within the *familia*, and what this indicates about the severity of the penalties that were inflicted upon them. The order in which the women are presented reveals not only their position in the *familia* in relation to the *paterfamilias* but the severity with which a transgression such as adultery may have been regarded by those affected. The first two individuals mentioned in the list are the patron's wife or the actual patron, if she was a woman. These two women would have been the most closely linked, in terms of their position and role within the *familia*, to the *paterfamilias*, who was the head of

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has not been able to make note of any other instances whereby a similar transfer had occurred (Simpson 2005, 181). Gold rings therefore, especially in the early Empire, were clearly associated with either senatorial or equestrian rank. For example, Cicero refers to Verres' gift of the gold ring to his assistant Maevius, who helped him when he extorted the people of Sicily (Verr. II, iii, 80, 185, 187); the dictator Sulla gave a gold ring to the actor Q. Roscius Gallus (Macrobius, *Sat.* III, 14, 13); and Caesar returned the gold ring to Laberius in 46 B.C (Suetonius, *Jul.* 39, 2; Macrobius, *Sat.* II, 7, 2). In all of these examples, the action of bestowing the gold ring on these individuals is associated with their elevation to the equestrian order in return for a service. It would not have been undertaken lightly and it illustrates the esteem and favour with which the equestrian order was regarded and how the increasing frequency of social mobility was bringing freedmen into contact with freeborn members of Roman society in situations with which the latter may not have been accustomed. Juvenal and Martial also wrote about gold rings and their connections with an increase in social status when they described how it was one of the knights' privileges to wear the gold ring: Juvenal (11.42-3) mentioned a knight who became bankrupt and was no longer entitled to wear the gold ring and Martial (8.5) described a knight called Macer who lavished rings on his 'lady friends' and lost the right to wear the ring and was then bankrupt. Tacitus (*Hist.* IV. 3.3) also mentions an individual who had been knighted and was thus allowed to wear multiple golden rings. As a side note, one author, Browning, references a commentary from the *Digest* that maintains that "having the *ius annulorum* as an honour conferred by the *princeps* upon freedmen to symbolize a fictitious freeborn origin was started by Hadrian" (Browning 1949, 12; Dig 40.10.6). However, the substantial number of primary sources dated earlier than Hadrian, especially those that reference Augustus, and a closer examination of the Title (Dig 40.10.6) (that deals exclusively with the question of various circumstances where it is permitted for a freedman to wear a gold ring) reveals that Hadrian is referring to a specific circumstance rather than the overall procedure, make it possible to refute this claim by Browning. The wearing of gold rings is therefore clearly linked in the primary sources with what *appears* to be an elevation in status to the equestrian order. However, becoming a member of the equestrian class was not as simple as receiving a gold ring and admittance to this order, even on the orders of the emperor himself, did not guarantee these 'upstart' freedmen equal and fair treatment by the law and those members of the equestrian class who had a longer association with the order. Duff also addressed the issue of gold rings worn by freedmen and concluded that, in fact, a freedman granted the *ius anuli aurei* was "in relation to society...deemed to have free birth, but in relation to his former master he is still his freedman. The *anulus aureus* renders a freedman immune from the disabilities that servile parentage entails...the *ius anuli aurei*, then, did not annul any of the patron's rights" [Duff (1958), 85-86]. He further concluded that "The *ius anuli aurei* did not, then, in itself give the *equus publicus*. It merely took away the social disqualifications remaining from servitude. Freedmen possessed of the gold ring had not the full privileges of knighthood, unless they obtained the *equus publicus* by a further imperial grant." [Duff (1958), 218]. This 'double-standard' in the social and legal standing of freedmen in relation to their patrons is also reflected in their treatment in regard to the adultery statute.

the *familia*, and who would have been in a position to exercise his power and authority, not only over these women but the freedmen himself. Committing adultery with the wife or daughter of a *paterfamilias* was regarded with more severity than it may have been if an adulterous affair involved another female member of the *familia* because the potential consequences would have had a greater impact. One alternative explanation for adultery being perceived as such a severe crime is, as already suggested earlier in this thesis, because it could have led to an illegitimate child being introduced into the succession line of a *paterfamilias*. This would have interrupted the intended line of succession and how the wealth would have been distributed and also interfered with the sanctity of the *domus*. This would have been of particular concern to the wealthy elite of the senatorial and equestrian classes who stood to potentially lose vast portions of their estates and other elements of their wealth to an intruder. Indeed, the repeated references within *Digest* 48.5 to the variance in penalties directed towards the daughters and wives of the elite, depending on in which of their father's and husband's *multiple* homes they committed adultery, demonstrates that the adultery statute addressed an issue of particular concern to the wealthy: the significance of this concern, especially in regard to the motivation behind the promulgation of the statute, will be explored in the conclusion to this thesis.

If we refer back to the order in which Tryphoninus mentioned the transgressing women, after he placed the wife of the patron/*paterfamilias* centre-stage, we see that he then seemingly flips the order of importance around by then listing the mother-in-law, the mother, the daughter-in-law and the daughter of the patron/*paterfamilias* as partners with whom a freedman, having been elevated to the equestrian order, should be subjected to more stringent punishments for choosing as partners for his adulterous affair. However, this is not the case. Another reading of the text is that Tryphoninus has deliberately reversed the order so that the last individual noted on the list, the daughter, is deliberately placed adjacent to the patron/*paterfamilias*, thus emphasizing the significance of this relationship. The two most significant individuals that a newly equestrian freedman could have had a relationship with, in terms of the adultery statute that is, are thus placed in this list where readers would remember them most easily. This was a deliberate action intended to reinforce the importance of the transgression.



There are two more phrases from Tryphoninus' extract that need to be clarified. The first is "...ought he to be punished as a freedman?". It has already been established how specific the adultery legislation was in regard to how freedmen should be punished and how, for instance, it increased the chances for them to be legally killed by an enraged husband. The change in legal status from a freedman to a, for all intents and purposes, freeborn Roman citizen, should have presumably been more permanent, especially considering it was an activity usually carried out by the emperor. The fact that it was not hints at uneasiness on the part of the elite equestrian class at the inclusion of freedmen to 'their' equestrian order.<sup>187</sup> The remaining phrase, or rather question, "And if he be caught in the act of adultery can he be killed with impunity?..." is a direct and deliberate reference to the fragment of original statute mentioned in Dig 48.5.24.pr, where a father was permitted to kill both partners in an adulterous relationship with impunity if he literally 'caught them in the act'. Much like the previous phrase, it is deliberately referencing those parts of the *Digest* and the statute that refer to the punishment of freedmen. This commentary is reflective of a wider distrust and displeasure within Roman society, not only with the inclusion of freedmen within the equestrian order, but with the potential risk they posed in terms of increased 'legitimate' access to and interaction with elite women and, thus, the creation of more chances for them to commit adultery.

The juxtaposition of slaves and freedmen serving as both the instigators of an adulterous affair and the object, or focus, of any punishments or methods of retribution in regard to an adulterous relationship is encapsulated within the following extract from Ulpian. It discusses the circumstances in which a slave, having been identified as an adulterer, can be tortured, how those who either own or share an interest in the slave are compensated for the loss of access to their property, and what happens to slaves after they have suffered in this way. In particular, there are two sections that exemplify the variety of roles that slaves could inhabit within an adulterous

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<sup>187</sup> For a detailed analysis of the equestrian class in the Empire, and promotion in this class, see Brunt (1983), Davenport (2012), Duncan-Jones (2006), and Wiseman (1970), especially p.118, n249.

relationship. This example is part of a section that discusses how best to compensate the owner of a slave accused of adultery:

...Attention should be paid to what is provided in chapter nine [of the statute] if a slave be accused of adultery and the accuser wishes torture to be applied to him; the statute [in general] requires double his value to be paid to the master, but in this case only the single [amount].<sup>188</sup>

Here, the slave is both the subject of the adulterous relationship, as he is being accused of adultery, and the object of the (consequence of the) act to which he is subjected, i.e. torture.<sup>189</sup> The seriousness with which adultery is perceived is made immediately clear when Ulpian states that even a servile member of society accused of adultery is worth half as much as a non-adulterous slave. Whether this is meant as a judgment on the now de-valued status of the slave or as a means of punishing the master for not exerting more control over his slave, is difficult to discern.<sup>190</sup>

It is fair to describe the presence of slaves and freedmen in the juristic writings on the adultery statute as ubiquitous. While their presence in ‘object’ roles is perhaps not surprising, slaves and freedmen as the ‘subject’ or drivers of the action being discussed in an extract on adultery is less expected. Yet, they have been identified as having the capacity to be adulterers themselves and thus being subject to the same, or sometimes worse, penalties than their free-born counterparts. Freedmen and slaves also drove the action of juristic discussions of adultery when they were either the main topic of discussion or the focus of a particular action mandated by the statute. In sum, whether occupying the object or the subject role, or both, it is clear that these legal

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<sup>188</sup> There are only five words remaining of this chapter. ...*ad quem ea res pertinebit* (‘to whom this matter pertains’). Given the context in which chapter nine is referred in Dig 48.5, it is likely that the chapter dealt with, at least in part, assigning ownership and value of slaves being tortured. Dig 48.5.28, Ulpian, *Adulteries*, book 3: ...*Notandum est, quod capite quidem novo cavetur, si servus adulterii accusetur et accusator quaestionem in eo haberi velit, duplum pretium domino praestari lex iubet, at hic simplum.*

<sup>189</sup> Although the *Digest* does not distinguish gender in this extract, it makes no mention of female homosexual relationships and a female slave involved in a relationship with a married man could only be accused of *stuprum* so it is reasonable to assume that Ulpian is referring to a male slave in these examples.

<sup>190</sup> On the monetary (sale) values of (Roman) slaves, see Salway (2010) and Crawford (2010). The devaluation of a slave following punishment is central to the discussion in Roth (2011), tellingly titled ‘Men Without Hope’.

sources on adultery considered slaves and freedmen to be a legitimate target for the consequences and penalties of the legislation including those for actual adulterers.

### 4.3 CONCLUSION

Slaves and freedmen are not typically considered within the context of a discussion of the *lex Iulia de adulteriis coercendis* or its effects on the *familia* or Roman society as a whole. However, a closer examination of the legal evidence has shown that these servile and freed members of Roman society were sometimes more entangled with the adultery statute than perhaps has previously been realized. The evidence for the involvement of slaves with the adultery legislation has been examined with an analytical framework that categorizes the evidence using a ‘grammatical’ approach. This study has revealed that slaves occupied two main roles within the adultery statute: the subject, or the instigator or main driving force of the action in a juristic commentary such as an adulterer; or the object or recipient of the action being discussed in the commentary, which was predominantly as the evidence for an affair between their owners. These roles were not mutually exclusive and it was not inconceivable for slaves to occupy more than one role within the network of interactions that surrounded an adulterous relationship. There is another category that helps to further our understanding of slave and freedman involvement with the adultery statute – that of the ‘hidden’ roles. These roles can be described as ‘hidden’ for two reasons: the first is because some juristic commentaries discuss the consequences of and punishment for involvement in an adulterous affair in a manner that does not exclude slaves and freedmen even if the terms *servus* or *libertus* are not used explicitly, especially as their connection with the statute has already been established, thus expanding the evidence that can be used to analyse their relationship with the legislation. The second, even more subversive role occupied by slaves and freedmen, can be deduced from examination of those extracts that discuss making homes and residences available for adulterous affairs. Slaves and, to a lesser extent, freedmen would have been involved in the running of these homes and may even have been the people who welcomed the illicit lovers into their owner’s and patron’s residences. Although these individuals

were not directly involved in the affair, they would have still been affected by the legislation. Any attempt, therefore, to understand the impact of the *lex Iulia de adulteriis coercendis* on the *familia* must incorporate the experiences of slaves and freedmen in order to produce a more subtle and complex image of ancient reality.



# **CHAPTER FIVE: LITERARY REPRESENTATIONS OF THE INVOLVEMENT OF SLAVES AND FREEDMEN WITH ADULTERY**

## **5.1 INTRODUCTION**

Adultery, for the Romans at least, was not exclusively discussed within the rarefied world of legal practitioners, such as advocates, and the legal writers, such as the jurists who have provided most of the texts so far discussed. It was addressed, either directly or indirectly, by a number of literary authors for a number of different reasons. It would not be possible to draw any meaningful conclusions concerning the roles played by slaves and freedmen within the adulterous relationships of their owners and patrons without also including the perspective of non-legal writing. Although writers such as Ovid, Tacitus or Suetonius, naturally had personal and political biases that influenced their writing, the key point to emphasize here is that their portrayal of and 'relationship' to adultery itself, Augustus' adultery statute, and those it affected, was shaped by the world they lived in and responded to; it therefore offers a potentially important corrective to the views expressed in the juridical discussions. As we shall see, whilst there are significant overlaps between the representation of adultery in the legal sources with those discussed in this section, the poets, historians, etc. focussed on here also provided perspectives that were different to that of the jurists, such as Ulpian. It is both the overlaps, as well as the differences, that make this chapter necessary.

Questions may be asked as to how and why, from the panoply of available literary authors, were the authors highlighted in this section chosen? There are several reasons why the five writers in this chapter were selected. Suetonius, Tacitus, Seneca the Elder, Quintilian, and Ovid represent specific time periods, genres and political and social viewpoints. By utilizing the work of authors from both just before the promulgation of Augustus' adultery legislation, during its enactment and almost a century and a half later, it is possible to gain a more comprehensive view of the developments, if any, in attitude toward the crime of adultery and the statute that transformed it from a private to a public transgression, as well as to see if the concept

of the involvement of the servile and the freed members of the *familia* within adulterous relationships had changed. Genre was also an important factor in considering which authors to select for this chapter. Selections from the fields of history, biography, rhetoric and poetry were deliberately chosen in order to demonstrate that particular attitudes toward the involvement of slaves and freedmen were not limited to one specific niche of writing, for instance, genre.

The particular works selected for this chapter are Suetonius' *Lives of the Twelve Caesars*, Tacitus' *Annals*, Seneca the Elder's *Controversiae*, Quintilian's *Declamations*, and Ovid's *Amores* and *Ars Amatoria*. The literary authors will be discussed in reverse chronological order, which means they will be organised from the most 'recent' – Suetonius – to the oldest – Ovid. On the one hand, this will allow for the influence of the ideas and perspectives engendered by Augustus' adultery legislation to be monitored during the changes in the social and political composition of the Empire. But it is particularly important to start this discussion with a text produced roughly in the period in which most of the legal evidence used in the previous chapter was composed. This should allow for the easier identification of conceptual similarities and differences irrespective of chronological differences. Thus, Suetonius, chronologically the most recent, is the first author to be discussed followed by Tacitus.

Suetonius' more straightforward writing style is different from that of his near contemporary Tacitus. This contrasting of styles is useful because it allows for a clearer view of the importance of certain ideas and how they may have developed throughout the period about which the authors were writing and that led up to the production of the legal texts already discussed. Yet, the chronological gap between the composition of the two works is also useful as it also reveals any broader changes in Roman attitudes towards adultery. Rhetoric, as represented by Seneca the Elder and Quintilian, is also an important element of this literary chapter. Although there is some disagreement regarding the attribution of the *Declamations* to Quintilian, both works are valid sources of enquiry as they depict, relatable, plausible examples of adultery and how the law, legal practitioners and the Roman public were intertwined. Ovid is

the last author to be analysed in this chapter. His two perhaps most well-known erotodidactic works were chosen because they provide the richest source of evidence of interaction between the servile, and those they serve, within the context of adulterous relationships. In addition, as with the other authors in this chapter, the possible reasons behind his vocabulary choices will also be explored because it will allow for a picture to be constructed reflecting one author's interpretation and interactions with adultery and, consequently, provide a small insight into adultery as it was perceived by those not necessarily involved within the legal spheres in early imperial Rome. Although I have stressed above that *both* similarities with and differences from the legal sources (and between the five authors focussed on in the present chapter) are what is at stake ultimately, in order to document that the jurists' viewpoints were not isolated perspectives, it will be critical to show in particular the existence of overlaps between these and our five authors, to advance the argument propounded in this thesis.

However, before we move on to the methodology employed in this chapter it would be useful to address certain aspects of the applicability and nature of the portrayals of adultery that will be seen in this upcoming section of the thesis. One element of the adultery scenarios used in this literary chapter, as well as the legal chapter to an extent, is the emphasis on examples of adultery, and the involvement of the servile and freed, drawn from the lives of the imperial 'class' in Rome. While a cross-section of descriptions of adultery from both elite and non-elite *familiae* would help in creating a more nuanced analysis, it was not within the scope of this thesis to include such breadth in the examples, not least because of a dearth of evidence regarding examples of and from individuals who carried lower status. The authors chosen, as mentioned above, focussed primarily on the lives of the elite; thus, the sample group for adultery depictions concentrates on a relatively narrow section of society. This is, however, acceptable within the framework of the analysis for this thesis because it is not strictly the status or wealth of those free Romans involved in the adultery, and mentioned in the literary examples, that is important but that they had slaves and freedman that also became entangled in the affairs of their masters and patrons. Another aspect to consider is the specific *nature* of the portrayals themselves.



Ovid, for example, adopts a playful and irreverent tone in his depictions of adultery, which is unlikely to be a wholly accurate portrayal of how adulterous relationships were carried out by the relevant parties.<sup>191</sup> However, as with the focus on the imperial elite, this ‘light-hearted’ depiction of adultery and the attendant players remains relevant and applicable for this discussion for, as with the afore-mentioned example, it is the fact that these passages *include* slaves and freedmen that is most important for the analysis in this thesis – which deals as much with the slaves’ and freedmen’s conceptual inclusion as with their real inclusion.

## 5.2 METHODOLOGY

Driving the analysis of the chosen literary works will be the same methodological framework and questions that were applied to the legal writing – naturally, viewed against the backdrop of the findings of my analysis of the legal texts: were the slaves and freedmen discussed by these authors occupying the same ‘subject’ and ‘object’ roles as the slaves and freedmen depicted in the legal sources, and how much were they involved in the adultery of their owners and patrons? Slaves and freedmen necessarily have an extensive textual presence in the text as they are commonly referred to when they are part of the background action of the text, instead of the main focus of the action. For the purposes of this study, select texts that reveal the interactions between slaves and freedmen and adultery were used for the analysis. The afore-mentioned keywords, adultery (*adult* - ), slave (*serv* - ), and freedman (*libert*), in their base forms were chosen in order to generate the largest possible sample size with the highest number of relevant examples.<sup>192</sup> Only examples of adultery that included slaves and freedmen and mentions of slaves and freedmen in conjunction

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<sup>191</sup> Ovid’s playful distortion of reality in his poetry has been well studied by Arkins (1990); Binns (2014); Claassen (1988, 2008); Cross (2000); Geyssen (2007); Gross (1975); Hinds (1987); Holzberg (1998); Houghton (2009); Ingleheart (2006a and 2006b); Javitch (1978); Kenney (2002); Miller (1995); Miller (2004); Mordine (2010); Murgatroyd (1999); Newlands (1991); Nikolaidis (1994); Reed (1997); Rosenmeyer (1997); VerSteeg and Barclay (2003); Wise (1982); and Ziogas (2016).

<sup>192</sup> There were 21 results (24 matches) for ‘adult’; 94 results (147 matches) for ‘serv’ and 79 results (114 matches).

with adulterous affairs were used to form a basis for analysis as it is beyond the scope of this work to examine the nature of *all* interactions between the free, elite members of Roman society and the servile and freed population. Examining the range and quality of the examples of adulterous relationships involving slaves and freedmen generated by this word search will allow for a sustained analysis of these authors' treatment of adultery to support my argument.

### 5.3 SUETONIUS: AN AMBIGUOUS AFFAIR

Suetonius' portrayals of illicit affairs and the servile and freed individuals associated with them are not presented with the same level of condemnation and judgement that can be seen in the work of other authors in this study. His depictions of adultery are not the sole focus of entire passages and, indeed, are more commonly treated as an important, perhaps, but yet not all-encompassing component of an emperor's story.<sup>193</sup> In order to explore Suetonius' treatment of adultery within the Roman Empire, this section will carefully examine the interactions and depictions of slaves and freedmen, and the recorded examples of illicit relationships will be analysed in order to generate a comprehensive picture of how Suetonius depicted adultery, and the roles taken by slaves and freedmen, and the effect of its attendant legislation on the Roman population. I will conclude with an analysis of the instances of adultery that involve

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<sup>193</sup> There is a long history of scholarship addressing the quality of Suetonius' work and his reasons for writing the *Lives*. Lewis (1991) offers a concise summary of some of the scholarship that has addressed the issue of the ancient author's writing style and approach, typified, perhaps, by Funaioli's statement : "*ma un vero scrittore non è*" (Lewis 1991, 3624). Lewis, however, has taken a different perspective that places him and his work in a socio-political-cultural context that recognises the "social and political prejudices supposed to be specifically those of the equestrian class to which he belonged" (Lewis 1991, 3625). He identified that Suetonius grouped his *Lives* under headings of abstract topics such as the perils facing the emperors but that he also used as headings with "more concrete topics, dealing in turn with the emperor's relationships as head of state with senators, *equites* and plebs, Italy, the provinces and client-kings; or as *paterfamilias* and *patronus* with kindred, wives, children, friends, clients, freedmen and slaves" (Lewis 1991, 3636). It is the inclusion of these last, more tangible categories that are important not only for our understanding of how Suetonius structured his work and, thus, what that can tell us about how he would have approached the topic of adultery but also, the acknowledgement of slaves and freedmen as individuals that would have had a relationship with the emperor that could have affected his behaviour and should then be considered within the framework of an overall study of how slaves and freedmen affected and were affected by the social relationships of freeborn Romans.

slaves and freedmen and examine how the law affected them and what, if indeed any, were the differences between the treatment of slaves and freedmen in respect of the adultery statute that can be seen in the work of Suetonius. One aim of this section is to argue for the wide-ranging involvement – in Suetonius’ writing – of slaves and freedmen in diverse and fluid roles associated with adulterous acts, thus further demonstrating my argument of the importance to consider these lower status groups when discussing the *lex Iulia de adulteriis coercendis*. Suetonius’ treatment of adulterous relationships, and his representation of the servile and freed members of Roman society connected with these interactions offers a perspective on the relationship between the *familia* and the implementation and enforcement of the adultery statute that can aid in creating a more nuanced understanding of the new legislation.

### **5.3.1 SLAVES AND FREEDMEN IN ADULTEROUS RELATIONSHIPS IN *THE LIVES***

Slaves and freedmen are presented as being intimately involved with their owners and patrons in the context of adulterous relationships in *The Twelve Caesars*. Their roles, as presented in conjunction with adulterous affairs, are written with substantial ambiguity though; they are not depicted with the same sense of intent and purpose that will be seen in Tacitus. Importantly, the impression generated by the legal sources of slaves and freedmen actively involved in initiating adulterous contact is not as prevalent in Suetonius. The ‘traditional’ view of slaves and freedmen being the passive recipients of the actions and desires of their owners and patrons is more established here. However, the text does show evidence of slaves and freedmen intimately involved in these relationships. Therefore, this shows that there is both an undeniable element of ambiguity attributed to the nature of their relationships and, also, that the adultery statute is applicable to them in more than one incarnation. This presentation of slaves and freedmen and, indeed Suetonius’ attitude to adultery in general, is seen throughout the text. The first example is taken from the *Life of Julius Caesar*. Although his reign predates the enactment of the adultery legislation, it is not

too far removed chronologically to render the attitudes to adultery superfluous and irrelevant:

It is further reported that in the provinces he gave banquets constantly in two dining-halls, in one of which his officers or Greek companions, in the other Roman civilians and the more distinguished of the provincials reclined at table. He was so punctilious and strict in the management of his household, in small matters as well as in those of greater importance, that he put his baker in irons for serving him with one kind of bread and his guests with another; and he inflicted capital punishment on a favourite freedman for adultery with the wife of a Roman knight, although no complaint was made against him.<sup>194</sup>

Here, Suetonius' presents Caesar's attitude towards adultery as just one part in a small series of anecdotes used to reveal the manner in which he ruled his household. It is not the focus of the passage but, rather, is used to demonstrate Caesar's overall attitude. There is not even the underlying impression of condemnation and derision commonly associated with adultery that can be seen in the legal sources. However, there are certain aspects of Caesar's treatment of his freedmen that demonstrate a sense of continuity in terms of the attitude to adultery that are mirrored in Augustus' legislation. The first is that 'capital punishment' was inflicted on the hapless freedman. This is a contradiction of the law as since, presumably, the emperor did not catch the freedmen 'in the act' with the wife of the Roman knight, he was not entitled to kill him in accordance with the law. The second common characteristic is that punishment was inflicted without a formal complaint being made. This is, in part, due to the fact that the adultery legislation was not yet formalised and is reflective of the more *laissez-faire* attitude to punishing adultery before it was propagated.<sup>195</sup> However, jurists

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<sup>194</sup> *DVC* Jul 48: *Convivatum assidue per provincias duobus tricliniis, uno quo sagati palliative, altero quo togati cum inlustrioribus provinciarum discumberent. Domesticam disciplinam in parvis ac maioribus rebus diligenter adeo severeque rexit, ut pistorem alium quam sibi panem convivis subicientem compedibus vinxerit, libertum gratissimum ob adulteratam equitis Romani uxorem, quamvis nullo querente, capitali poena adfecerit.*

<sup>195</sup> There are hints at this overall position on adultery throughout Suetonius' work. For example, *De Vita Caesarum* Jul 6.2.3 and 74.2.2 refer to his wife Pompeia's affair with Publius Clodius. His attitude in these passages would appear to indicate his disapproval as he first divorced and then imprisoned his wife. However, Suetonius hints at a more complex attitude in *De Vita Caesarum* Jul 52.3.5 when he refers to Caesar's affairs with Eunoe and Cleopatra, high-born women in positions of power in other nations. Both the motivations for these relationships and, indeed, their veracity are not clear but the

writing in the *Digest* did allow for spontaneous, heat-of-the-moment killings, as we saw in the previous chapter. While Caesar's position at the top of the social and legal hierarchy undoubtedly influenced the types of actions he could take within the context of enforcing punishment to those guilty of committing adultery, there are enough similarities with subsequent examples dated after the enactment of the legislation to demonstrate a continuity in Suetonius' approach to the matter that justifies the inclusion of the Caesarean example.

Despite being the de-facto force behind the enactment of the adultery legislation, Augustus himself adopted a somewhat flexible approach in his attitude towards adultery. This contrast can be seen when comparing his attitude toward the adultery of his freedmen to his own personal life and is, perhaps, more indicative of the emperor's attitude towards adultery than the legislation alone suggests. Understanding this position, albeit through the lens of Suetonius' interpretation of his actions, aids in furthering our understanding of the purpose of the legislation, which will be explored in the conclusion to this thesis. This is exemplified by the following passages that discuss the affair that Polus, one of his freedmen, had with a, presumably, freeborn Roman matron:

As patron and master he was no less strict than gracious and merciful, while he held many of his freedmen in high honour and close intimacy, such as Licinus, Celadus, and others. His slave Cosmus, who spoke of him most insultingly, he merely put in irons. When he was walking with his steward Diomedes, and the latter in a panic got behind him when they were suddenly charged by a wild boar, he preferred to tax the man with timorousness rather than with anything more serious, and turned a matter of grave danger into a jest, because after all there was no evil intent. But he forced Polus, a favourite freedman of his, to take his own life, because he was convicted of adultery with Roman matrons, and broke the legs of his secretary Thallus for taking five hundred denarii to betray the contents of a letter. Because the tutor and attendants of his son Gaius took advantage of their master's illness and death to commit acts of arrogance and greed in his province, he had them thrown into a river

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fact that they were included in this biography is an indication that his stance on adultery was not fixed and was thus, to a certain degree, dependent on multiple scenarios and circumstances.

with heavy weights about their necks.<sup>196</sup>

In this passage, the punishment for adultery that is inflicted upon Polus appears to be a factor more closely related to his betrayal of Augustus' honour or his social reputation than being based solely on his status as a freedman. Polus' transgression was deemed worthy of a punishment more severe than that meted out to a slave who insulted him or another servant who cowered behind Augustus when a wild boar charged them. Here, Suetonius is presenting adultery through the lens of Augustus' reaction to the affair rather than a reflection of contemporary Rome's response to adultery. There appears to be an element of reluctance on the author's part to thoroughly denigrate or condemn those who commit adultery; slaves and freedmen who are involved in these relationships seem to receive punishment dependent on the effect of the adultery on the reigning emperor, rather than the fact that they committed adultery at all. Before these examples can be examined in further detail, however, it is first necessary to return to Suetonius' portrayal of Augustus to solidify the placement of adultery within the social and legal hierarchies of Rome during his reign. In order to understand if the treatment of freedmen connected to adulterous relationships during Augustus' reign in *The Twelve Caesars* was solely a reflection of their social and legal standing in regard to the adultery statute or was motivated by other factors, it is necessary to examine the following passage. Although it does not contain references to the adulterous actions of slaves or freedmen, its relevance stems from Suetonius' treatment of adultery committed by a freeborn man, albeit that of one in the unique social and legal position of emperor:

That he was given to adultery not even his friends deny, although it is true that they excuse it as committed not from passion but from policy, the more readily to get track of his adversaries' designs through the women of their households. Mark Antony charged him, besides his hasty marriage with Livia, with taking the wife of an ex-

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<sup>196</sup> *DVC* Aug 67: *Patronus dominusque non minus severus quam facilis et clemens multos libertorum in honore et usu maximo habuit, ut Licinum et Celadum aliosque. Cosmum servum gravissime de se opinantem non ultra quam compedibus coercuit. Diomedem dispensatorem, a quo simul ambulante incurrenti repente fero apro per metum obiectus est, maluit timiditatis arguere quam noxae, remque non minimi periculi, quia tamen fraus aberat, in iocum vertit. Idem Polum ex acceptissimis libertis mori coegit compertum adulterare matronas; Thallo a manu, quod pro epistula prodita denarios quingentos accepisset, crura ei fregit; paedagogum ministrosque C. fili, per occasionem valitudinis mortisque eius superbe avareque in provincia grassatos, oneratis gravi pondere cervicibus praecipitavit in flumen.*

consul from her husband's dining-room before his very eyes into a bed-chamber, and bringing her back to the table with her hair in disorder and her ears glowing; that Scribonia was divorced because she expressed her resentment too freely at the excessive influence of a rival; that his friends acted as his panders, and stripped and inspected matrons and well-grown girls, as if Toranius the slave-dealer were putting them up for sale. Antony also writes to Augustus himself in the following familiar terms, when he had not yet wholly broken with him privately or publicly: "What has made such a change in you? Because I lie with the queen? She is my wife. Am I just beginning this, or was it nine years ago? What then of you — do you lie only with Drusilla? Good luck to you if when you read this letter you have not been with Tertulla or Terentilla or Rufilla or Salvia Titisenia, or all of them. Does it matter where or with whom you take your pleasure?" <sup>197</sup>

Here, the emperor's involvement with adultery is reported with a sense of political necessity, on the part of Suetonius, rather than outright scandal and condemnation. It is relevant for the representation of the involvement of the servile and freed in adultery because it shows that Augustus did not adopt a universally condemnatory approach to adultery so that the harsh punishments inflicted on the freedman may have been more linked to that individual's social status than the mere fact, or allegation, that they had committed adultery.<sup>198</sup> (This suggests that the moralistic viewpoint seen in Tacitus'

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<sup>197</sup> DVC Aug 69: *Adulteria quidem exercuisse ne amici quidem negant, excusantes sane non libidine, sed ratione commissa, quo facilius consilia adversariorum per cuiusque mulieres exquireret. M. Antonius super festinatas Liviae nuptias obiecit et feminam consularem e triclinio viri coram in cubiculum abductam, rursus in convivium rubentibus auriculis incomptiore capillo reductam; dimissam Scriboniam, quia liberior doluisset nimiam potentiam paelicis; condiciones quaesitas per amicos, qui matres familias et adultas aetate virgines denudarent atque perspicerent, tamquam Toranio mangone vendente. Scribit etiam ad ipsum haec familiariter adhuc necdum plane inimicus aut hostis: "Quid te mutavit? Quod reginam in eo? Uxor mea est. Nunc coepi an abhinc annos novem? Tu deinde solam Drusillam inis? Ita valeas, uti tu, hanc epistulam cum leges, non inieris Tertullam aut Terentillam aut Rufillam aut Salviam Titiseniam aut omnes. An refert, ubi et in qua arrigas?"*

<sup>198</sup> In addition to the value it was apparently granted as an expedient political tool, Suetonius also does not always spend an inordinate amount of time on the transgressions of the elite who commit adultery. In passage *De Vita Caesarum* Aug 5.1.6, the adultery of a young, male, noble is discussed: "For it is recorded in the proceedings of the senate, that when Gaius Laetorius, a young man of patrician family, was pleading for a milder punishment for adultery because of his youth and position, he further urged upon the senators that he was the possessor and as it were the warden of the spot which the deified Augustus first touched at his birth, begged that he be pardoned for the sake of what might be called his own special god. Whereupon it was decreed that that part of his house should be consecrated." Here, Suetonius does not concentrate on the nature of the transgression or the exact nature of the punishment but rather focuses his attention on the transformation of his *domus* into a sacred space honouring Augustus. This could be because Suetonius was more focused on shaping the legend of Augustus in the beginning sections of his biography so associated him with sacred spaces in the homes of his people was more befitting his 'legend'; however, it could also be due to the fact that Suetonius did not regard adultery with the same severity as his almost-contemporary Tacitus. These differences in perspective, especially when contrasted with the apparently almost rabid fear of slaves and freedmen committing

writing, which will be explored in the following section, was perhaps more a product of his own motivations or agenda rather than a representation of the standpoint prevalent in the contemporary Roman society.) If adultery was universally condemned, surely Suetonius would have presented a similar viewpoint in his representations of the illicit affairs? An alternative explanation is that he may have had a particular agenda in mind when he wrote the biography and thus wished to downplay the importance or effect of the imperial adultery. Examining further extracts from Suetonius that address adultery can expand upon this point.

Any depiction of adultery in Suetonius must not neglect the example of Claudius, the transgressions of his young wife Messalina and the close nature of his relationships with his slaves and freedmen, such as Narcissus. Again, Suetonius' portrayal of these relationships and the imperial responses to them will be seen to be markedly different from those of Tacitus in the next section. The following three passages are critical:

But it is beyond all belief, that at the marriage which Messalina had contracted with her paramour Silius he signed the contract for the dowry with his own hand, being induced to do so on the ground that the marriage was a feigned one, designed to avert and turn upon another a danger which was inferred from certain portents to threaten the emperor himself.<sup>199</sup>

His ardent love for Messalina too was cooled, not so much by her unseemly and insulting conduct, as through fear of danger, since he believed that her paramour Silius aspired to the throne. On that occasion he made a shameful and cowardly flight to the camp, doing nothing all the way but ask whether his throne was secure.<sup>200</sup>

When he had put Messalina to death, he asked shortly after taking his place at the table why the empress did not come. He caused many of those whom he had condemned to death to be summoned the very

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adultery that can be seen in a reading of the legal source, Dig 48.5, hints at a possible level of fluidity seen around the perception and impact of adultery, at least in certain situations.

<sup>199</sup> *DVC* Cl 29.3.3: *Nam illud omnem fidem excesserit quod nuptiis, quas Messalina cum adultero Silio fecerat, tabellas dotis et ipse consignaverit, inductus, quasi de industria simularentur ad avertendum transferendumque periculum, quod imminere ipsi per quaedam ostenta portenderetur.*

<sup>200</sup> *DVC* Cl 36.1.9: *Messalinae quoque amorem flagrantissimum non tam indignitate contumeliarum quam periculi metu abiecit, cum adultero Silio adquiri imperium credidisset; quo tempore foedum in modum trepidus ad castra confugit, nihil tota via quam essetne sibi salvum imperium requirens.*



next day to consult with him or game with him, and sent a messenger to upbraid them for sleepy-heads when they delayed to appear. When he was planning his unlawful marriage with Agrippina, in every speech that he made he constantly called her his daughter and nursling, born and brought up in his arms. Just before his adoption of Nero, as if it were not bad enough to adopt a stepson when he had a grown-up son of his own, he publicly declared more than once that no one had ever been taken into the Claudian family by adoption.<sup>201</sup>

One factor that is apparent from the above examples is the comparative lack of agency granted toward Claudius' freedmen in this version of events.<sup>202</sup> Adultery is a crime inherently intimate in nature. Any connection with slaves and freedmen could have been seen as a disruption to the strict legal and social hierarchy present in Roman society, especially that of the early Principate. If Suetonius did not feel it necessary to focus on their actions and the consequences, it could be that the extent of their involvement in the adulterous affairs of the imperial household was not as extensive as previously portrayed. The nature of the portrayal of slaves and freedmen' involvement with adultery by Suetonius is difficult to understand. Thus, the degree to which their portrayal was a reflection of societal behaviours and practices or a caricature exaggerated for literary purposes is hard to determine. However, Suetonius' depiction of freedmen and slaves in adulterous relationships was not limited to the emperors of the early Empire.

Claudius was, of course, not the only emperor who was intimately involved with freedmen. The emperor Nero had a notoriously intimate relationship with the freedwoman Acte, and Suetonius discusses it in the below passage:

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<sup>201</sup> *DVC* Cl 39.2.5: *Occisa Messalina, paulo post quam in triclinio decubuit, cur domina non veniret requisivit. Multos ex iis, quos capite damnaverat, postero statim die et in consilium et ad aleae lusum admoneri iussit et, quasi morarentur, ut somniculosos per nuntium increpuit. Ducturus contra fas Agrippinam uxorem, non cessavit omni oratione filiam et alumnam et in gremio suo natam atque educatam praedicare. Adsciturus in nomen Neronem, quasi parum reprehenderetur, quod adulto iam filio privignum adoptaret, identidem divulgavit neminem umquam per adoptionem familiae Claudiae insertum.*

<sup>202</sup> As will be seen in the forthcoming section on Tacitus, he may have been deliberately exaggerating the influence and level of agency of the freedmen in order to portray Claudius, and thus the imperial household and ruling elite, as becoming increasingly weak and servile in nature, Suetonius did not share this agenda and therefore did not need to place undue emphasis on their roles and involvement, especially in regard to adulterous relationships.

Besides abusing freeborn boys and seducing married women, he debauched the vestal virgin Rubria. The freedwoman Acte he all but made his lawful wife, after bribing some ex-consuls to perjure themselves by swearing that she was of royal birth ...<sup>203</sup>

Part of a longer passage that describes the overall apparent moral depravity of Nero, this extract is one of only two examples where the emperor is paired with his freedwoman mistress.<sup>204</sup> Suetonius does not make any mention of the wider phenomenon of political machinations in which the freedwoman was entangled.<sup>205</sup> The image created by this passage is one of nothing more than an erstwhile illicit companion of the emperor. One possible explanation for this is that her activities were so widely known to the wider Roman populace that he did not feel it necessary to mention it in his writing. However, it is nearly impossible to judge the level of awareness of the Roman people's knowledge of what the emperor may or may not have been doing. Instead, Suetonius appears to have used adultery as more of a tool to reveal the personal habits of the emperor as a man, rather than as a way of commenting on his political acuity and fitness to rule an empire.<sup>206</sup> This can also be seen in the other examples of imperial and elite adultery with freedmen and slaves.

Servile and freed individuals were mentioned in conjunction with several emperors in the context of an illicit relationship with the elite of Rome. There is one allusion to adulterous relationships between freeborn or freed woman and a slave. During the reign of Vespasian, Suetonius mentions the emperor's response to the reported immoral behaviour that was flourishing in the populace:

Licentiousness and extravagance had flourished without restraint; hence he induced the senate to vote that any woman who formed a connection with the slave of another person should herself be treated as a slave; also that those who lend money to minors should never

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<sup>203</sup> *DVC* Nero 28.1.3: *Super ingenuorum paedagogia et nuptarum concubinitus Vestali virgini Rubriae vim intulit. Acten libertam paulum afuit quin iusto sibi matrimonio coniungeret, summissis consularibus viris qui regio genere ortam peierarent.*

<sup>204</sup> The other example is *DVC* Nero 50, where Suetonius describes Nero's ashes being deposited in the family tomb by his nurses Egloge and Alexandria, and his mistress Acte.

<sup>205</sup> Unlike Tacitus, who, as will be seen shortly, was convinced of the political ambitions of the erstwhile 'companion'.

<sup>206</sup> On Suetonius' approach in general, see Gladhill (2012), Wallace-Hadrill (2004), and Wardle (2010).

have a legal right to enforce payment, that is to say, not even after the death of the fathers.<sup>207</sup>

In this example, the decaying morals of Roman society are being directly linked to the personal lives and behaviours of Roman matrons. It is apparent that liaisons between slaves and the free remained a worry of the elite decades after the enactment of Augustus' legislation. Adultery between the free and the servile is presented as both a criminal and moral transgression and is punished accordingly.

Male freeborn citizens, especially the emperors, are not treated with the same condemnatory approach in Suetonius' writing. This can be seen in the following example from the Life of Otho:

...After his father's death he pretended love for an influential freedwoman of the court, although she was an old woman and almost decrepit, that he might more effectually win her favour. ...<sup>208</sup>

Here, the involvement of a freedwoman with an emperor does not appear to have been treated with a similar level of scorn as in the previous examples.<sup>209</sup> This could be because the freedwoman mentioned in the passage was old and, it is implied, incapable of bearing children. Therefore, she would not have been able to introduce any children into his *familia* that could potentially interfere with the inheritance of the rightful heirs.

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<sup>207</sup> DVC Ves 11.1.2: *Libido atque luxuria coercente nullo invaluerat; auctor senatui fuit decernendi, ut quae se alieno servo iunxisset, ancilla haberetur; neve filiorum familiarum faeneratoribus exigendi crediti ius unquam esset, hoc est ne post patrum quidem mortem.*

<sup>208</sup> DVC Otho 2.2.1: *...Post patris deinde mortem libertinam aulicam gratiosam, quo efficacius coleret, etiam diligere simulavit quamvis anum ac paene decrepitam...*

<sup>209</sup> See the passage below for another example of the ambiguity seen around the involvement of freedwomen and emperors: Meanwhile he took to wife Flavia Domitilla, formerly the mistress of Statilius Capella, a Roman knight of Sabrata in Africa, a woman originally only of Latin rank, but afterwards declared a freeborn citizen of Rome in a suit before arbiters, brought by her father Flavius Liberalis, a native of Ferentum and merely a quaestor's clerk. By her he had three children, Titus, Domitian, and Domitilla. He outlived his wife and daughter; in fact lost them both before he became emperor. After the death of his wife he resumed his relations with Caenis, freedwoman and amanuensis of Antonia, and formerly his mistress; and even after he became emperor he treated her almost as a lawful wife. *De Vita Caesarum* Ves 3: *Inter haec Flaviam Domitillam duxit uxorem, Statili Capellae equitis R. Sabratensis ex Africa delicatam olim Latinaeque condicionis, sed mox ingenuam et civem Rom. recipatorio iudicio pronuntiatam, patre asserente Flavio Liberale Ferenti genito nec quicquam amplius quam quaestorio scriba. Ex hac liberos tulit Titum et Domitianum et Domitillam. Uxori ac filiae superstes fuit atque utramque adhuc privatus amisit. Post uxoris excessum Caenidem, Antoniae libertam et a manu, dilectam quondam sibi revocavit in contubernium habuitque etiam imperator paene iustae uxoris loco.*

Another explanation for the almost detached tone used to describe the relationship is that the emperor was clearly doing so for political gain; it is presented almost as a military strategy and therefore the usual condemnatory approach is apparently not applicable in this case. Although it is not stated that this freedwoman was married, the usual requirement for a charge of adultery, it is still being included here because of the ambiguity surrounding her marital status.

There are further examples within Suetonius' work that reveal his approach to adultery and how the freed were depicted in association with it. The following two examples are from the *Life of Vitellius* and reveal two different types of freedman/freeborn interactions:

He was an honest and active man, but of very ill repute because of his passion for a freedwoman, which went so far that he used her spittle mixed with honey to rub on his throat and jaws as a medicine, not secretly nor seldom, but openly and every day ... to neglect no means of gaining the favour of Claudius, who was a slave to his wives and freedmen, he begged of Messalina as the highest possible favour that she would allow him to take off her shoes.<sup>210</sup>

Beginning in this way, he regulated the greater part of his rule wholly according to the advice and whims of the commonest of actors and chariot-drivers, and in particular of his freedman Asiaticus. This fellow had immoral relations with Vitellius in his youth, but later grew weary of him and ran away. When Vitellius came upon him selling at Puteoli, he put him in irons, but at once freed him again and made him his favourite. His vexation was renewed by the man's excessive insolence and thievishness, and he sold him to an itinerant keeper of gladiators. When, however, he was once reserved for the end of a gladiatorial show, Vitellius suddenly spirited him away, and finally on getting his province set him free. On the first day of his reign he presented him with the golden ring at a banquet, although in the morning, when there was a general demand that Asiaticus be given that honour, he had deprecated in the strongest terms such a blot on the equestrian order.<sup>211</sup>

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<sup>210</sup> DVC Vit 2.4.8: *Vir innocens et industrius, sed amore libertinae perinfamis, cuius etiam salivis melle commixtis, ne clam quidem aut raro sed cotidie ac palam, arterias et fauces pro remedio fovebat... Claudium uxoribus libertisque addictum ne qua non arte demereretur, proximo munere a Messalina petit ut sibi pedes praeberet ex calciandos...*

<sup>211</sup> DVC Vit 12: *Talibus principiis magnam imperii partem non nisi consilio et arbitrio vilissimi cuiusque histrionum et aurigarum administravit et maxime Asiatici liberti. Hunc adolescentulum mutua libidine constupratum, mox taedio profugum cum Puteolis poscam vendentem reprehendisset, coniecit*

In the first example, it is a very conventional type of censure as the idea of a wealthy, elite man forming an illicit relationship with a freedwoman was not uncommon in the literary sources. Suetonius did not attempt to hide his scorn at the emperor's behaviour and his almost slavish devotion to a woman who would have been considered an inferior by his contemporaries. His weakness for the freedwomen is paralleled by mention of Claudius' weakness in the face of the dominating personalities of his wives and freedmen. Here, the combined perceived 'weakness' of the female freedwoman is split and embodied by the emperor's wives and his attendants and the common theme of the corrupting influence of the lower-status woman is revealed. The second example from Vitellius is less conventional. The emperor is accused of immoral relations, so-called because, according to the author, they were shared by two men, with a freedman.<sup>212</sup> According to the legal sources, this type of relationship was treated with a similar level of severity to adultery as the jurists supported the idea of such transgressors being prosecuted under the terms of the adultery statute.<sup>213</sup> Although they are superficially two completely types of relationships, they do share one common attribute: both types of relationships do not lead to the creation of children that are legally heirs. These children would potentially disrupt the inheritance lines of a *paterfamilias*. That this was a widespread concern of emperors, and concurrently all *paterfamiliae* albeit to a lesser degree, is seen in the following passage that demonstrates that the emperor did not want to risk introducing a 'bastard' into his *familia*:

Claudia was the offspring of his freedman Boter, and although she was born within five months after the divorce and he had begun to rear her, yet he ordered her to be cast out naked at her mother's door and disowned.<sup>214</sup>

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*in compedes statimque solvit et rursus in deliciis habuit; iterum deinde ob nimiam contumaciam et furacitatem gravatus circumforano lanistae vendidit dilatumque ad finem muneris repente subripuit et provincia demum accepta manumisit ac primo imperii die aureis donavit anulis super cenam, cum mane rogantibus pro eo cunctis detestatus esset severissime talem equestris ordinis maculam.*

<sup>212</sup> See Dig 48.5.9 - 1 for the legal perspective on homosexual relations between two men: *Qui domum suam, ut stuprum adulteriumve cum aliena matre familias vel cum masculo fieret, sciens praeberit vel quaestum ex adulterio uxoris suae fecerit: cuiuscumque sit condicionis, quasi adulter punitur. Appellatione domus habitationem quoque significari palam est.*

<sup>213</sup> See Boswell (1980), Cantarella (1992), Lilja (1982) Richlin (1983, 1993), Taylor (1997) and Williams (1992) for recent discussions of the implications of homosexuality in imperial Rome.

<sup>214</sup> *DVC Cl 27.1.9: Claudiam ex liberto suo Botere conceptam, quamvis ante quintum mensem divortii*

Initially accepted by her putative father, the child was rejected by Claudius, as the truth of her parentage could not be ignored. Even though the motivation for this rejection could be due to political rather than dynastic considerations, it does demonstrate that the potential consequences for interrupting the inheritance of a *familia* could not be ignored even by the emperor.

Slaves and freedmen entangled within adulterous relationships were not depicted with a universal approach by authors of the early Principate. Adultery depicted by Suetonius in *The Twelve Caesars* appears as more of a personal indicator of an individual's morals. Previously in this thesis, adultery has been defined as a crime committed by a married, freeborn Roman woman. This definition was based on the legal sources and is still applicable and relevant for an analysis of literary sources. Suetonius' writing reveals that he more closely followed the definition of adultery favoured by the jurist Ulpian, who maintained that both men and women could be adulterers. While the *Digest*, through the jurist Papinian, also overwhelmingly concentrated on female adultery, and its perceived threat to the inheritance of a *familia*, Suetonius adopted a more expansive view of adultery that was better suited to his use of the crime of an indicator of an emperor's personal morals. One more issue to address is also related to a flexible use of terms, namely the apparent mutability of the instances of adultery used in this section sharing characteristics of both adultery and *stuprum*. This is directly linked to the previous point. It has already been established that *stuprum* is any sort of illicit, extra-marital relationship not involving a freeborn, married Roman woman. However, it has also been established that Suetonius saw adultery as a crime that can be committed by men, so when he used adultery to describe relationships that would otherwise be referred to as *stuprum*, especially under the criteria previously outlined in the legal analysis, he was adopting a more comprehensive meaning of the term, which is reflected in the examples chosen for analysis in this chapter.<sup>215</sup> From examining this author, it is clear that there are differences in how adultery involving slaves and freedmen is represented in this period

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*natam aliquae coeptam, exponi tamen ad matris ianuam et nudam iussit abici.*

<sup>215</sup> Williams (1992) argues that *stuprum* only occurs when a freeborn Roman man was involved with anyone other than his wife, slaves or freedmen. This may explain why Suetonius refers to adultery throughout his work.

(i.e. compared with some of the passages discussed in the previous section). Yet, even acknowledging all these differences, one thing is revealed as perfectly clear: i.e., that in the writing and thoughts of even just this one author, slaves and the freed played significant roles when discussing adultery. Indeed, they were crucial to these depictions and the (literary) use of adulterous acts in more than one way. That established, it is time to assess our next author: Tacitus.

## 5.4 TACITUS: AN IMPERIAL AFFAIR

Although Tacitus' oeuvre is concerned with the idea and reality of *libertas*, slaves and the freed are not prominent in his work.<sup>216</sup> With the exception of notable characters such as Narcissus and Acte, the adulterous relationships discussed in this work from him focus primarily on the lives of the imperial elite who were directly involved, to a greater or lesser extent, in the fractious power struggles of the early years of the Empire. His treatment of Claudius, for example, reveals the almost complete contempt with which the emperor was regarded, at least by Tacitus himself. Shotter argues that "Tacitus' own treatment of Claudius is revealed as far more anecdotal than his treatment of other emperors. Whilst anecdotes would reveal little that was important or profound about a Tiberius or an Otho, they have the capacity to pinpoint the ridiculous or the grotesque: and it was precisely in such respects that Claudius' inadequacy was demonstrated...He was not continuously in touch with, much less in control of, events".<sup>217</sup> This somewhat less than flattering depiction of the emperor places any mention of the involvement of slaves and freedmen within adulterous relationships in the imperial household within a wider context of disapproval. Tacitus' depictions of adultery could then potentially be a reflection of disdain for the action itself and for Claudius' lack of awareness and ability as an emperor. Shotter also highlighted the control exercised over Claudius by his *liberti*.<sup>218</sup> This recognition of the influence of *some* of the imperial freedmen is important because it is placing

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<sup>216</sup> See Gibson (1998) for a discussion of how Tacitus used rumour as one component to construct the passages in the *Annals*, which should be kept in mind when using them as a source for the activities of early imperial Rome.

<sup>217</sup> Shotter (1991), 3302.

<sup>218</sup> Shotter (1991), 3304.

them within the context of the private lives of these individuals, thus recognizing that there would likely have been a degree of involvement on behalf of the servile and freed members of the imperial household when adultery occurred. Unfortunately, Shotter does not expand more on the nature of and potential for the involvement of slaves and freedmen in adulterous relationships. The afore-mentioned emphasis on the adulterous relationships of the elite is not unexpected as the reported adultery of these individuals was more significant to the overall jockeying for position, as well as for attempts to seize control that characterized the reigns of emperors such as Claudius and Nero.<sup>219</sup> However, Tacitus, especially in the *Annals*, mentions the servile and freed in several passages when he discussed the adulterous relationships of their imperial masters, mistresses and patrons. These slaves and freedmen and freedwomen were undoubtedly involved in these illicit relationships but a straightforward reading of the source does not reveal the subtleties and nuances of their interactions. Applying the ‘grammatical’ approach that separates the slaves and freedmen into either the ‘subject’ or ‘object’ in an adulterous relationship allows for a closer examination of their involvement in the adulterous relationships of the Roman elite.

#### **5.4.1 TACITEAN SLAVES AND FREEDMEN AS THE ‘SUBJECT’ IN AN ADULTEROUS RELATIONSHIP**

Within Tacitus’ depictions of the imperial power struggles at the courts of Claudius and Nero, two emperors chosen for the prominence of their involvement with slaves and freedmen, the senatorial elite was not often depicted as having embarked upon a relationship with the servile members of their *familia*. This could be due to a paucity of evidence or, alternatively, it could indicate the relative infrequency of such a pairing. There is one instance, though, where Tacitus does allude to a relationship between Nero’s wife, Octavia, and a slave in their household – Eucærus.<sup>220</sup> Ostensibly,

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<sup>219</sup> Nero relied heavily on slaves and freedmen throughout his reign. See Weaver (2005) for a discussion of his reliance on Phaon, a freedman he fled to at the end of his life.

<sup>220</sup> Tac.*Annals* 14.60.3-4: "Long the paramour of Nero, and dominating him first as an adulterer, then as a husband, she incited one of the female slaves of Octavia to accuse her of a love affair with a slave: the part of defendant was assigned to a person named Eucærus;" Tacitus does not explicitly state that the musician is a slave or freedman in this passage. However, his deliberate mention of Eucærus’ status as a native of Alexandria and his profession are strong hints towards his legal status. Being an



his role as the adulterer in the alleged relationship would place him as the ‘subject’ of this relationship and one who is at the heart of the illicit affair. However, the reality of Eucaerus’ association with Octavia has more in common with a phenomenon more clearly embodied by Acte, the freedwoman, which will be explored subsequently in this section, where there is a ‘grammatical shift’ in her roles associated with the adulterous relationships of their free masters and patrons. Specifically, Acte’s role in the adulterous affairs of Nero metamorphoses between that of the ‘object’ of the relationship and one which can be argued to be more in line with that of the ‘subject’ or more active participant in an adulterous partnership. Eucaerus’ involvement with the alleged adultery of Octavia, while sharing some similarities with Acte’s role, has some significant differences that necessitate a separate discussion.

Autonomy and a certain degree of decision-making are associated with those who occupy the ‘subject’ role in an adulterous relationship. More precisely, this is an individual who can be seen to have ‘driven’ or been directly involved in committing the crime of adultery, or, at the very least, is assumed to have had some sort of awareness of the relationship. This behaviour is not seen in Tacitus’ description of Eucaerus’ involvement with Octavia, as his name is suggested merely as a suitable candidate for having an alleged affair with the emperor’s wife.<sup>221</sup> Indeed, Eucaerus’ tenuous position within this alleged adultery suggests that he occupied two roles in this relationship - both the ostensible lover of Octavia and the recipient, or passive, role where he was manipulated by individuals of great power. This duality hints at the ‘grammatical shift’ that is more evident in the relationship between Acte and Nero, as will be seen. Even with the lack of a firm definition of his part in the relationship, Eucaerus’ dilemma remains relevant to an analysis of the roles of slaves and freedmen in adultery. That he could even be suggested as a suspected lover for Octavia indicates

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Alexandrian citizen was one of the few options available for attaining Roman citizenship, before universal citizenship was introduced by Caracalla’s edict in A.D. 212, but his presence in the imperial household and his profession as a musician, not a role associated with the elite of Roman society, strongly suggests that Eucaerus was either a slave or a freedman. See A.N. Sherwin-White (1973) for a discussion of Roman citizenship. In addition to Eucaerus, this passage mentions female slaves called upon to corroborate the story. They will be discussed in the following section on slaves and freedmen as the ‘objects’, or recipients of the action in an adulterous relationship.

<sup>221</sup> Tacitus’ decision to embellish his description of the unwitting paramour by mentioning his talent for flute playing distinguishes Eucaerus from the other household slaves and also, perhaps, provides a plausible explanation for Octavia supposedly embarking on an affair with him.

that Roman society could conceptualize slaves and freedmen in relationships with free, elite Roman women, yet the fluid nature of Eucaerus' roles in this relationship also suggests that the Romans did not lose sight of the legal status of the servile and ex-slaves, even when they were implicated in adulterous relationships. Despite this passage having demonstrated the potential for slaves being portrayed as the 'subjects' of an adulterous relationship, the evidence for slaves and freedmen, and freedwomen, overwhelmingly supports the idea of them serving as the 'object' in an adulterous relationship. More, then, is to be said about the latter.

#### 5.4.2 TACITUS CONTINUED: SLAVES AND FREEDMEN AS THE 'OBJECT' IN AN ADULTEROUS RELATIONSHIP

It is perhaps not unsurprising that there is a preponderance of evidence in Tacitus' *Annals* for slaves and freedmen occupying the 'object' role in an adulterous relationship as their inferior social and legal status made opportunities for them to dominate in such relationships rare. This is no more evident than in this next passage detailing the experience of the unfortunate Eucaerus. Here, Octavia's female attendants, or slaves, are described as having been tortured with the hope of forcing them to corroborate the allegations against their mistress:

...Her slave girls, in pursuance of the scheme, were examined under torture; and, although a few were forced by their agony into making groundless admissions, the greater number steadfastly maintained the honour of their mistress...<sup>222</sup>

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<sup>222</sup> Tac. *Annals* 14.60: *Igitur accepto patrum consulto, postquam cuncta scelerum suorum pro egregiis accipi videt, exturbat Octaviam, sterilem dictitans; exim Poppaeae coniungitur. Ea diu paelex et adulteri Neronis, mox mariti potens, quendam ex ministris Octaviae impulit servilem ei amorem obicere. Destinaturque reus cognomento Eucaerus, natione Alexandrinus, canere tibiis perdoctus. Actae ob id de ancillis quaestiones, et vi tormentorum victis quibusdam, ut falsa adnuerent, plures perstitero sanctitatem dominae tueri; ex quibus una instanti Tigellino castiora esse muliebria Octaviae respondit quam os eius. Movetur tamen primo civilis discidii specie domumque Burri, praedia Plauti, infausta dona accipit: mox in Campaniam pulsa est addita militari custodia. Inde crebri questus nec occulti per vulgum, cui minor sapientia et ex mediocritate fortunae pauciora pericula sunt. His. . . tamquam Nero paenitentia flagitii, coniugem revocarit Octaviam.*

Unlike the flute-player, these women are clearly not the drivers of the action in the relationship – they are very much at the mercy of those in positions of power.<sup>223</sup> Their function in this relationship was to supposedly serve as evidence of their mistress’ ‘affair’ – that they did not validate the lies of those in power does not negate the apparent value attached to their testimony by those Roman elite in charge. These women were the objects of the action in this scenario because they were regarded as occupying the periphery of the alleged affair as they were not implicated as being a partner to the adultery – and they are not untypical: slaves and freedmen were frequently portrayed as being a source of evidence for their owner’s or patron’s infidelity in the works of Tacitus.<sup>224</sup>

An adulterous affair between two free Romans, a plebeian tribune named Octavius Sagitta and a woman named Pontia, provides a further example of how slaves and freedmen occupied the role of ‘object’, in conjunction with an adulterous relationship, by corroborating, or fabricating, the activities of their owners and patrons. The following passage sets the scene for their involvement:

Nearly at the same time, the plebeian tribune Octavius Sagitta, madly in love with a wedded woman called Pontia, purchased by immense gifts first the act of adultery, then her desertion of her husband. He promised marriage on his own part, and had secured a similar pledge on hers. Once free, however, the woman began to procrastinate, to plead the adverse wishes of her father, and, when hopes of a wealthier match presented themselves, to shuffle off her promise. Octavius, on the other side, now remonstrated, now threatened, appealing to the ruin of his reputation, to the exhaustion of his fortune, and finally placing his life, all that he could yet call his own, at her absolute disposal. As he was flouted, he asked for the consolation of one night, to allay his fever and enable him to control himself in future. The night was fixed, and Pontia entrusted the watch over her bedroom to a maid in their confidence. Octavius entered with one freedman, a dagger concealed in his dress. Love and anger now ran their usual course in upbraidings and entreaties,

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<sup>223</sup> These women are being tortured in accordance with the tenets of the *lex Iulia de adulteriis coercendis* as discussed in the afore-mentioned chapter.

<sup>224</sup> For a historical assessment of slaves as ‘evidence’, see Bernstein (2012), Jones (1972), and Robinson (1995), and Schumacher (1982).

reproach and reparation; and a part of the night was set aside to passion; inflamed by which, as it seemed, he struck her through with his weapon, while she suspected nothing; drove off with a wound the maid who came running up, and broke out of the room. Next day the murder was manifest, and the assassin not in doubt: for that he had been with her was demonstrated. None the less, the freedman asserted that the crime was his own; he had avenged, he said, the injuries of his patron: and so startling was this example of devotion that he had shaken the belief of some, when the maid's recovery from her wound enabled her to disclose the truth. Octavius, after laying down his tribunate, was arraigned before the consuls by the father of the victim, and sentenced by verdict of the senate and under the law of assassination.<sup>225</sup>

Unlike the previous reference to the adulterous relationship between Eucerus and Octavia, the roles of the slaves and freedmen involved in this relationship are plainly defined. The subjects, or drivers of the action, are clearly Sagitta and Pontia. Their servants, both servile and ex-slave, are the objects of the action in this affair as their involvement is defined by the actions and requirements of others. Although they were not part of the adultery itself, they played a part in facilitating the relationship. Sagitta's freedman initially accepted responsibility for the murder, by claiming it was to avenge the treatment of his master, and his apparently unstinting loyalty was initially not questioned. However, once the wounded female slave recovered she was able to refute the freedman's story and ensure that Sagitta was appropriately punished. While they are not direct participants in the relationship, the freedman and the female slave in this passage occupy, however, a more prominent role when compared with

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<sup>225</sup> Tac. *Annals* 13.44: *Per idem tempus Octavius Sagitta plebei tribunus, Pontiae mulieris nuptae amore vaecors, ingentibus donis adulterium et mox, ut omitteret maritum, emercatur, suum matrimonium promittens ac nuptias eius pactus, Sed ubi mulier vacua fuit, nectere moras, adversam patris voluntatem causari repertaque spe ditioris coniugis promissa exuere. Octavius contra modo conqueri, modo minitari, famam perditam, pecuniam exhaustam obtestans, denique salutem, quae sola reliqua esset, arbitrio eius permittens. Ac postquam spernebatur, noctem unam ad solacium poscit, qua delentus modum in posterum adhiberet. Statuitur nox, et Pontia consciae ancillae custodiam cubiculi mandat. Ille uno cum liberto ferrum veste occultum infert. Tum, ut adsolet in amore et ira, iurgia preces, exprobratio satisfactio et pars tenebrarum libidini seposita; ex qua quasi incensus nihil metuentem ferro transverberat et accurrentem ancillam vulnere absterret cubiculoque prorumpit. Postera die manifesta caedes, haud ambiguus percussor; quippe mansitasse una convincebatur, sed libertus suum illud facinus profiteri, se patroni iniurias ultum isse.<sup>2</sup> Commoveratque quosdam magnitudine exempli, donec ancilla ex vulnere refecta verum aperuit. Postulatusque apud consules a patre interfectae, postquam tribunatu abierat, sententia patrum et lege de sicariis condemnatur.*

previous passages from Tacitus.<sup>226</sup> Their testimony was alternatively used to exonerate and then convict Sagitta, ostensibly, of murder and, tacitly, of adultery. This suggests that servile and freed individuals were not completely dismissed by literary authors, such as Tacitus, when they depicted adulterous relationships within their work. These unfortunate individuals would have been affected by the *lex Iulia de adulteriis coercendis* as it is probable that they would have been tortured first to ensure that they were telling the truth rather than relaying a story that would serve to benefit their master or mistresses, regardless of its veracity.<sup>227</sup> Once again, the slave and freedman, while inextricably caught in the machinations of their mistress and patron, are not depicted as the drivers behind the main action of this passage but are merely supporting players to the main actors in the passage. Yet, the willingness to acknowledge the involvement of slaves and freedmen within adulterous relationships, and the necessity of relying on their testimony to determine the veracity of any charges, coincides with the treatment of slaves and freedmen within the legal sources that discuss Augustus' adultery legislation. Such intersection hints at the reality of the treatment of slaves and freedmen in regard to the adultery law.

The servile and freed did not always have to serve as evidence to be involved in an adulterous relationship in Tacitus' writing. When he relayed Messalina's passion for Silius, slaves and freedmen acted as nothing more than as symbols of the wealth and recklessness of those involved – wealth, because only a rich woman could afford to extravagantly transport her staff alongside her other riches; and reckless, because

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<sup>226</sup> Reference to a slave acting as evidence of adultery is also mentioned by Tacitus in passage 14.62 from the *Annals*. In this passage, Anicetus falsely admitted to committing adultery with Octavia, Nero's wife, so that Nero could remove her as his wife (first by exile to the island of Pandateria and then by being 'ordered to die' [Tac. *Annals* 14.63-64]). Reference is made to a slave acting as evidence of the adultery but this testimony of a slave was not considered to be sufficient to secure a successful charge of adultery against Octavia, which is why Anicetus was persuaded to provide false testimony. Tacitus mentions that the testimony of this slave was rendered void by the contrasting testimony of Octavia's 'waiting-women', or *ancilla*. *Ancilla* was a term used to refer to female slaves so this statement is inferring that the testimony of two slaves was not considered sufficient to secure a conviction for adultery. This is in apparent contrast to the charges brought against Octavius Sagitta (Tac. *Annals* 13.44), where the testimony of a female slave was sufficient for charges to be brought against him. Rather than trying to imply that testimonies from slaves and freedmen is only applicable or valid in certain situations, this second example demonstrates that Nero's desire to separate himself from Octavia and the exceptional nature of this example necessitated *additional* assurances to ensure the conviction, such as the testimony of Atimetus, alongside the evidence from the slaves.

<sup>227</sup> See Dig 48.5.28(27) 1-4, Dig 48.5.28(27) 6, Dig 48.5.28(27) 8-9, Dig 48.5.28(27) 11-14 and Dig 48.5.34(33) pr for mentions of slaves being tortured under the aegis of the adultery statute.

such an ostentatious display would have attracted unwanted attention, and because her slaves and freedmen would all have been considered legitimate sources of information as to the activities of their mistress:

...For her passion for Gaius Silius, most handsome of Roman youths, had burned so high that she drove his distinguished wife, Junia Silana, from under her husband's roof, and entered upon the possession of a now unfettered adulterer. Silius was blind neither to the scandal nor to the danger, but, since refusal was certain death, since there was some little hope of avoiding exposure, and since the rewards were high, he consoled himself by closing his eyes to the future and enjoying the present. Messalina, with no attempt at concealment, went incessantly to the house with a crowd of retainers; abroad, she clung to his side; wealth and honours were showered upon him; finally, as though the transference of sovereignty was complete, slaves, freedmen, and furnishings of the palace were to be seen in the house of an adulterer.<sup>228</sup>

Slaves and freedmen are described here as tangible assets that reflect the status and wealth of their owner and the depravity and audacity of a woman who did not appear to be even attempting to disguise her illegal affair, and not as individuals who were capable of having any direct influence on the affair. Their roles in this passage reflect the generally accepted scholarly understanding of the role of slaves and freedmen with adulterous affairs in the Roman Empire. Representations of Messalina's affair help to increase our understanding of how adultery was perceived in the early Empire and how ancient authors often portrayed the roles of slaves and freedmen in these relationships. In this situation, Tacitus appears to be using the reports of Messalina's affair in a similar, if not identical, way to how he portrayed the activities of Agrippina. The affair itself is used as an indicator of the overall moral depravity of Messalina, her lack of judgment and her inability to conform to the accepted behaviour patterns of free-born, elite Roman women. The slaves and freedmen mentioned in the passage are not imbued with any particular type of influence over the affair itself but are rather seen

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<sup>228</sup> Tac. *Annals* 11.12.26 : *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, exitioet nonnulla fallendi spe, simul magnis praemiis, opperiri future et praesentibus frui pro solacio habebat. Illa non furtim, sed multo comitatu ventitare domum, egressibus adhaerescere, largiri opes, honores, postremo, velut translate iam fortuna, servi liberti paratus principis apud adulterum visebantur.*

as symbols of the status of their owner or patron. This lack of influence, however, was not consistent throughout all of Tacitus' depictions of adultery. There were exceptions to the overwhelming portrayal of slaves and freedmen as generally passive participants in adulterous affairs that reveal a fluidity to the nature of their involvement in adulterous affairs and the adultery legislation.

### 5.4.3 A 'GRAMMATICAL SHIFT'? - ACTE

The variability of the function of slaves and freedmen within an adulterous relationship, as portrayed in Tacitus' *Annals*, has already been argued in the previous sections. However, this potential for a 'grammatical shift' between the roles of subject and object has only been alluded to up to this point. Such potential for variability between roles, and consequently the social influence of a slave or freedman or freedwomen, is exemplified by the following two examples – Acte and Narcissus.<sup>229</sup> Acte was a freedwoman who became inextricably involved with the machinations of Seneca and Nero:

Already lascivious kisses, and endearments that were the harbingers of guilt, had been observed by their intimates, when Seneca sought in a woman the antidote to female blandishments, and brought in the freedwoman Acte, who, alarmed as she was both at her own danger and at Nero's infamy, was to report that the incest was common knowledge, since his mother boasted of it, and that the troops would not submit to the supremacy of a sacrilegious emperor.<sup>230</sup>

The role and actions of the freedwoman Acte, the only non-elite individual mentioned in the above extract, offer an alternative perspective on how Tacitus portrayed slaves and freedmen as well as their roles within the *familia* and how they were affected by the adultery legislation.<sup>231</sup> She is introduced as an individual with prior knowledge of

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<sup>229</sup> The example of Narcissus will be discussed in a separate section in this chapter.

<sup>230</sup> Tac. *Annals* 14.2.4: *iamque lasciva oscula et praenuntias flagitii blanditias adnotantibus proximis, Senecam contra muliebris inlecebras subsidium a femina petivisse, immissamque Acten libertam, quae simul suo periculo et infamia Neronis anxia deferret pervulgatum esse incestum gloriantem matrem, nec toleraturos milites profani principis imperium.*

<sup>231</sup> See Suet., Nero 28,50; Cassius Dio 61.7; and Tac. *Annals* 13.12,13.13, 13.46 and 14.63 for other 'contemporary' accounts of Acte's relationship with Nero. Rutland (1978) and Santoro L'Hoir (1994) discuss how women were portrayed by Tacitus in the *Annals*. Although they focus on the imperial

the illicit actions carried out by Agrippina, and Tacitus took pains to make clear that she was astutely aware of the precarious nature of her position.<sup>232</sup> Ostensibly, Acte's role, as portrayed by Tacitus in this passage, is that of the object, or recipient of the action. She is presented as an individual with knowledge of the illicit actions of Agrippina, which is how she fulfills what is assumed to be the primary role of the freedwoman in this passage, i.e. to serve as an expository tool for the illicit actions of the elite rather than as an instigator of any immoral actions. Typically, servile members of a household in this scenario would not wield any significant power or influence, as their role within the framework of an adulterous relationship would be to either serve as evidence of an affair or realize their primary role as facilitating and anticipating the actions of their owners. This freedwoman, however, did hold a peculiar type of power: she had the ability to condemn Agrippina through revealing what she knew; any possibility of loyalty has been subsumed by an instinct for self-preservation. Here, Acte occupied a unique role as she bridged the divide between the subject and object roles in an adulterous relationship by occupying both positions. She accomplishes this by becoming intimately involved with Nero:

...For Nero had slipped into a love affair with a freedwoman by the name of Acte, and at the same time had taken into his confidence Marcus Otho and Claudius Senecio, two handsome youths; the former of consular family, the latter a son of one of the imperial freedmen. At first, without the knowledge of his mother, then in defiance of her opposition, they had crept securely into the prince's favour as the partners of his dissipation and of his questionable secrets; while even his older friends showed no reluctance that a girl of that standing should gratify, without injury to anyone, the cravings of the emperor...<sup>233</sup>

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women, they does indicate his overall perception of women in general. See also Marshall (1984-86; 1996), Syme (1981) for more on the role of women in Tacitus' writing. See Clark (1981) for a more general introduction to the lives of Roman women that does not focus solely on the imperial elite.

<sup>232</sup> Acte's status as a freedwoman, not Nero's legally recognized wife, would mean that her status in this relationship would more properly be that of a *concubina*. It has been established previously in this work that adultery is between a married woman and her lover so why then is Acte being included in the discussion about flexibility in the roles of slaves and freed men and women in adulterous relationships? There is legal precedent for *concubina* being liable for being accused of adultery (Dig 48.5.14(13)) and it is clear from the other primary sources mentioned above that she was intimately involved in Nero's life and was more than just evidence of Agrippina's indiscretions. See Treggiari (1981) for a discussion on *concubinae*.

<sup>233</sup> Tac. *Annals* 13.12: *Ceterum infracta paulatim potentia matris delapso Nerone in amorem libertae, cui vocabulum Acte fuit, simul adsumptis in conscientiam [M.] Othone et Claudio Senecione, adulescentulis decoris, quorum Otho familia consulari, Senecio liberto Caesaris patre genitus. ignara*



Here, the freedwoman's role in the adultery relationships of the imperial family is revealed to be more fluid. She was considered to be part of the evidence that was used to condemn the emperor's mother of adultery, yet she occupied a more pro-active role within her relationship with Nero. This duality in her interactions with the imperial family demonstrates two things: the potential mutability of the roles that slaves and freedmen and freedwomen could occupy in regard to the adulterous relationships of the elite, and that the applicability of the adultery legislation to a social group composed of more than the free elite of Roman society was understood outside of the somewhat limited gathering composed of the jurists and others involved in the legal arena.<sup>234</sup>

Acte's presence can also be used to elucidate the social position of ex-slaves within the *familia* and the wider Roman society. Set within the broader context of Nero's dissolute actions, his relationship with Acte is portrayed as symptomatic of his increasing unsuitability and thus she embodies the common trope of the unsuitable, lower-status woman corrupting the sacrosanct, male imperial leader. Taking these observations into consideration, Tacitus' statement that Acte was "alarmed as she was both at her own danger and at Nero's infamy" must be assessed in a new light.<sup>235</sup> Rather than being apprehensive and fearful of the consequences of being forced to act as the evidence for an adulterous affair, it is now clear that she was also concerned about the repercussions of her own relationship with the emperor. She would have been aware of the capricious nature of the emperor and her vulnerable position so close to the centre of power. That Acte was, despite her supposed influence over Nero, not part of

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*matre, dein frustra obnitente, penitus inrepserat per luxum et ambigua secreta, ne senioribus quidem principis amicis adversantibus, muliercula nulla cuiusquam iniuria cupidines principis explente, quando uxore ab Octavia, nobili quidem et probitatis spectatae, fato quodam, an quia praevalent inlicita, abhorrebat, metuebaturque, ne in stupra feminarum inlustrium prorumperet, si illa libidine prohiberetur.*

<sup>234</sup> The Romans' reliance on slaves and freedmen to serve as 'background players' in regard to adulterous affairs can be seen elsewhere in the *Annals*. In 13.21.5, it is noted that a commission used freedmen as witnesses to their conversation with Agrippina and that, subsequently, she challenged the same individuals to find someone who could say she had seduced a slave or freedman into a crime. It is not clear whether she meant the crime of adultery or an additional crime but the indirect condemnation of the act of adultery is implied due to the use of *corruptos*, which has connotations with corrupt or degenerate actions alongside interpretations of seducing, tempting or beguiling.

<sup>235</sup> Tac. *Annals* 14.2.4.

the elite class is made clear by how Tacitus describes the nature of her involvement and her actions in regard to the adulterous affair. L'Hoir argues that "the topos of the wanton woman who poisons had its origins in Greek literature and it left an indelible mark on Roman rhetorical thought" and that "because these conventions – often portrayed in a tragic frame of reference that depicts poisoning as a female transgression against the boundaries of the house – were perpetuated by oratory, they became entrenched in the narratives of historians, who were...trained in rhetoric".<sup>236</sup> L'Hoir maintains that a closer examination of the language surrounding the elite women in the *Annals* thus reveals that certain terms and sentence structures are employed by Tacitus when describing the actions of elite women as he considered the "Julio-Claudian regime as a tyranny, his respective tyrants, according to rhetorical convention, had to be depicted as morally weak and subjugated by power-hungry wives who would stop at nothing to achieve their goals..."<sup>237</sup> Although the inclusion of Acte is contributing towards the depiction of Nero as morally degenerate and unsuitable for rule, there is clearly a distinction remaining between her actions and overall role within the affair and those of an elite woman. Despite her precarious position, however, she can still be considered to have been the subject, or driver of the action because she was directly involved in the crime that was at the heart of the transgression and would have been subject to the legislation.<sup>238</sup> This freedwoman is, then, an excellent example of the different ways in which Tacitus portrayed slaves and freedmen in his discussions of adultery. But there was more.

#### 5.4.4 A SPECIAL CASE - NARCISSUS

Narcissus' connection to Messalina's adultery is complex and convoluted. His involvement in this illicit relationship does not adhere to the established pattern of slave and freedman involvement in adulterous relationships depicted so far in Tacitus' *Annals*, even when the exceptional case of Acte is taken into account. His example,

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<sup>236</sup> L'Hoir (2006), 173.

<sup>237</sup> L'Hoir (2006), 174. See L'Hoir (2006), especially 173-195 for further discussion on this topic.

<sup>238</sup> It has already been established previously in this work that adultery was legally defined as an affair between a married woman and a man of any legal or social status. Acte's marital status is unknown but her relationship with Nero falls under the aegis of the *lex Iulia de adulteriis coercendis* because both *stuprum* and adultery were punished under the terms of this law.

while so drastically different from that of his erstwhile compatriots, remains vital to this analysis of the roles of slaves and freedmen because it reflects the potential for diversity and flexibility in their roles within an adulterous relationship.<sup>239</sup> An analysis of Messalina's adultery in the *Annals* shows that freedmen were characterized as playing a more significant role in the revelatory passages that follow the initial description of the 'marriage' between Silius and Messalina.<sup>240</sup> Through the following three passages, Narcissus' dominance is revealed. The first passage describes an audience in which Narcissus is summoned before Claudius and asked what he knew about the adultery of the emperor's wife:

As the next step, Calpurnia – for so the woman was called - secured a private audience, and, falling at the Caesar's knee, exclaimed that Messalina had wedded Silius. In the same breath, she asked Cleopatra, who was standing by ready for the question, if she had heard the news; and, on her sign of assent, requested that Narcissus should be summoned. He, entreating forgiveness for the past, in which he had kept silence to his master on the subject of Vettius, Plautius, and their like, said that not even now would he reproach the lady with her adulteries, far less reclaim the palace, the slaves and other appurtenances [accessories] of the imperial rank. No, these Silius might enjoy – but let him restore the bride and cancel the nuptial contract! "Are you aware," he demanded, "of your divorce?" For the nation, the senate, and the army, have seen the marriage of Silius; and, unless you act with speed, the new husband holds Rome!"<sup>241</sup>

There are two points from this passage that need to be highlighted: firstly, the prominence of the freedman Narcissus and the apparent encouragement to disregard

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<sup>239</sup> Weaver (1964) offers a detailed explanation of the status of slaves and freedmen within the Imperial family that goes some way to explaining Narcissus' power in the Imperial household.

<sup>240</sup> While it is acknowledged by modern scholars such as Dixon (1984, 1985, 1991, and 2011, for example), Gardner (1986, 1989, 1991, 1993, 1998, 1999), Treggiari (1991, for example) that the processes for Roman marriage were not as formalized as those in the modern age, the use of apostrophes in regard to the relationship between Silius and Messalina is meant to indicate its furtive and clandestine nature. See Joshel (1995) for a discussion on Messalina, how she is portrayed by Tacitus and the involvement of the slaves and freedmen.

<sup>241</sup> Tac. *Annals* 11.30: *Exim Calpurnia (id enim paelici nomen), ubi datum secretum, genibus Caesaris provoluta nupsisse Messalinam Silio exclamat; simul Cleopatram, quae id opperiens adstabat, an comperisset interrogat, atque illa adnuente cieri Narcissum postulat. Is veniam in praeteritum petens, quod ei Vettios, Plautios dissimulavisset, nec nunc adulteria obiecturum ait, nedum domum servitia et ceteros fortunae paratus reposceret. Frueretur immo his, set redderet uxorem rumperetque tabulas nuptiales. "An discidium" inquit "tuum nosti? Nam matrimonium Silii vidit populous et senatus et miles; ac ni propere agis, tenet urbem maritus.*

Messalina's adulteries and, secondly, her misappropriation of the slaves, palaces and other accoutrements of rank. Although he is not an active participant in the adulterous affairs, Narcissus played a more prominent role than either Acte or any other slaves and freedmen that have been previously mentioned in this discussion. Indeed, he is arguably more entangled in this situation than in the subsequent exposition of Agrippina's adultery.<sup>242</sup> While he begins by pleading for the emperor's mercy and "entreating forgiveness for the past", he swiftly changes his tone and essentially dictates Claudius' forthcoming course of action, which is to seemingly avoid punishing Messalina for her adultery and instead focus on dissolving her new marriage and reasserting his authority.<sup>243</sup> This gives the initial impression that Narcissus may be advocating that Messalina be pardoned for her egregious behaviour; however, an analysis of two subsequent passages demonstrates that this is not the case.<sup>244</sup> We thus learn that through his influence, the freedmen arrange for the execution of any men who were associated with Messalina's adulteries, such as Proculus, Vettius Valens, Pompeius Urbicus, Saufeius Togus, Decrius Calpurnianus, Sulpicius Rufus, Juncus Vergilianus and Mnester, the actor.<sup>245</sup> This depiction of the numerous deaths he ordered encapsulates the extent of the steadily increasing power of Narcissus. The

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<sup>242</sup> See Tac. *Annals* 12.65 for the contrast of the vulnerability of Narcissus in that situation.

<sup>243</sup> Tac. *Annals* 11.30. His forthrightness is even more explicit in Tac. *Annals* 11.37, where he overrides Claudius' burgeoning desire to pardon Messalina and sends soldiers to her location to assassinate her. The ruthlessness of the freedmen, when compared to Claudius, is seen again in Tac. *Annals* 11.36, where Claudius was growing inclined to pardon the actor Mnester from death as he reminded the emperor that he had forced him to be intimate with Messalina. However, the freedmen overturned this decision because they decided it was not appropriate for him to spare the life of an actor.

<sup>244</sup> 11.37 and 11.38 reveal the role that Narcissus played in hastening the death of Messalina and also that of other freedmen in Claudius' service. Their involvement is almost completely opposite to that of the freedmen, and the servile members of a *familia*, discussed in the earlier sections of this chapter. Instead of merely serving as evidence of the transgressions of their masters and mistresses, these individuals played an integral part in enacting the punishment meted out to the adulterers – an aspect of the adultery legislation that will be shown later in this work to be of central importance to the Romans and the later jurists. Two freedmen are named in this passage: Narcissus and another ex-slave, Evodus. The latter individual prevented the adulterous empress from escaping her fate and thus played a direct role in her punishment. Narcissus was even more involved in Messalina's judgment and punishment as he, according to Tacitus, circumvented the wishes of the emperor and ensured that Messalina would die – either by her own hand or that of the guard. The activities of the freedmen in these two passages demonstrates that freedmen, at least within the boundaries of the imperial family, sometimes occupied integral roles within the complex web of relationships connected to an illicit affair and, thus, should be considered when the effects of the adultery legislation upon the components of a Roman *familia* are analysed.

<sup>245</sup> Perhaps tellingly, the phrase *consciis*, or accomplice, is used to refer to these individuals, which is an indication that such activities were considered crimes by the Roman legislature, or at least in the records Tacitus used to construct his history.

actor plead for his life in front of Claudius; arguing that it was not fair for him to be punished when he was placed at the mercy of Messalina by the emperor himself.<sup>246</sup> The emperor wavered towards forgiveness but his freedmen persuaded him that he could not forgive Mnester when he had already executed men of a higher rank and so the actor was slaughtered.<sup>247</sup> Instead of being relegated solely to the role of witness or evidence for an adulterous affair, the freedman Narcissus was able to wield considerable influence during the aftermath of the revelations about Messalina's activities.<sup>248</sup>

What, then, can be said of Narcissus' and Acte's roles in the downfall of Messalina and Agrippina in comparison to the roles of slaves and freedmen in general within the adulterous relationships of early imperial Rome, especially those of the Roman elite? First and foremost, that slaves and freedmen played active roles within these illicit relationships, and thus were as affected by the *lex Iulia de adulteriis coercendis* as the free members of their *familiae*, has been clearly demonstrated. This brief overview of their depiction has also shown that there was a degree of flexibility in the roles that they occupied during an adulterous relationship. More specifically, if both Suetonius and Tacitus are taken into account, they could occupy a wider range of roles, clearly including both subject and object roles, ranging from acting as the evidence for the crime of their masters and mistresses to being accused of adultery themselves and even mitigating the punishment meted out to the adulterers, within these relationships and, in some cases, certain individuals fulfilled more than one role within the same situation. Within the writing of Tacitus, at least, and taking the *Annals* as a sufficient sample and example, slaves and freedmen were heavily involved in the affairs of the free members of Roman society. However, further examination of other literary sources is necessary to produce a more balanced comparison of the literary depictions of slaves and freedmen in the illicit relationships of their owners and patrons before committing to a final verdict.

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<sup>246</sup> Tac. *Annals* 11.36.

<sup>247</sup> Tac. *Annals* 11.36.

<sup>248</sup> Narcissus was not entirely confident of his position within the imperial household. See Aveline (2000) for clarification of the freedman's perspective on his prospects.

## 5.5 THE ELDER SENECA AND QUINTILIAN: A RHETORICAL AFFAIR?

Rhetoric has undeniably influenced Roman literature and Roman society as a whole. The declamations of leading rhetoricians were used to educate the leading young elite of Rome, and were an intrinsic part of the education of influential Romans such as Cicero or Ovid.<sup>249</sup> As the method of thinking and approaching a problem promulgated by a rhetorical education was so influential in Roman society, a closer examination of how rhetoricians, such as Seneca the Elder and Quintilian, approached, if at all, the involvement of slaves and freedmen in adulterous affairs and to what extent they were affected by the new adultery statute introduced by Augustus is an important component of this chapter. Although rhetoric draws heavily on the law, it is how the law is interpreted and employed by writers other than jurists that is salient to this examination.

Seneca the Elder and Quintilian, and their works *Controversiae* and *The Minor Declamations* were chosen specifically as exemplars of this genre of writing in order to provide a window into how adultery and slaves and freedmen were treated within this genre. Seneca the Elder was born before the start of the Roman Empire but compiled his *Controversiae* towards the end of his life; so, his work encompasses both republic and imperial changes. Establishing the provenance of the work attributed to Quintilian is less straightforward. There is considerable debate surrounding the confirmation of Quintilian as the author of the *Minor* and *Major Declamations*.<sup>250</sup> However, for the purposes of this discussion, the exact authorship is not the most relevant factor. Rather, it is where it can be placed chronologically, following Nero, which means that the perspectives on the involvement of slaves and freedmen and the interpretation of the adultery statute are reflective of the early Flavian period. Thus, these works can be used to approximate what, if any, changes in the attitude towards slaves and freedmen being involved in adulterous affairs and being affected by the

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<sup>249</sup> Detailed discussion of the role of rhetoric in Roman society can be seen in Bloomer (1997) and Pascal (1984).

<sup>250</sup> Quintilian's work is discussed in Fantham (1978; 1995), and Sussman (1995).

statute occurred, in order to put a check on how authors of this period approached the matter of interest here. It is important also to note at this juncture that, as has been previously stated, this is not intended to be an exhaustive study of the entire body of writing attributed to each author but is instead designed to demonstrate the plausibility of a position that argues for the inclusion of the servile and freed within a larger discussion of adultery in Rome and the effect of Augustus' statute. This section will first discuss selected works from Seneca the Elder's *Controversiae* and then extracts from Quintilian's *Minor Declamations*. Rhetorical perspectives on adultery and the involvement of slaves and freedmen are crucial for a complete understanding of the adultery statute and how it influenced the servile and freed.

### **5.5.1 SENECA THE ELDER AND THE *CONTROVERSIAE* ON ADULTERY, SLAVE AND FREED**

The elder Seneca did not shy away from including adultery within the declamations he compiled for his sons. It was featured either as the main contributing factor in a particular case under discussion or as the sole way of describing the participant in a case in several of the declamations included in this work. However, it is in a case that dealt ostensibly with the problems faced by a man who had disinherited three sons that the most unambiguous example of a slave being involved in an alleged case of adultery is discussed.<sup>251</sup> The following extract refers to an example of a slave being accused of adultery and the 'valiant' defense provided to him by Junius Otho, another rhetorician:

And so I recall that he shone particularly on behalf of the slave charged with adultery, against whom the eloquent Vallius Syriacus had sworn he brought no false charge. The case was like this: a man

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<sup>251</sup> The mention of a slave being accused of adultery appears in the epigrams of the declamations where Seneca includes the *colours*, or a line of approach that could be applied to the case (Winterbottom (1974), xviii). The declamations all followed the same general pattern, according to Winterbottom, "Seneca first gives the law (if any) on which the theme depends..., then the theme itself. Then come epigrams from the declamations of a number of speakers, first on one side of the case, then on the other" (Winterbottom (1974), xvi).

attested that he had caught an attractive youth, a slave of his, with his wife in her bedroom, and on this pretext divorced his wife. The slave was therefore prosecuted for adultery. His master did not speak in his defense, but the woman did, a prejudgment being sought against her.<sup>252</sup>

Here, Seneca is making an indisputable reference to a slave not only being charged under the terms of the statute but being accused of being the ‘subject’ or putative driver of the action in the relationship. He appears to be basing this on the events of an actual case but the fact that he is using such an example as part of exemplary declamations to help educate his sons means that the idea of a slave being charged with adultery would likely not have been considered out of the ordinary, or he would not have included it in a guide for his sons to help strengthen their rhetorical skills. It is worth noting at this point that Seneca does not appear to have used Otho’s skill with his verbal defense of the slave as an example of his skill in defending an uncommon or rare occurrence; rather, it is presented as a laudable defense of a challenging case overall, not just because it involves a slave. A subsequent mention of the slave-adultery at *Con* 2.1.35 describes the slave as an adulterer, yet not a class of adulterer that would indicate such a scenario was in any way a unique or rare occurrence.<sup>253</sup> A tentative conclusion based only on the above example would make it appear that slaves were capable of being conceptualized as being involved in adulterous relationships by rhetoricians and, presumably, by the children of the elite who learned from them and the wider public, who would have heard their orations in a law court. Further examples, however, are required before a more definitive conclusion can be safely achieved.

As was common with the majority of literary writers during the early Empire, slaves were most commonly relegated to a subordinate position when mentioned in

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<sup>252</sup> SenRhet, *Con* 2.1.33-35: *Itaque memini optime illum dicere pro hac re ne adulteri reo, in quem I Syriacus Vallius, homo disertus, [ad] calumniam iuraverat. Erat genus iudici tale: speciosum iuvenem dominus suus deprehendisse cum uxore in cubiculo testatus est et ob hoc uxorem suam dimisit; hoc nomine servum adulteri postulatum dominus non defendebat, mulier, in quam petebatur praeiudicium, tuebatur.*

<sup>253</sup> SenRhet *Con*, 2.1.35: *Syriacus, cum secunda actione hunc colorem urgueret, diserte multa dixit, inter quae et hoc: “adulterum accusator in cubiculum usque perduxit, patronus in lectum,”* . // Syriacus was attacking this colour in a second speech, he said a good many clever things, including this: “The adulterer was taken into the bedroom by prosecuting counsel, and into bed by defence counsel.”



conjunction with an adulterous relationship, the afore-mentioned example notwithstanding. The following example is taken from a declamation concerning a returning foreign merchant who had accused his wife of adultery after she was bequeathed a fortune by a man who tried on three separate occasions to seduce her; the wife, needless to say, denied the accusation:

No doubt she ordered the seducer's go-between to be seized and stripped, called for whips and lashes and every variety of torture, scarcely restrained her feeble woman's hands from flogging the worthless slave.<sup>254</sup>

Here, a slave is once more entangled in an adulterous relationship but this time within a subordinate and much more perilous position. He or she was used as a 'go-between' to help facilitate the arrangements. The woman's husband sarcastically describes the torture when he mentions that he is sure that his wife would have tortured the representative of the adulterous man for daring to suggest they meet. If the above description is true then the slave would probably have been tortured twice: the first time as punishment for delivering the message of the hopeful paramour and the second, most likely, in an attempt to provide evidence for a legal trial. Following on from the above example, Seneca maintained that "a slave is not the judge of his master's orders but their agent".<sup>255</sup> This passage is taken from a declamation concerning a slave who was ordered to be crucified after he refused to provide poison after his stricken master requested it.<sup>256</sup> Although this is an argument from an opposing side discussing a case, it remains relevant to the overall discussion because of the overarching principle behind it – i.e., that of the degree of agency imbued to slaves in general; moreover, both sides acknowledge how much involvement these servile members of the household could conceivably have had with the adulterous affairs of the Roman elite. So widespread was the idea that a slave could be involved in the machinations of an affair and also participate as a witness for the act itself, that Seneca refers to an

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<sup>254</sup> SenRhet Con 2.7: *Internuntium, puto, illa sollicitatoris arripi et denudari iussit, flagella et verbera et omne genus cruciatus poposcit, in plagas deterrimi Mancipi vix inbecillitatem muliebris manus continuit.*

<sup>255</sup> SenRhet Con 3.9: *Servus erilis imperii non censor est sed minister.*

<sup>256</sup> SenRhet Con 3.9; Winterbottom (1974), 419.

unfortunate female slave in a declamation concerning a father of a poisoned girl attempting to discover who murdered his daughter:

The father tortured a slave-girl, who said she knew nothing of poison but was aware of an affair between her mistress and the man to whom he had proposed to marry his daughter...

He has brought two very serious charges, adultery and poisoning: the adultery on the evidence of a slave-girl.<sup>257</sup>

It is clear from the above examples that the capacity for slaves to be conceptualized as expected participants within an adulterous affair was fully recognized by Seneca the Elder. As these declamations were available for literary authors such as Ovid when they were learning how to write and to persuade an audience, the pervasive nature of the idea of servile and freed involvement in adultery is clear. Yet, this single work of Seneca can provide only so much insight into how rhetorical writing approached the idea of slaves and freedmen being involved in adultery; and although there is no need to suggest that this was the only influence, another perspective is needed for ‘control purposes’.

### **5.5.2 QUINTILIAN AND THE *MINOR DECLAMATIONS*: CONFIRMING THE TREND**

Setting aside the contentious nature of the provenance of these declamations attributed to Quintilian, these works remain a crucial source of information on the treatment of slaves and freedmen in the descriptions of the adulterous affairs of imperial Rome. They offer a perspective later than that provided in the work of Seneca the Elder and provide the opportunity to analyze any changes in the perspective towards slaves and freedmen being involved in the illicit affairs of their owners and patrons as reflected in this genre. However, even a brief overview of the *Minor Declamations* reveals similarities with those of Seneca the Elder, which, due to the time that lapsed between

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<sup>257</sup> SenRhet Con 6.6: *Torsit ancillam pater; dixit illa nihil se scire de veneno, sed de adulterio dominae et eius cui conlocaturus filiam erat...duo gravissima criminal obiecit, adulterium et veneficium: adulterium ancilla teste...*

the writing of both pieces, means that the Roman attitude towards the involvement of slaves within the adulterous affairs of the free did not, at the very least, change dramatically from the former to the latter. The following example from Quintilian is taken from a declamation echoing similar concerns to those found in Sen *Rhet Con* 2.7, which concerns a husband who was growing increasingly suspicious of his wife due to some tentative advances by his foreign neighbour:

Let him be said to have been a careful guardian of his wife's chastity, also naturally anxious and sedulous. When he was solicited about his wife's favours, he was surprised at the audacity of the foreign businessman. When he was approached again, he began to have some suspicion of his wife too; as far as now appears, more from a defect in his own nature than from any fault of his wife. But when the adulterer urged him even for a third time, he was unable to hide his suspicion and anxiety. So because he thought that the adulterer had previously had some talk with his wife through the wardrobe maid, he summoned the latter and asked her whether she knew anything about an adultery. She answered that her mistress was innocent and not even known to the businessman. "In short, if you doubt my word, send me dressed as your wife. I'll see whether he can tell the difference."<sup>258</sup>

The similarities between these examples and the afore-mentioned passage from Seneca are not coincidental as both authors would have had been able to draw on the same source material. It is striking that both authors chose to include a case where a female slave was presumed to have been intimately involved with the illicit affairs of her mistress, and also to have been a credible source of evidence for establishing the veracity of her mistress' involvement with the overly generous neighbour. The slave is, once more, playing two roles in this encounter. The first is as the intermediary between her mistress and the putative lover. Although that apparently did not happen in this case, the potential for such behaviour is acknowledged. The second is as

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<sup>258</sup> Quint, *Decl* 363: *ut dicatur fuisse diligens custos pudicitiae uxoris, natura quoque sollicitus et sedulus. Cum esset de stupro uxoris appellatus, admiratum tantam peregrini negotiatoris audaciam; cum deinde etiam repetitus, suspicari aliquid etiam de uxore coepisse; quantum nunc appareat, suae naturae potius vitio quam culpa uxoris. Cum vero tertio quoque instaret adulter, non potuisse dissimulare suspicionem et sollicitudinem suam. Itaque quia putaret aliquid ante cum sua uxore locutum adulterum per vestiplicam, advocasse illam et quaesisse num aliquid de adulterio sciret. Illam respondisse innocentem esse dominam et ne notam quidem negotiatori: 'denique si dubitas, me uxoris tuae habitu mitte: videro an possit discernere.'*

evidence for any potential violation performed by her mistress. It is clear even from this first comparison that there were similarities in how the servile were treated by both authors, but further examples are needed in order to draw stronger parallels between the two.

Torture of slaves is a theme that can be observed in the works of both authors. Although not directly related to the torture of slaves and freedmen in regard to cases of alleged adultery, the following passage remains relevant because it demonstrates the importance placed by the Romans on using the servile and the freed as usable sources of evidence in legal proceedings. In this case, two men shared a disagreement regarding the payment of a deposit and their stewards were being obstinate by refusing to verify the claims of their masters:

#### Stewards tortured

A man was claiming a deposit from another who denied the same.

The stewards of both said under torture the opposite of their masters. The suit starts afresh.

The claimant has to discredit his steward and say that he has been bribed by his opponent, who has rejected the claim in reliance on the steward's promise to deny even under torture. Hence arose from the opponent, when the proceedings started: "let us torture the stewards." He will say that this other steward's intention was honest, for he always said openly that he had received the money and when handed over to torture he has this intention right away: "What? For what reward would I lie?" Therefore he confessed. This too among common topics is effective: "Your steward received the money, mine denies that he gave it. The latter's word is more valid, for the money can also be thought to have been paid through someone else." He will say that initially he was pleased with the slave and therefore put him in charge of accounts, but later he went to the bad, what with his own license and the carelessness of his master, who trusted him a great deal; he had taken many bribes before this one and for that reason he himself made the deposit. This was his reason for depositing, since he saw that his accounts were in a bad way. This has to be added because he is pressed by questioning as to what reason he had for depositing. The denier has to say that his steward wanted to end the torments: he confessed to be let go.<sup>259</sup>

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<sup>259</sup> Quint, *Decl* 353: *Dispensatores torti*

Here, the stewards serve as a seemingly obvious avenue in which to turn in order to reach a satisfactory conclusion to their predicament. However, the apparently ubiquitous nature of torture as a technique in which to obtain information cannot be used to obscure the problems inherent in relying on this technique to extract information. Quintilian himself acknowledged this in the *Institutio Oratoria* where he illuminated some of the potential problems to be aware of when using torture:

There will, however, be some considerations in this area, which are peculiar to individual cases. If the point is whether torture should be used, it will make all the difference who demands or offers whom, and against whom and for what reasons the victim is asked for or offered. If it has already taken place, the important points are: who was in charge, who was tortured and in what way, whether his evidence was credible and consistent, whether he persisted in his initial statement or changed something under the influence of pain, and whether he did this at the beginning of the questioning or as the torture proceeded. These considerations, on both sides, are as infinitely varied as are real situations.<sup>260</sup>

Understanding Roman attitudes to torture is important as it helps us to understand how slaves and freedmen may have been treated when they became entangled in the legal proceedings surrounding adultery. For the purposes of the current discussion,

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*Quidam ab infitiantē petebat depositum. Dispensatores. utriusque torti contraria dominis dixerunt. De integro lis est.*

*Petitor necesse est infamet dispensatorem suum et dicat ab adversario corruptum, et ea fiducia esse illum infitiatum, cum promitteret dispensator negaturum se etiam in tormentis. Itaque ab adversario natum, cum lis esset: 'dispensatores torqueamus.' Alterum hunc dispensatorem sani propositi dicet, qui semper accepisse se palam dixerit, et statim cum datus sit in tormenta, hoc sibi proposuerit: 'quid? ego quo praemio mentiar?'; <ideo>2 confessum esse. Et hoc in locis valens est: 'Tuus dispensator accepisse se ait, meus dedisse negat. Huius potentior vox est: potest enim etiam per alium numerata videri pecunia.' Initio autem dicet hunc3 sibi placuisse servum, et ideo supra rationes esse positum; sed postea et licentia sua et securitate domini, qui illi plurimum crediderit, isse in vitia, a multis corruptum antequam ab hoc, et ideo se deposuisse. [Hanc sibi deponendi fuisse causam, cum videret in malo statu rationes esse.] Hoc necesse est adicere quia urgetur per interrogationem quam causam deponendi habuerit. Infitiator dicat oportet dispensatorem suum finem tormentorum quaesisse: ideo confessum ut dimitteretur.*

<sup>260</sup> Quint, *Inst* 5.4: *Quaedam tamen in hac parte erunt propria cuiusque litis. Nam sive de habenda quaestione agetur, plurimum intererit quis et quem postulet aut offerat et in quem et ex qua causa: sive iam erit habita, quis ei praefuerit, quis et quo modo sit tortus, an credibilia dixerit, an inter se constantia, perseveraverit in eo quod coeperat an aliquid dolore mutarit, prima parte quaestionis an procedente cruciatu. Quae utrimque tam infinita sunt quam ipsa rerum varietas.*

however, it is most important to highlight that regardless of whether torture was employed during an interrogation or not, slaves and freedmen were regarded as a viable source of information for legal proceedings. Relying on slaves and freedmen to provide evidence for criminal cases, and the unfortunate use of torture to extract this information, is a theme seen in the works of both authors and thus likely to be accepted and understood by wider Roman society.

Rhetoric was an almost inescapable element of Roman education and it subsequently had an influence on the thinking and writing of prominent authors such as, for instance, Ovid and Tacitus. As this genre of writing was so ubiquitous throughout Roman society, its treatment of adultery and the involvement of slaves and freedmen is an important avenue to explore in order to attain a wider, nuanced appreciation of how the servile and freed members of a household were seen as being involved in adultery. Seneca the Elder, in his *Controversiae*, and the author of the *Minor Declamations*, nominally Quintilian, demonstrated clearly that the concept of slaves being accused of adultery and subjected to legal proceedings, and also being called upon to act as witnesses for adulterous affairs, either when accused of the crime, or independent of being accused themselves, was present in the rhetorical writing from Rome – which would seem to suggest that the inclusion of the servile and freed within the machinations of the adultery statute was not a legal oddity restricted to the writing of the jurists. Slaves and freedmen, therefore, appear to have been present and to have been included within discussions of adultery and its ramifications throughout the writing of the early Roman Empire. But does this hold true for poetry as well?

## **5.6 OVID: A WATCHFUL AFFAIR**

It has already been established earlier in this chapter that, while legal sources provide an invaluable resource for understanding the adultery statute, they are not the only source that can be used for comprehending the impact of this legislation. Contemporary literary works provide a useful counterpoint to juristic writings because they looked at how adultery and the new legislation impacted society from a different

perspective to that of the jurists. Ovid, the last of the literary authors to be discussed in this chapter and the only poet, provides candid commentary on Roman sexuality, an important element necessary for the understanding of the impact of the adultery statute on the *familia*, specifically slaves and freedmen. Sharrock has stated that “writing poetry, for Ovid, is not just *about* ‘sexuality’; it is itself an erotic experience, in which it is impossible to distinguish clearly between sex and poetry”.<sup>261</sup> She goes on to claim that “very often in the Ovidian corpus, sexuality offers an alternative view of the world, most explicitly in the *Ars Amatoria*, where sex is set up as an alternative to Augustan citizenship” and that “[this poem] undermines marriage not so much because Ovid thinks adultery is a good thing, as in order to offer an alternative to Augustan social control”.<sup>262</sup> An alternative reading of Ovid’s intent can be seen in Greene’s work where she maintains that his intention with his poetry was to reveal the “ideologies of erotic conquest and domination”.<sup>263</sup> An alternative interpretation of Ovid’s work has been put forth by Schiesaro who maintains a more subversive viewing of the poet:

[Ovid’s] ...passion for all that is relative, fluid, epistemologically elusive, is hardly the ideal breeding ground for authority and norm. It is tempting, indeed, to read these overarching passions as a sophisticated indictment of the increasingly authoritarian penchant displayed by the Augustan regime.<sup>264</sup>

There is an undeniable temptation to this interpretation, in regard to viewing Ovid’s depiction of slaves and freedmen and their involvement in adultery, as it lends itself to a potential explanation of how Augustus’ social changes were perceived by Roman society, at least certain elements of it, and thus towards his motivations behind his legislation, for example. As already mentioned in Chapter One, Sharrock maintains that “Ovid’s amatory works put private life on display – or rather, show us how private life is always already on display, a fiction played out for real, a reality fantasized”.<sup>265</sup>

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<sup>261</sup> Sharrock (2002a), 99.

<sup>262</sup> Sharrock (2002a), 105.

<sup>263</sup> Greene (1998), 113. For further discussion of Ovid and sexuality, see Green (1996), who discusses Ovid’s use of the hunt as a metaphor for the pursuit of love and its function as a paradigm for the “taming of natural human wildness” [Green (1996), 261].

<sup>264</sup> Schiesaro (2002), 74.

<sup>265</sup> Sharrock (2002b), 150. An earlier work by Sharrock also explores depictions of slavery within the *Ars Amatoria*. In addition to the expected portrayals of slaves, Sharrock also highlights Ovid’s use of slavery imagery to indicate a lover enslaved to his mistress and being willing to subject himself to the punishments associated with the servile: “iron and savage fires” (Sharrock 1994: 26;58). The poet’s

Indeed, it could be argued that Augustus' social legislation, especially the adultery statute, served a similar function by pushing a formerly private crime, adultery, out into the arena for public condemnation.

Another important component to Ovid's work is the influence of rhetorical writers such as the above discussed Seneca the Elder. His contemporaries recognized the impact of these writers and their works, and this is significant as it reveals the influence of the approaches and ideas seen in these works. The following passage provides an insight into how much Ovid was influenced by rhetoric:

Well, while a student, Ovid was held to be a good declaimer...however Ovid rarely declaimed *controversiae*.<sup>266</sup>

Within the above section, Seneca comments on the extent to which Ovid was influenced by rhetoric and the declaimers included in the *Controversiae*. This is significant because it demonstrates that ideas found in rhetoric – as discussed above – were influential and seen by many, if not most, members of elite Roman society. So, concepts such as slaves being accused of adultery and being involved in other ways would not have been considered out of the ordinary for them. Now, let us move on to a brief discussion of the source material used to attain a deeper appreciation for Ovid's perspective on adultery before offering an analysis of key passages to further the argument of this thesis.

### 5.6.1 METHODOLOGY

Ovid is the last author to be examined in this study.<sup>267</sup> His works *Amores* and *Ars Amatoria* will serve as source material as they focus primarily on 'love' and thus its somewhat unfortunate corollary, adultery; these hold the greatest potential for evidence of the involvement of slaves and freedmen with adulterous relationships by

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use of slavery metaphors in this manner reinforces the subordinate position from which slaves were viewed by Ovid in this work.

<sup>266</sup> SenRhet, *Con* 2.2.8-12.

<sup>267</sup> For a general overview of the scholarship on Ovid, see Allen (1992), Booth (1991), Bornecque (1930), Boyd (1997), Brandt (1963), Gibson (2003), Hollis (1977), Janka (1997), Lee (1968), McKeown (1987), McKeown (1998), and Sharrock (1994).



investigating the use and context of specific Latin words and stems related to slavery and adultery. As with the other authors discussed in this chapter, the material for this analysis was gathered by searching for all occurrences of the relevant stems and words in the sources and collating all examples that pertained to adulterous relationships. In addition to the, by now, standard search terms, this analysis also includes passages that feature related terms, like those designating a role normally carried out by slaves (like that of doorkeeper) – for reasons that will become apparent in the relevant section. Rather than examine each work sequentially, this section will be organized according to the use and context of the key words across the *Amores* and *Ars Amatoria* to enable a comparing and contrasting of the terminology used.<sup>268</sup> A poet such as Ovid will be able to provide a perspective on adultery distinct from the legal writings of the jurists and the Roman lawmakers, as well as from that of the (mainly later) historians, biographers and rhetoricians discussed so far.

### 5.6.2 ADULTEROUS SLAVES IN OVID'S *AMORES* AND *ARS AMATORIA*

Slaves are manifest throughout both the *Amores* and *Ars Amatoria*.<sup>269</sup> The first instance in which a slave is mentioned in the *Amores* within the context of an adulterous relationship is at 1.8.87, where male slaves and female slaves, *servi* and *ancillae*, are described as having 'parts' in love affairs such as asking for gifts from the putative lover:

Turn a deaf ear to such gambits. You must get yourself a male slave  
and a well-trained female slave, who can hint what gifts will be most  
welcome. Don't let them demand exorbitant tips for themselves.  
Little presents soon add up.<sup>270</sup>

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<sup>268</sup> For commentary on the structure of the *Amores* and *Ars Amatoria*, see Sharrock (2002b), Gibson (2003), McKeown (1987), and Zinn (1970).

<sup>269</sup> For a discussion of the involvement of slaves and freedmen in Latin literature, see Habinek (2005), who argues that slaves and freedmen were indispensable to Latin literature for a large number of reasons; for further scholarly discussion on slaves and freedmen in Latin literature, see also Fitzgerald (2000), in particular, Chapter Four, which uses analogies between slaves and freedmen to explore a range of Roman relationships.

<sup>270</sup> Ovid *Am* 1.8.87-90: *servus et ad partes sollers ancilla parentur,*  
*qui doceant, apte quid tibi possit emi;*  
*et sibi pauca rogent—multos si pauca rogabunt,*

Here, the nature of their involvement in the affairs of their owners is clear as they would have been witnesses to an illicit relationship and would have been able to provide such evidence if called upon, and thus would have been acting in the ‘object’ role in these types of interactions.<sup>271</sup> But slave-girls are also depicted in conjunction with a number of different adulterous relationships and there is a corresponding degree of flexibility within the roles they perform in these affairs, which belies the somewhat rigid depiction of these individuals in the legal sources. The following is a declamation by Ovid admitting to the proclivity of Roman men for falling in love with female slaves:

I’m sorry I told her no man in his proper senses could go overboard  
for a female slave – Achilles fell madly in love with his *ancilla*,  
Briseis, Agamemnon was besotted by the slave ...<sup>272</sup>

In this example, the poet is referring to two enslaved women who have ‘seduced’ kings or leaders of men. Although such relationships would not be considered ‘adultery’ under the criteria established through the legal sources, these examples are still relevant to this discussion for a number of reasons. The most obvious is that literary depictions of servile members of the household and adulterous relationships are not the same of those found in the legal sources as the authors, such as Ovid, would have been motivated by different factors and ‘source material’. Another point worth illuminating is that such relationships reflect the mutability of the female slave’s role within the Roman *familia*, especially in terms of the nature of her interactions with the free members of the household. Despite these examples of *ancillae* as apparent paramours of men in power, Ovid’s most prevalent description of them places them in the role of go-between, and thus potential witness, for the illicit affairs of their owners

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*postmodo de stipula grandis acervus erit*. All translations of the *Amores* are from Green (1982) unless otherwise noted.

<sup>271</sup> *Ancilla* is usually translated as meaning ‘handmaiden’ or some sort of female domestic servant. To highlight the difference in treatment between male and female servile members of a *familia* more accurately, the terms ‘male slave’ and ‘female slave’ are used throughout this section.

<sup>272</sup> Ovid *Am* 2.8.9-2.8.12: *Quid, quod in ancilla siquis delinquere possit, illum ego contendere mente carere bona? Thessalus ancillae facie Briseidos arsit; serva Mycenaeano Phoebas amata duci.*

and, indeed, in the following examples, he appears to actively counsel against intimate relationships with the female slaves of their intended targets:

But take care first to know the female slave of the woman you would win; she will make your approach easy...  
Let her female slave incite her, as she combs her tresses in the morning...  
...see that you gain the mistress first, and let the female slave follow:  
do not begin your wooing with the *ancilla*.<sup>273</sup>

These three passages are taken from a longer tract offering a putative lover advice on how to facilitate a relationship with their intended when the potential barrier of a faithful attendant is present. It is clear that the presence of these female slaves was an expected component of the process of romancing their mistresses and, thus, they would have shared full, or at least very well-informed, knowledge of the activities of their owners. Hollis offers another perspective on the actions and role of the *ancilla*.<sup>274</sup> He highlights the ubiquity of the *ancilla* throughout Roman comedy and Latin love-elegy and maintains that Ovid's use of them in this poem is a not uncommon example from a much wider tradition; his commentary on these lines does not express any hesitation over the inclusion of these servile members of the *familia* being included in the machinations of a free lover trying to arrange an adulterous affair.<sup>275</sup> What is not included in this analysis, though, are any references to how the adultery statute would have affected these individuals. While Hollis does address the influence of the legislation on possible reasons behind Ovid's exile and the poet's cautious warning off of 'respectable ladies' from the ideas of the poem, there is a clear lack of analysis of how the statute would have affected *all* the members of a *familia*. Such a demonstration of one example of their level of integration with the personal lives of their elite owners, albeit from one literary example, would seemingly indicate that the servile members of the household were, indeed, more affected by the new adultery legislation and its ramifications than was indicated in the legal sources. The female

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<sup>273</sup> Ovid *Ars* 1.351-2: *Sed prius ancillam captandae nosse puellae*

*Cura sit: accessus molliet illa tuos.*, 1.367-8: *Hanc matutinos pectens ancilla capillos*

*incitet, et velo remigis addat opem*, and 1.385-6: *Fac domina potiari prius, comes illa sequatur:*

*Non tibi ab ancilla est incipienda venus.* All translations of the *Ars Amatoria* are from Goold (1979).

<sup>274</sup> Hollis (1977).

<sup>275</sup> Hollis (1977), 99-100.

slaves in the afore-mentioned extracts are portrayed as either potential confidants or potential paramours for the illicit lover and these are not the only instances of these types of portrayals. The following examples from Ovid also depict similar scenarios:

Blush not to win over female slaves, as each stands first in rank, nor blush to win over slaves. Salute each one by name: you lose nothing thereby; clasp low-born hands, ambitious one, in yours. Aye, even to a slave, should he ask you (the cost is trivial), offer some small gift on the day of Fortune; offer it to a female slave also, on the day that the Gallic band paid penalty, tricked by the marriage robe...<sup>276</sup>

Perhaps some lying, proud-faced female slave will say, “Why does this fellow besiege our door?” Supplicate and coax both door and cruel damsel...<sup>277</sup>

In these examples, there are several points that need to be examined in further detail. The first is that the slave-girls are depicted as legitimate recipients of bribes or gifts, whose intended purpose was to persuade their recipient’s mistresses to be receptive to the approaches of the prospective lover. This is yet another example of how the servile members of a household were entangled within the extramarital affairs of their owners. Another area to focus on is the language used to describe the slaves and their mistresses and the nature of the interactions with them that Ovid believed were necessary to win them over. The female slaves are portrayed as deceitful, untrustworthy and acting above their station, especially in the second extract where the attendant describes the door to her mistress’ chamber as “*our door*”. Both the male and female slaves could conceivably be understood as mercenary and grasping individuals in this context if Ovid’s mention of them as willing and logical recipients of bribes meant to help a paramour gain access to his target. The supposedly fickle nature of slaves is then reinforced with the image of the female slave then degenerating the potential lover to

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<sup>276</sup> Ovid *Ars* 2.251-2.258: *Nec pudor ancillas, ut quaeque erit ordine prima,  
Nec tibi sit servos demeruisse pudor.  
Nomine quemque suo (nulla est iactura) saluta,  
Iunge tuis humiles, ambitiose, manus.  
Sed tamen et servo (levis est inpena) roganti  
Porrige Fortunae munera parva die:  
Porrige et ancillae, qua poenas luce pependit  
Lusa maritali Gallica veste manus.*

<sup>277</sup> Ovid *Ars* 2.525-2.527: *Forsitan et vultu mendax ancilla superbo  
Dicet “quid nostras obsidet iste fores?”  
Postibus et durae supplex blandire puellae,*

her mistress. The mutability of the role of the female attendant in facilitating an adulterous affair can also be seen in the following examples from the *Ars Amatoria*, some of which are addressed to a potential mistress:

Write your messages by the hand of male slave or female slave, and entrust not your pledges to a young boy you know not.<sup>278</sup>

Let a clever female slave hurry in, and cry, “We are undone!” conceal the frightened youth in any hiding place.<sup>279</sup>

Nor let too pretty a slave-girl attend you: often has she played her mistress’ part for me.<sup>280</sup>

Here, we can see, once more, that these female attendants are integral to any romantic assignments, at least among those elite and wealthy enough to afford multiple slaves, and yet they are also portrayed as individuals whose general character is not to be trusted. Based on these passages, we can see that the poet appears to have a particularly quixotic view of slaves and female slaves, at least when in relation to their involvement in adulterous relationships.<sup>281</sup> He appears unable to settle on whether it is advantageous for a potential lover to employ servile help in achieving his goal, but what is not in doubt is the involvement of the slaves themselves in the machinations surrounding these illicit liaisons. However, it will, of course, be necessary to gather

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<sup>278</sup> *Ars* 3.485-3.486: *Ancillae puerique manu perarate tabellas, Pignora nec iuveni credite vestra novo.*

<sup>279</sup> *Ars* 3.607 – 3.608: *Callida prosiliat dicatque ancilla “perimus!” Tu iuvenem trepidum quolibet abde loco.* Female slaves playing a prominent role in ‘adultery mime’ and can also be seen in Horace (*Sat.* 1.2.13of) and Plautus (*Amph.* 268; *Psued.* 385), according to Gibson (2003), 333.

<sup>280</sup> *Ars* 3.665-3.666: *Nec nimium vobis formosa ancilla ministret: Saepe vicem dominae praebuit illa mihi.*

<sup>281</sup> It is clear here that Ovid is merely employing a standard literary trope of a ‘tricky slave’; something he himself referred to in his earlier work the *Amores*, when he listed this character amongst those that would endure because of the ‘glory’ of his work – Ovid *Am* 1.15.15-17: No loss shall ever come to the buskin of Sophocles; as long as the sun and moon Aratus shall live on; as long as tricky slave, hard father, treacherous bawd and wheedling harlot shall be found/ *nulla Sophocleo veniet iactura cothurno; cum sole et luna semper Aratus erit; dum fallax servus, durus pater, inproba lena vivent et meretrix blanda...* . Gibson (2003) recognizes the ubiquitous nature of slaves being involved in transmitting messages between erstwhile lovers as “authorship of a letter can more easily be denied or concealed if written in the hand of a slave” (Gibson 2003, 296). There is some debate over the interpretation of *puero* relation to a new, probably male slave but his arguments that “acquiring new slaves is an issue unparalleled in elegy” and that “contextual support is provided for *puero* [as referring to a young, male slave] by the proverbial power of slaves privy to guilty secrets” demonstrate that it is not at all unreasonable to suppose that slaves would have been employed to relay messages between putative lovers (Gibson 2003, 296).

and assess a wider range of examples of the roles and behaviour of the servile and freed from the *Amores* and the *Ars Amatoria* before it will be possible to draw any meaningful conclusions about the nature of his portrayal of their involvement in adultery.

### 5.6.3 ‘DOORKEEPERS’: THE OVIDIAN *CUSTOS* AND ADULTERY

*Custos*, or *custode*, is a term that occurs frequently throughout the *Amores* and the *Ars Amatoria*.<sup>282</sup> A careful reading of selected passages from these works reveals a role for this individual that was distinct from that of the *servus* and *ancilla* within adulterous relationships but that is nonetheless relevant for the present discussion. Ovid interacts with these guardians in these poems in a range of different manners.<sup>283</sup> The first takes the form of direct entreaties to the watchman. The following is a petition made to a slave called Bagoas to relent in his unwavering watch over his mistress:

You whose trust is the guarding of your mistress, attend, Bagoas,  
while I say a few words, but apt. Yesterday I saw the fair one walking  
in the portico—the one that has the train of Danaus. Forthwith—for  
I was smitten—I sent and asked her favours in a note. She wrote back  
with trembling hand: “It is not possible! “and when I asked why” it  
was not possible,” gave this reason, that your guard of your mistress  
was too strict.

If you are wise, good guardian, cease, believe me, to merit hate;  
whom each man fears, he longs to see destroyed. Her husband, too,  
is anything but wise; for why take pains to watch over that from  
which, even did you not guard, nothing would be lost?

...be you the means of giving her stolen liberty, that she may render  
back to you the freedom you gave to her. Be willing to conspire with  
her—the mistress is bound to the slave; fear you to conspire—you

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<sup>282</sup> *Custos*, from *custōdia*, is defined variously in the Oxford Latin Dictionary as “protection, safe-keeping, defence, the responsibility for protecting or taking care of [something], and the keeping of a guard or watch”, and it is that meaning that shall be used and referred to throughout this work.

<sup>283</sup> The motif of the door serving as a barrier between two lovers is one common to love elegy as is the slave go-between (Sharrock 1994, 282-284). Here, the servile and freed are clearly identified as being integral elements of an adulterous relationship although, in this instance, as their actions are generally at the behest of their master or mistress, they are very much occupying the ‘object’ role.

can pretend. She will read a missive by herself —think that her mother sent it! One comes not known to you—in a moment you will know him well! She will go to a sick friend, who will not be ill—let her go to see her; let the friend be ill in your judgment! Is she late in coming back, you need not let long waiting tire you out, but may lay your head in your lap and snore. And make it not your business to ask into what happens at linen-clad Isis' temple, nor concern yourself about the curving theatre! The accomplice in a secret will reap continual reward—and what is less labour, too, than keeping silence?

...But let her sometimes nonetheless cross words with you, too, and feign to weep, and call you executioner. You, in turn, must charge her with what she can safely explain and by false accusation take away faith from true ones. In this way will your honour ever increase, in this way your pile of savings grow high. Do this, in short time you will be free.

...'Tis no crime we are entering on; we are not coming together to mingle poisons; no drawn sword flashes in our hands. What we ask is that you will give us the means to love in safety. What can be more modest than our prayers?<sup>284</sup>

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<sup>284</sup> Ovid *Am* 2.2. : *Quem penes est dominam servandi cura, Bagoa, dum perago tecum pauca, sed apta, vaca. hesterna vidi spatiantem luce puellam illa, quae Danaï porticus agmen habet. protinus, ut placuit, misi scriptoque rogavi. rescripsit trepida "non licet!" illa manu; et, cur non liceat, quaerenti reddita causa est, quod nimium dominae cura molesta tua est. Si sapis, o custos, odium, mihi crede, mereri desine; quem metuit quisque, perisse cupit. vir quoque non sapiens; quid enim servare laboret, unde nihil, quamvis non tueare, perit? ...huic furtiva tuo libertas munere detur, quam dederis illi, reddat ut illa tibi. conscius esse velis—domina est obnoxia servo; conscius esse times—dissimulare licet. scripta leget secum—matrem misisse putato! venerit ignotus—postmodo notus erit. ibit ad adfectam, quae non languebit, amicam: visat! iudiciis aegra sit illa tuis. si faciet tarde, ne te mora longa fatiget, inposita gremio stertere fronte potes. nec tu, linigeram fieri quid possit ad Isim, quaesieris nec tu curva theatra time! conscius adsiduos commissi tollet honores—quis minor est autem quam tacuisse labor? ...Sed tamen interdum tecum quoque iurgia nectat, et simulet lacrimas carnificemque vocet. tu contra obiciens, 1 quae tuto diluat illa, et veris 2 falso crimine deme fidem.*

It is immediately apparent from examining this selection that Ovid had adopted a conciliatory approach with this particular guardian. The entire section, of which only select passages are included above, is a supplication to a slave, Bagoas, who has been charged with guarding his mistress and, supposedly, preventing her from cheating on her husband and committing adultery.<sup>285</sup> Here, there are some similarities between the function of the male slave, or ‘guardian’, and the female slave, or ‘attendant’. Both fulfil a role as a preliminary line of defence against the intrusion of an illicit lover, and both the guardian and the attendant are initially presented as allies or co-conspirators with the narrator. If the analytical framework of the subject/object roles occupied by slaves and freedmen in adulterous relationships is applied to these depictions, it is clear that the flexibility, or mutability, of these roles for the servile and freed that was observed in the legal sources is also found in these examples from Ovid. Both the watchman and the female attendant could be considered to be occupying ‘subject’ roles because they have a limited degree of agency and are thus responsible for directing, or ‘driving’, the action in these encounters. Alternatively, it is also reasonable to classify them as occupying ‘object’ roles because they are also responding to the enticements of the male lover to enable access to their mistress or obeying their mistress’ wishes if she acquiesces to contact with her potential lover. There are, however, significant differences between the portrayal of the male and female slaves in the *Amores* and *Ars Amatoria*. The first major difference to consider is that Ovid’s blandishments to Bagoas emphasize the latter’s relative level of power in regard to controlling access to his mistress. For example, the poet states that the watchman’s “guard of the mistress was too strict” and that, overall, he was a “good guardian”.<sup>286</sup> Although Ovid is writing, presumably, from the perspective of someone with a higher social standing than the guard, he makes a point of emphasizing the seriousness and care that Bagoas applied to his duties and the more absolute control

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*sic tibi semper honos, sic alta peculia crescent.  
 haec fac, in exiguo tempore liber eris.  
 Non scelus adgredimur, non ad miscenda coimus  
 toxica, non stricto fulminat ense manus.  
 quaerimus, ut tuto per te possimus amare.  
 quid precibus nostris mollius esse potest?*

<sup>285</sup> The passage is discussed for different purposes in Booth (1991), Keith (1994), and McKeown (1998).

<sup>286</sup> Ovid *Am* 2.2.8-2.2.9.



he had over the control both of access to his mistress and her apparent freedom in carrying out her daily activities. Ovid follows up his initial praise by appealing to the slave's desire for freedom. He encourages him to adopt a more relaxed approach to his duties and to even facilitate any romantic liaisons his mistress may want to make with a lover.<sup>287</sup> While these entreaties are similar to those proffered to the female slaves, who shared a perhaps more intimate relationship with their mistress, as they both encourage a servile member of the household to subvert the orders of the *paterfamilias*, the enticements made to the male watchman are different because they focus on an attainable goal for the male slave – his freedom – rather than mere praise and the hope of an affair for the female attendant. Here, gendered differences between the treatment of and the behaviours allowed for Roman men and women are reflected in Ovid's approaches to the servile attendants of his erstwhile lover. The male slave, and door guardian, is approached based on the poet's assumptions regarding what a man in that position would be the most motivated by – a desire for freedom and release from his responsibilities. The female slave, on the other hand, is characterized as a woman motivated only by love whose inherent weakness makes her vulnerable to enticements. Parker places women in an exalted position within Roman society as he argues that "feminine virtue was used in antiquity as a sign of the moral health of the commonwealth..."<sup>288</sup> This exalting of women is emphasized even further as he explains that "two specific charges of sexual impurity in women – violation of virginity in Vestals and adultery in wives – were made responsible for danger to the state"<sup>289</sup> Ovid's depiction of the female slaves as being more susceptible to romantic suggestion is merely an embodiment of the wider Roman attitude towards women being more likely to besmirch the sexual impurity of their marriage as, in this instance, the female attendants are representing the interests of their mistresses. McKeown sees more of a subversion of roles in the relationship between the narrator and the guardian as he sees *Am* 2.2 as "wheedling" and *Am* 2.3 as adopting a more aggressive, hectoring approach.<sup>290</sup> This method of appealing to the intelligence and base human desires of

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<sup>287</sup> Ovid *Am*: 2.2.15 – 2.2.28; 2.2.35 – 2.2.40.

<sup>288</sup> Parker (2004), 564.

<sup>289</sup> Parker (2004), 564.

<sup>290</sup> McKeown (1998), 29.

the slave can also be seen in the following passage albeit with a difference in the nature of the appeal:

Miserable me, that you who guard your mistress are neither man nor woman, and cannot know the joys of mutual love! He who first robbed boys of their nature should himself have suffered the wounds he made. Readily would you be compliant and yielding to lovers' prayers, if you had ever grown warm with love for any woman. You were not born for a horse, nor for the strenuous service of arms; the warlike spear fits not your right hand. Let men engage in those ways of life; do you lay aside all manly hopes. The standards you bear must be of your mistress's service. She is the one for you to ply with deserving deeds; hers is the favour to bring you gain; should you lack her, what then will be your use? Then, too, she has charms, and her years are apt for love's delights; 'tis a shame for her beauty to perish by dull neglect. She could have eluded you, strict guardian though you are called; what two have willed lacks not accomplishment. Yet since 'twill be better to have tried entreaty, we ask your aid, while you still have power to place your favours well.<sup>291</sup>

In this instance, Ovid adopts a different approach in order to convince the watchman to help his mistress facilitate her adulterous affairs. Rather than acknowledge his position of relative power in the household or his potential desire for freedom, Ovid continues the emasculation of the slave that began when he was castrated by repeatedly emphasizing that he was incapable of experiencing love or succeeding in any of the traditional activities practiced by successful Roman elite men, and that the only worthwhile purpose of his life could be to serve as an architect of another man's

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<sup>291</sup> Ovid *Am.* 2.3: *Ei mihi, quod dominam nec vir nec femina servas  
mutua nec Veneris gaudia nosse potes!  
qui primus pueris genitalia membra recidit,  
vulnera quae fecit, debuit ipse pati.  
mollis in obsequium facilisque rogantibus esses,  
si tuus in quavis praetepuisset amor.  
non tu natus equo, non fortibus utilis armis;  
bellica non dextrae convenit hasta tuae.  
ista mares tractent; tu spes depone viriles.  
sunt tibi cum domina signa ferenda tua.  
hanc inple meritis, huius tibi gratia prosit;  
si careas illa, quis tuus usus erit?  
Est etiam facies, sunt apti lusibus anni;  
indigna est pigro forma perire situ.  
fallere te potuit, quamvis habere molestus;  
non caret effectu, quod voluere duo.  
aptius ut fuerit precibus temptasse, rogamus,  
dum bene ponendi munera tempus habes.*

‘romantic’ aspirations. Ovid thus appears to have adopted a different approach to the three types of slaves seen to be involved in the adulterous affairs of their mistresses so far – female attendants, male guardians, and those male slaves who had been castrated. Female slaves are treated with the least respect as no appeals are made to their desire for freedom and they are portrayed as fickle individuals with unstable loyalties. Although they are physically closest to their mistresses, Ovid’s entreaties to their male counterparts, the guardians of the mistress’ chambers, make it appear that it was these individuals who wielded the greater share of power through their ability to control access. The castrated guard is next in line as he is acknowledged as having an inherent amount of power due to his position in the household in controlling the access to this mistress, but his inability to perform ‘normal’ Roman male pursuits diminishes his position. It is worth noting here that it is unlikely that an ordinary slave or anyone of a similarly lowly social ranking would have been able to fulfil the military obligations mentioned by Ovid; therefore, it is clear that such examples were chosen as easily recognized metaphors for manliness in Rome.<sup>292</sup> From this, it follows that, within this triad, the slave with the greatest amount of perceived power is the *custos* Bagoas

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<sup>292</sup> It is perhaps interesting to note here that the protagonist depicted in Ovid’s poems behaves in a manner that is in marked contrast to the more widely accepted behaviour associated with the elite, free men of Rome yet still embraces some of the more ‘traditional’ ideals associated with Roman manhood during the early Empire. Korfmacher (1946) identified the difference between how the young male protagonists of, for example, Ovid’s *Amores* and *Ars Amatoria*, whom Korfmacher described as a “devil-may-care, roistering, hard-living representative of the brisk and flippant society of Rome in the early years of the Empire” (Korfmacher 1946: 139) and the vision of Roman ‘gentlemen’ promoted by writers such as Cicero who, according to Korfmacher, were “those of an excellent family...[and]...a free-born man liberally trained to desire to be well thought of by his parents, relatives and good men in general” (Korfmacher 1946: 139; Cicero *De Fin* 3.57). Ovid, therefore, appears to be trying to appeal to both types of Roman man. Other authors have addressed this topic of the notion of manliness in Rome and the imbalance in the relationships between slaves and masters and clients and patrons. This difference in the motivating factors attributed to the elite of Rome and the remainder of Roman society has also been identified by Bell (2008). He argues that while “*exempla* [models of behaviour] were selected by all classes, ages, and genders...the nobility could turn inward into their homes, finding in their ancestral masks reflections of their own inborn greatness, those lower down the social ladder looked outward to Rome’s rugged icons of masculinity, gladiators and charioteers” (Bell 2008, 2). Bell clearly identifies a separation of some degree between the behavioural for the elite and non-elite, which provides a possible explanation for why Ovid chose to include the less restrained depiction of the Roman male in the *Amores* and *Ars Amatoria* because it served as a jolt or shock to those supposedly more aligned to a more genteel model of elite male behaviour. Masterson (2005) offers an alternative perspective on what constituted the bedrock of Roman manhood, or the “enduring importance of the military man to the realization of Roman manhood” (Masterson 2005, 289), which makes it clear that Ovid’s military references would have been easily recognisable symbols of male virility for his audience.

mentioned in Ovid *Am* 2.2 due to his apparent ability to support or disguise the illicit actions of his mistress and any of her potential lovers.

So far, Ovid has directly addressed the guardians, or keepers, when he is imploring them to help their mistresses commit adultery.<sup>293</sup> However, the poet does refer to them indirectly in certain examples, which still serve to emphasize their particular role with the myriad of relationships surrounding an adulterous affair. The following three passages from the *Amores* provide an example of the poet addressing the *husband* instead of his self-appointed proxy:

Being tough's no good, man. Guarding your girl won't help you.  
Try exploiting her feminine instincts.

Penelope had no guard, yet remained unmolested among all those youths.

Besides, do you want her guardian to go around saying 'I did it'?  
Why keep her chaste if a slave gets the credit?<sup>294</sup>

In these examples, Ovid, or the narrator, is portraying himself as a confidant of a suspicious husband. Broadly speaking, his overall goal would appear to be persuading the husband to relent on his insistence on providing a guard to preserve the 'virtue' of his wife. But the salient point that can be extracted from these three passages is that the involvement of these members of the household with any potential adulterous affairs is not questioned. These servile members of the household, though, are not portrayed as co-conspirators in adulterous affairs and it is this juxtaposition of their roles within Ovid's work that will be examined in the following section.

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<sup>293</sup> See Ovid *Am* 3.1.49; 3.1.55; 3.4.35; 3.8.63 and 3.11a.18 for further examples of servile or freed male members of a household who were guardians or keepers of their master's wife and whose primary role is portrayed as preventing illicit lovers from gaining access or, indeed, errant wives venturing out to commit adultery.

<sup>294</sup> Ovid *Am* 3.4.1-2: *Dure vir, inposito tenerae custode puellae  
nil agis; ingenio est quaeque tuenda suo.*  
Ovid *Am* 3.4.23-24: *Penelope mansit, quamvis custode carebat,  
inter tot iuvenes intemerata procos.*  
Ovid *Am* 3.4.35-36: *scilicet ut possit custos "ego" dicere "feci,"  
in laudem servi casta sit illa tui?*

The poet's treatment of the watchman, or gatekeeper, is not uniform throughout his works, and, indeed, Ovid's interactions with the *custos* in the *Ars Amatoria* contrast sharply with those displayed in the *Amores*. Rather than evoking a collegial atmosphere based on some sense of mutual appreciation and support, the depiction of the *custos* in the *Ars Amatoria* is more adversarial:

Go now, hateful guardian, bar the lady's door, and add a hundred bolts to the sturdy posts. What remains secure, when the dishonourer of her name abides, and would have what never befell believed? As for me I recount even true amours but sparely, and a solid secrecy hides my dark intrigues.<sup>295</sup>

In this passage, it is clear that the dynamic between the narrator and the guardian has changed. The interactions between the would-be paramour and the slave/freedmen are now more antagonistic as Ovid is openly challenging the guardian's adherence to the, presumed, instructions of his master to keep his mistress from committing adultery. What has not changed, however, is the inclusion of a servile member of the household within the innermost relationships of an illicit tryst. The afore-mentioned passage is not, though, the only reference to a hostile relationship between a guardian and a potential lover. While perhaps not as overt as the above extract, the following examples show that the nature of the relationship between the two was fluid:

How a crafty husband or a vigilant guardian may be deceived I was about to pass by;

Though as many keep watch as Argus had eyes (so your purpose be but firm), you will deceive them. Will a guardian forsooth prevent your writing, when time is allowed you for taking a bath? when a confidant can carry a written tablet, concealed by a broad band on her warm bosom? when she can hide a paper packet in her stocking, and bear your coaxing message 'twixt foot and sandal?

Should the guardian beware of this, let the confidant offer her back for your note, and bear your words upon her body. A letter too is

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<sup>295</sup> Ovid *Ars* 2.635 – 2.640 : *I nunc, claude fores, custos odiose puellae,  
Et centum duris postibus obde seras!  
Quid tuti superest, cum nominis extat adulter,  
Et credi quod non contigit esse, cupit?  
Nos etiam veros parce profiteur amores,  
Tectaque sunt solida mystica furta fide.*

safe and escapes the eye, when written in new milk: touch it with coal-dust, and you will read.

What can a guardian do, when there are so many theatres in the city?<sup>296</sup>

These examples demonstrate how intrinsic the roles of the slaves and freedmen of a household were in regard to an adulterous relationship: before, during, and after.<sup>297</sup> That the social and legal status of these individuals, whether enslaved or freed, would have affected how they performed their roles, and the nature of the poet's interactions with them, is not always acknowledged by modern scholars. Sharrock, for example, references a watchman within the wider context of a discussion of desire in *Amores* 2.19 and 3.4 but does not acknowledge the likelihood of the guard being a slave or

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<sup>296</sup> Ovid *Ars* 3.611-12: *Qua vafer eludi possit ratione maritus, Quaque vigil custos, praeteriturus eram.*  
3.617-24: *Tot licet observent (adsit modo certa voluntas), Quot fuerant Argo lumina, verba dabis. Scilicet obstabit custos, ne scribere possis, Sumendae detur cum tibi tempus aquae? Conscia cum possit scriptas portare tabellas, Quas tegat in tepido fascia lata sinu? Cum possit sura chartas celare ligatas, Et vincto blandas sub pede ferre notas?*  
3.625-28: *Caverit haec custos, pro charta conscia tergum Praebeat, inque suo corpore verba ferat. Tuta quoque est fallitque oculos e lacte recenti Littera: carbonis pulvere tange, leges.*  
3.633: *Quid faciat custos, cum sint tot in urbe theatra, Cum spectet iunctos illa libenter equos,*

<sup>297</sup> As discussed in the previous chapters, the legal consequences for adultery were so extreme that Romans wanting to commit adultery would have regularly needed to utilise spaces other than their marital homes in order to remain unnoticed. Consequently, it is important to understand how the Romans conceptualised different categories in order to more fully understand how they would have used the space around them. In this context, it is noteworthy that Allison (2015) has explored the idea of looking for 'gendered space' in Rome, in terms of determining how/if space was used by men or women and what their corresponding "social identity", through examining specific types of artefacts such as brooches, glass bottles and needles (Allison 2015, 107). Her work has shown that it is possible to draw conclusions about the utilisation of particular places based by certain genders, which is relevant to this discussion because it is unlikely, for example, that a couple would have chosen to commit adultery in a space primarily occupied by women as it would have been more challenging to disguise their activities and there would have been more scope for potential witnesses. Adding to the guardian's woes about the 'dangers' of theatres would have been the proliferation of bath houses in Rome, which may have been a more suitable venue for assignations as those involved would have been less constrained by the strict rules governing interactions between men and women and the elite and non-elite in theatres. To provide some perspective on how easy it may have been for an adulterous couple to access a bathhouse, Fagan (1993) suggest a range of between 170 to 856 *balnae*, or bathhouses, in Rome.

freedman and how this would have affected the nature of the guard's role.<sup>298</sup> There is another, perhaps more subversive, reading of the wider passage from which these lines are taken. Gibson argues that "the present passage [*Ars* 3.611-18] declares, more or less openly, a rejection of the Julian law's apparent inclusion of *libertinae* in the class of women denied free sexual relations", but he later maintains that Ovid "does not reject the Julian law [*lex Iulia de adulteriis coercendis*] on a legal principle, but on a word-play...the implication is that it is intolerable that someone who has recently been freed should be 'tied down like a slave'".<sup>299</sup> Either way, it is clear that Ovid was aware of the implications of the adultery law and that his audience would also have had, at least, an awareness of the law itself. What is not present, though, is an acknowledgement by Gibson of how Ovid approached the statute and its wider effect on the freed, apart from the cursory mention of freed women being 'tied down like slaves'. While these individuals are not acting as the adulterer, or 'subject', of these adulterous scenarios, they are clearly involved with and connected to these adulterous relationships and, so, it is reasonable to state that the impression gained from the legal sources, and the other ancient literary sources, that slaves and freedmen were involved more than previously conceived of by modern scholars is also brought out here. The reality of servile and freed involvement within the erotodidactic world of Ovid cannot be avoided. Slaves and freedmen are an inescapable component of the portrayals of adultery in Ovid's *Amores* and *Ars Amatoria*. There are, though, differences between the depictions of the slaves and freedmen within both of the poems. Female slaves had specific parts to play in adulterous relationships. Generally, they were used to facilitate access to their mistress and could either ease or hamper access for the hopeful paramour. Ovid also includes, in his portrayals of adultery, how these slaves could sometimes be persuaded, by means of bribes or other inducements, to facilitate access for a potential suitor. Perhaps unsurprisingly, the language used to describe these women represents them, predominantly, as deceitful and untrustworthy. Male slaves and freedmen, on the other hand, were depicted in an entirely different manner. Within the *Amores*, Ovid adopts a congenial approach to his depiction of the *custos*, or male

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<sup>298</sup> Sharrock (2002b), 155. Subsequently in the chapter, Sharrock does examine the role of slaves and how, as a group, they function to "underline the uneven power-relations of Ovidian erotics as much as of conventional Rome" (2002b, 158).

<sup>299</sup> Gibson (2003), 335.

guardian of the mistress of the household, and evokes an atmosphere of cooperation, where it is the potential lover and watchman uniting to achieve the goal of access to the mistress and, hopefully, more subsequent interaction. In the *Ars Amatoria*, however, the poet describes his interactions with the male guardians with a markedly different approach. It is less collegial and more antagonistic and more time is taken to emphasize the differences in legal and social status between the potential paramour and the barrier, both literal and figurative, preventing access to his goal – access to the guardian’s mistress. It is clear, therefore, that there are significant differences between Ovid’s portrayal of male and female slaves and freedmen within the context of his descriptions of adulterous relationships, or at least the initial stages of an affair. This could be due to the differences in chronology, or it was, perhaps, due to differences in the intended audiences of the two poems. While the reasoning behind the variations in the portrayals of slaves in these poems is worthy of exploring in greater detail, such work is beyond the scope of this study. But another aspect of the poet’s portrayal of slaves and freedmen involved in adultery that is clear is the lack of servile and freed individuals occupying the ‘subject’ role in these relationships. Although this might well be due, in large part, to the intended audience of the works, the elite of Rome, the absence of the servile and freed from the subject role in these works does not negate either their overwhelming presence in ‘object’ roles in Ovid’s depictions of adulterous relationships or their presence as drivers of the action in the works of other authors, such as Tacitus. What is important to focus on here, though, is the fact that slaves and freedmen *were* actually included in representations of adultery within the works by Ovid.

As the sole examples of poetry included in this chapter, the representation of slaves and freedmen seen in the *Amores* and *Ars Amatoria* offer a unique perspective on servile individuals and their entanglement with the adultery of their owners and patrons. Differentiation between the roles occupied by slaves within the context of the illicit relationships of their owners was the dominant theme observed in this section. Slave-girls, or ‘handmaidens’, and certain male slaves, usually those who had been castrated, fulfilled a predominantly ‘object’ based role in the depictions seen in Ovid’s erotodidactic works; they served as either facilitators of ‘romantic’ encounters



between their mistresses and their paramours by, for example, accepting gifts in return for access or passing along messages between lovers. These individuals also occupied ‘subject’ roles, to a certain extent, as they also enjoyed a limited degree of agency in respect of controlling the access to their mistress. This flexibility in the roles occupied within an adulterous relationship is also encapsulated within that of the *custos*, or watchman, whose responsibility within the *familia* was to, ostensibly, guard his mistress and prevent illicit sexual relationships. The narrator either appealed to the guardian by praising his intelligence and acknowledging his desire for freedom, or was deliberately antagonistic by challenging the watchman’s loyalty to his master, and this duality in the nature of the approaches made to him also reflects the ambiguity inherent in his position – one of a certain degree of power and influence, yet, ultimately, still subject to the will of his master or patron. What is consistent, though, across all the depictions of servile involvement with adulterous relationships in the *Amores* and *Ars Amatoria* is that this involvement was not in question or considered out of the ordinary.

## **5.7 CONCLUSION: THE LITERARY PITCH**

Even through the admittedly small sample of the five authors chosen for this chapter, it is easy to see that slaves and the freed were as prevalent in the ancient literary works as they were in the legal sources. That is not to say, though, that these servile and freed members of the *familia* were portrayed in identical ways in both types of sources (or even across these). Suetonius and Tacitus, both writing about the same time period and individuals, albeit with different perspectives and agendas, portrayed slaves and freedmen as being intimately involved with adulterous relationships to varying degrees. Freed individuals were particularly prominent in Tacitus’ depiction of the adulterous affairs that occurred in the courts of Nero and Claudius. Narcissus and Acte, in particular, occupied multiple roles that displayed the overall fluidity of the roles of the servile and freed in imperial households. While he did mention one slave, Eucaerus, who was accused of committing adultery with Octavia, the circumstances surrounding that relationship reveal that there was definitely a degree of uncertainty surrounding the nature of his role and so the agency normally attributed to one instigating an affair cannot be assumed in this instance. Suetonius, on the other

hand, portrayed slaves and freedmen in a more passive light with apparently less inclination to initiate adulterous relationships with their mistresses. This mirrors the portrayal of the servile and freed in Quintilian and Ovid, where these individuals are seen generally in more ‘supporting’ roles: acting as go-betweens for those wishing to commit adultery, as guardians or barriers to the affections of putative lovers or as evidence of such affairs after the fact. Only Seneca, within his rhetorical examples, raised the potential for slaves to be adulterers with any sense of agency in a relationship. Overall, however, these depictions mirror the portrayal of the servile and the freed in the legal sources. Although there are clear differences between the two bodies of evidence, with the jurists seemingly more concerned about the possibility of slaves committing adultery or freedmen attempting to gain the same type of justice as their freeborn counterparts if their wives had strayed, the inclusion of both slaves and freedmen in these sources demonstrates that, rather than the legal sources being an anomaly of how the servile and freed were perceived in the Rome of the early Empire, they are indicative of a more general picture of how slaves and the freed were considered in relation to adultery and the *lex Iulia de adulteriis coercendis*. They were, clearly, part and parcel of the exercise.



## CONCLUSION

The Roman Empire could not have extended its reach or, indeed, existed at all in the way that it did without the contribution of slaves and freedmen. This is an immutable fact of the study of the Romans and is not an element ignored by modern scholars of Rome. However, one aspect of the involvement of slaves and freedmen within the wider activities of the Roman *familia* and, consequently, society that is strangely overlooked by the majority of scholars is their presence in the bedrooms of their owners and patrons, specifically when adultery becomes a part of the picture. The adultery statute, the *lex Iulia de adulteriis coercendis*, introduced by the Emperor Augustus has always ostensibly been thought, by modern scholars at least, to have been targeted at those free Romans, capable of entering a legal marriage, who transgressed against their marriage ‘vows’ and betrayed their spouses – especially amongst the elites. As a result of this target, slaves and freedmen were not considered to have been of any consequence in regard to an analysis or discussion of Augustus’ adultery legislation, not being themselves members of the free elite. This thesis, however, has shown that this is not the case and that these servile and freed members of Roman society were, not only, inexorably enmeshed with the illicit affairs of their owners and patrons, but also that any examination of the adultery statute must consider their involvement too.

Here, it would first be useful to include a brief reminder of the argument of this work and its scope, and the methodological approach – all covered in the first chapter – before commencing with the review of the main body of the thesis itself. This thesis, then, has argued that slaves and freedmen were an indelible part, not only of the adulterous relationships of their owners and patrons, but of the new legislation brought in to curb these particular excesses. This has been accomplished by examining the nature of their participation in all stages of these relationships, using both legal and literary sources to attain a more nuanced understanding of their participation. As the scope of this analysis encompassed such a wide variety of evidence and sources, a particular approach was employed to accomplish it. The ‘grammatical approach’ was adopted in order to introduce an element of structure to the analysis; it utilised

terminology analogous to the parsing of a sentence to *parse* the *roles* of slaves and freedmen in adultery. Rather than being a strict, proscriptive approach, it allowed for the focus to be on the *involvement* of the slaves and freedmen and the various ways in which this involvement showed itself in the adulterous relationships. The two main categories used in this analytical framework were those servile individuals in the ‘object’ role, where they were the recipient of the actions, and those in the ‘subject’ role, where they enjoyed a relative degree of agency. The potential for slaves and freedmen to occupy ‘hidden’ roles, where their status may not have been immediately apparent from the sources, yet their involvement would not have been in doubt, was also covered. As the legal and literary sources provided a wealth of evidence, it was also necessary to apply a set of questions that eliminated, as much as possible, any preconceptions about the nature of the crime, who was committing it, and the nature of the penalties and how they were enforced. These questions were:

- I. what is adultery;
- II. who commits adultery;
- III. who cannot commit adultery;
- IV. what are the punishments;
- V. who gets punished;
- VI. who initiates the punishment; and
- VII. who is not punished under the terms of the statute.

A somewhat different method, however, was adopted in relation to the literary sources. Key words, adapted for each author based on the nature of the material, were entered into a search engine to generate a list of passages that were germane to the research goal of determining the extent of the involvement of slaves and freedmen in adultery, and how this was portrayed in the literary sources. This ‘master list’ of passages was analysed and any depictions of slaves and freedmen and their roles within adulterous relationships was evaluated through the lens of the ‘grammatical approach’. After outlining my approach, the remainder of the first chapter consisted of a literature review of select modern scholars who work in the fields of Roman social history and Roman law. Rather than a comprehensive review of all available modern

contributions, this section was intended to demonstrate that within those fields, very few scholars addressed the question of the degree of involvement of slaves and freedmen within adultery (or indeed other laws) aimed ostensibly at their owners and patrons. This first chapter introduced the argument of the thesis, laid bare the foundation underpinning the research questions driving the work and introduced the analytical problems that would have to be addressed.

The second chapter addressed the concept of the Roman *familia*. This was the jumping-off point for the examination as this social group, in its various iterations, formed the core relationships around which the majority of Roman life revolved and which was, ostensibly, the overall target for Augustus' social legislation, of which the adultery legislation was only a part. The various definitions of *familia* understood by the Romans, as seen in contemporary legal sources, and how the term itself has been interpreted by modern scholars of Roman social history, was the main focus of the second chapter. Above all else, this chapter established that *familia* is a deceptively simple term with many nuances that should be taken into account within the context of this thesis. The foundation for the analysis in this chapter was a passage from Ulpian, one of the most prominent Roman jurists featured in the *Digest*, which included five separate meanings for *familia* – an estate, the 'collection of persons', a body of slaves, those persons descended from the last father, such as the Julian *Familia*, and the *materfamilias* – that were discussed in order to attain an understanding of the term closer to that of the Romans themselves. This chapter emphasized that there is actually a great degree of flexibility and mutability associated with the Roman conception of *familia* and the place of slaves and freedmen within it, and that this adaptability should be borne in mind when the effect of legislation, such as the adultery statute, on the Roman *familia* is considered.

Adultery itself was the topic of the third chapter. This chapter looked at two separate, major questions surrounding the nature of adultery. The first problem that needed to be addressed was finding a definition of adultery, and the related crime of *stuprum*, so that any subsequent investigations into the crime, the legislations and its ramifications were working to the same paradigmatic framework. For the purposes of

this work, adultery was defined as an act that could only have been committed by a legally married Roman woman. *Stuprum*, on the other hand, was defined in this section of the work as any type of illicit liaison that could not result in children that would have had the potential to disrupt the line of succession in a *familia*: it is to this concern over the disruption of the line of succession to which we will return in due course. The emphasis on the involvement of the *legally married* Roman women is significant here because it will speak to a potential true motivation behind the promulgation of the statute. The remainder of this chapter analysed the ‘culture’ surrounding the adultery law, or who was penalised by or entangled with the enforcement of the statute. This section was relevant here as it demonstrated the overall Roman attitudes towards and perspectives on adultery without focussing solely on slaves and freedmen – in order to stress that the involvement in adultery of the latter two groups did not occur in a vacuum. The first topic to be covered were the penalties enforced after a case of adultery was brought before the specialist adultery court, which were, broadly speaking, exile and confiscation of property and wealth to varying degrees. The central sections of the chapter explored the role of gender and its relevance to the punishments of the adultery law, special circumstances that aimed to ensure wives could be convicted of adultery in almost any circumstances, such as when incest was involved, and the penalties for those who sought to benefit from adulterous relationships or even helped to facilitate the affairs, and the last category, which is particularly telling in respect of the potential motivation behind the enactment of the statute, covers those circumstances when an accusation of adultery was *not* allowed against a married Roman woman. The key point to be gleaned from this last category, and which will be discussed momentarily, is that exclusions preventing women from being prosecuted all involved scenarios where they could not have introduced children into the succession line of their husband or the *paterfamilias* of the *familia*. The overview of punishments that preceded this particular discussion thus provided the context in which these women’s exemption from punishment must be seen – and its reasons understood: their exemption from punishment cannot be properly contextualised without first taking account of the standard ways in which the statute was applied to convicted offenders. We will in a moment understand better why this matters so much for the purpose of this thesis. Overall, then, this chapter defined the

nature of adultery as it was referred to throughout the remainder of the thesis and also served to establish Roman societal and legal attitudes towards adultery: this enabled the stage to be set for the focus to be solely on the roles of slaves and freedmen in the remaining chapters, which served as the major analytical core of the thesis.

Contrasting perspectives on adultery formed the core of the analysis in this thesis. Through focussing on the *roles* played by slaves and freedmen in regard to adulterous relationships, these chapters demonstrated that there was considerably more involvement by these servile individuals in respect of these illicit affairs. The fourth chapter analysed the legal perspectives towards the involvement of slaves and freedmen with the *lex Iulia de adulteriis coercendis*. This was accomplished by a detailed reading of Dig 48.5, the section of Justinian's *Digest* that deals with the punishment of adultery, and this chapter is also the first instance of the application of the 'grammatical approach' framework used to analyse the evidence.<sup>300</sup> The role most frequently occupied by slaves and freedmen within adulterous relationships was, as reflected in the review of the legal evidence, that of the 'object', which means that they commonly acted as evidence for the indiscretions of their owners and patrons or served a more prosaic function, such as messengers delivering missives between two lovers, either potential or established. Another position occupied by the slaves and freedmen, but perhaps more challenging to determine from the sources, is that of the 'hidden' role. In essence, these roles involved those cases where it was feasible to conclude that slaves and freedmen could have been involved but where the relevant terms, *servus*, *servi*, *libertus* or *liberti* etc, were not mentioned by the jurists. The discussion revealed that this included references to adulterers, which would have included male slaves or freedmen, as they could have committed adultery with a married Roman woman, or, alternatively, when jurists mentioned those individuals who were accused of facilitating, or helping to arrange, illicit affairs, which could have included slaves passing messages between households or those with more seniority arranging access to certain buildings, for example (as discussed generally in Chapter Three). The final role discussed in this chapter was slaves and freedmen that occupied the 'subject' role in a relationship where these individuals were perceived to have participated more

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<sup>300</sup> See the Appendix for a detailed summary of the relevant passages.



fully in these affairs in contrast to their compatriots who served as messengers or evidence of any transgressions. This category included slaves who committed adultery themselves or freedmen who accused their patrons of committing adultery with their wives. None of these roles were mutually exclusive and it was not inconceivable for slaves or freedmen to occupy more than one role within the network of interactions that surrounded an adulterous relationship. This chapter has shown that any attempt, therefore, to understand the impact of the *lex Iulia de adulteriis coercendis* on the *familia* must incorporate the experiences of slave and freedmen in order to produce a more complete analysis. It has also shown that slaves and freedmen were not relegated to the ‘object’ role only in classical antiquity.

The final chapter in this thesis examined the involvement of slaves and freedmen in adulterous relationships from a literary perspective. It was important to include a literary perspective on the effect of this predominantly legal topic to, not only, attain a more nuanced, well-rounded perspective on the involvement of these servile and freed inhabitants of Rome, but to compare and contrast the opinions of the literary authors with the legal writers in order to discern if the trends and perspective apparent in the legal evidence were a peculiarity of that evidence or those jurists, or if they reflected the opinions and understanding of the wider Roman populace, which would, in turn, have been reflected, to a certain extent, in the works of the literary authors. Works from five authors were chosen to accomplish this in order to contemplate not only the difference in genre (‘legal’ vs. ‘literary’), but that would also, in turn, reflect a potential diversity in perspective and track any changes that may have occurred over time, as well as potential differences due to variances in social and political perspectives.<sup>301</sup> These literary authors were discussed in reverse chronological order, which means they were organised from the most ‘recent’ – Suetonius – to the oldest – Ovid. This allowed for the influence of the ideas and perspectives engendered by Augustus’ adultery legislation to be monitored during the changes in the social and political composition of the Empire. However, starting with a text produced roughly in the period in which most of the legal evidence used in the

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<sup>301</sup> Changes due to the passage of time were not factored into the legal analysis due to the nature of the evidence and how it was compiled.

previous chapter was composed allowed for the easier identification of *conceptual* similarities and differences irrespective of *chronological* differences. Methodologically, the analysis for this chapter was similar to the former but there were some differences. While the same analytical framework was applied, the method for gathering the evidence itself differed. The analysis was based on a careful selection of texts that revealed the interactions between slaves and freedmen and adultery. As already stated above, keywords were chosen in order to generate the largest possible sample size with the highest number of relevant examples. Only examples of adultery that included slaves and freedmen or mentions of slaves and freedmen in conjunction with adulterous affairs were used to form a basis for analysis as it was beyond the scope of this work to examine the nature of *all* interactions between the free, elite members of Roman society and the servile and freed population. Primarily, this chapter has shown that the inclusion of slaves and freedmen within meaningful discussions of adulterous relationships was not a peculiar quirk limited to the legal writing of the jurists. Rather, it was an established facet of Roman society that acknowledged the presence of these individuals within these types of relationships. Each author did not include the full panoply of roles, ‘object’, ‘hidden’, and ‘subject’, within their works, but the full spectrum of potential involvement was, plainly, reflected across the sample as a whole and this remains the salient point. This section was intended to demonstrate that the perspective seen in the legal sources, that slaves and freedmen were thoroughly integrated into the adulterous relationships of their owners and patrons and were equally affected by the adultery statute, was not unique to the legal sources and represented, rather, the ubiquitous nature of that perspective in Roman society. This new awareness of their roles entailed the recognition that the idea that Romans conceptualized slaves and slavery always as submissive – as foregrounded by the modern scholarship reviewed in Chapter One – is not borne out in this context. But this means, in turn, that scholars, too, must acknowledge that the Romans were able to think of their ‘troublesome property’ not just as property, and hence objects, but also as subjects – i.e. as drivers of an action. In other words, the roles of slaves, and (by both extension and particular examples) freed slaves showed, in some cases, a considerable amount of agency. And if the Romans could *conceptualize* such servile agency, it is more likely than not that it actually existed;

this, too, must have an impact on our view of slaves and ex-slaves, and Roman slavery more generally: there was more to it than merely being designated as property.

As we have now seen, Augustus' adultery statute was not a piece of legislation that only affected those members of the elite in Rome who were committing affairs, or helping to arrange them. Instead, it was a statute that affected *all* members of the *familia* – servile and freed as well as freeborn. With this new assessment of the *effect* of the *lex Iulia de adulteriis coercendis* in place, perhaps it is now also time to consider another evaluation of the *motivations* behind the introduction of this new law. As mentioned at the outset of this thesis, in modern scholarship, the most commonly accepted motivation for the promulgation of the adultery statute is one driven by moral considerations. Namely, that Augustus was driven to return Rome to its 'Golden Age' when it was stronger, a not inconsequential concern in light of the political upheavals surrounding his ascendancy to power; and that the adultery legislation, along with the other statutes that made up the 'social legislation', was designed to grow and strengthen Roman *familiae* and, in turn, the Roman Empire.<sup>302</sup> However, on the basis of the findings of this thesis, I would posit another, less immediately obvious, reason for the introduction of this statute – that of economics and the desire to preserve and maintain the wealth of the elite, especially from 'undeserving', illegitimate children.<sup>303</sup> This is the point at which the findings from Chapter Three come to fruition – if a full account is taken of the notable exemption from punishment of women who were not able to introduce a child into the line of succession. But this does mean that 'the rest', and all those potentially involved in the production of such a child, were the real focus

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<sup>302</sup> For authors who have addressed the moral elements and implications of Augustus' legislation and approach, see Bowditch (2009); Cohen (2008); Frank (1975) and Garnsey (1970) who both argued that the legislation was introduced to preserve the social and moral order; Gorrie (2004), who highlights the importance of the tradition of associating familial 'purity' and morality with a strong 'state' by emphasizing the similarities of Severus' treatment of Julia Domna as a paragon of virtue and the comparable treatment of Livia by Augustus; Hammond (1965); Ingleheart (2006); Williams (1963), who addressed the somewhat rocky road travelled by the emperor on his journey to enact his 'moral legislation'.

<sup>303</sup> The implications for the inheritance of property created by Augustus' 'social legislation' have been addressed by Wallace-Hadrill (2009), where he argues that these laws were intended to "stabilize the transmission [of property], and consequently the transmission of status, by advantaging the family man in the pattern of inheritance" (268). However, he specifically argues against the adultery legislation being used to reduce or eliminate the potential of illegitimate children inheriting (2009, 269), which is where this thesis picks up the argument.

of the statute. And if we now consider the real life context of many elite women, it is not implausible to postulate that a large number of persons surrounding these women on a daily basis were slaves and ex-slave members of the *familia* – many of whom, including liberated slaves, would have resided ‘under the same roof’.<sup>304</sup> Or, that the pool of ‘assistants’ – from messengers to doorkeepers – or indeed ‘illegal’ lovers, who were just as much witnesses to those women’s adulterous acts, was to a large extent made up of slaves and ex-slaves – explaining, in turn, their regular occurrence in the legal and literary discourse on the matter. It is not unreasonable to hypothesize that they were the single most important and plentiful group in the *familia*, acting in a range of ‘adulterous’ roles, implicated in adultery, and affected by the adultery legislation. If so, the modern scholarly focus of Roman social historians has been, quite clearly, distorted and distorting – making and ‘remaking’ the elite actors on the basis of a predetermined understanding of the types of individuals affected by the Augustan statute.

A preoccupation with maintaining the wealth of the Roman elite and preventing its dissemination into, potentially, underserving hands, a concern briefly acknowledged by Robinson, would provide a resolution to the following points.<sup>305</sup> The first is that the sources overwhelmingly concentrate on the indiscretions of the married Roman women but spend markedly less time on the adultery of the man – the moral indignation engendered by straying Roman husbands seemingly did not have the same impact on Roman society. One explanation for this is that it would only have been Roman wives who could have introduced an illegitimate child into the succession line of their husbands or the *paterfamilias*. This would have been a concern to the Romans as all children of a marriage would have been considered heirs unless a particular exception was made. A husband would have been rather more hard-pressed to present his wife with a baby and declare it hers. Such a preoccupation with the potential to introduce heirs with a claim on wealth, control of which could be taken away from the *familia* if their true parentage would have been brought to light, could explain the

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<sup>304</sup> The numbers involved in elite households are easily imaginable from the still large number of surviving tombstones of members of the *familia*, even if these represent only a fraction of all ‘family members’. See Hasegawa (2005) for a detailed study of this topic.

<sup>305</sup> Robinson (1995), 60.

somewhat peculiar extract from the *Digest* when Ulpian stated that a husband who was aware of his wife's adultery and allowed it to happen without bringing a charge would not have been prosecuted under the part of the statute that allowed for the punishment of those who facilitated affairs.<sup>306</sup> This extract alone stands out for its apparent rejection of the contemporary prevalence of the general abhorrence of adultery. One explanation for this is that, in this instance, the husband was not concerned as he knew his wife was no longer physically capable of introducing children into their marriage.

It should not come as a surprise that this insight has been gained on the basis of an open – and wide – understanding of the concept of *familia*: by including in this analysis the effect of the *lex Iulia* on the *familia* and its slave and freed members, a new perspective was opened that allowed those too often relegated to the object roles (only) by modern scholarship to come to the fore – and to change the picture, thus demonstrating once more their capacity to drive an action. Put differently – and in keeping with the underlying them of this thesis – the *familia* understood as property had been multi-tasking in its other, 'human' role as flesh-and-blood members of that other *familia*, understood as the assemblage of people under the *potestas* of the *paterfamilias* – whether free, freed or slave. Ultimately, however, what was at stake was the conservation of the seemingly more basic *familia*.

Engendered from this re-reading of the evidence for adultery are two salient points: the first is that it has forced us to re-think how the Romans approached and conceptualized adultery and the adultery statute. The second, and perhaps more pressing, point is how this new approach to the evidence will affect our understanding of their conceptualization of slaves and freedmen. Clearly, unlike many modern scholars, the Romans were perfectly able to envisage slaves and freedmen adopting more prominent and active roles, even within the context of what must have surely been some of the most intimate aspects of the lives of their masters and patrons – reminding us of the ubiquity of slavery and its successor statuses in the Roman world. Slaves and freedmen mattered, to the *paterfamilias* who was concerned to maintain

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<sup>306</sup> Dig 48.5.2.3 Ulpian : *Ceterum qui patitur uxorem suam delinquere matrimoniumque suum contemnit quique contaminationi non indignatur, poena adulterum non infligitur.*

full control over the *familia* – property explicitly included. And so, slaves and freedmen must matter to us, when we try to understand better Roman society.



## **APPENDIX**

Tabular display of Digest passages (48.5) addressing one or more set questions.





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What is adultery?	Who commits adultery?	Who cannot commit adultery?	What are the punishments?
<p>The law uses <i>stuprum</i> and adultery indiscriminately. Adultery is committed <b>with</b> a married woman; the name derived from <b>children conceived from another (alter)</b>. <i>Stuprum</i> is committed <b>against</b> a virgin or a widow (NB: <i>stuprum</i> in this case could refer to a desecration of potential, while adultery is ruining something that already exists?) (Dig 48.5.6.1)</p>	<p>Both male and females can commit adultery (Dig 48.5.2 pr.) <i>Materfamilias</i> refers to married women and widows. Women are liable under the statute if they make their house available for or accept something for <b>blatant stuprum</b> and if they become a brothel-keeper or an actor they can also be accused of and charged with adultery (Dig 48.5.1.1)(10)</p>	<p>As long as a marriage in which the adultery is said to have been committed endures, the woman cannot be charged with adultery and the male adulterer cannot be accused for the time being (Dig 48.5.12(11) 10) A woman who married a man suspected of adultery with her cannot be accused before he is convicted of adultery or this will make it too easy for first husbands to break up harmonious second marriages (Dig 48.5.12(11) 11)</p>	<p>A penalty is laid down by the statute for <i>lenocinium</i>, which the statute seems to define as when a husband who acquires anything from the adultery of his wife or keeps her after she has been caught in adultery (Dig 48.5.2.2)</p>
<p>The crime of adultery cannot be conflated with other crimes and can be charged separately (Dig 48.5.6.3)</p>	<p>A married woman can be charged with adultery committed during a former marriage (Dig 48.5.5) A widow can also be charged with adultery whether or not she has remarried or remained single (Dig 48.5.5) A woman who genuinely believes her husband has died and then marries again only to have her husband return cannot be prosecuted under the act; however, if the absence of her husband was an excuse to get married again, this is an offence against chastity and therefore she can be prosecuted (Dig 48.5.12(11) 12)</p>	<p>It is the height of injustice that a husband should demand of his wife a purity that he does not show himself (Dig 48.5.14 (13)5)</p>	<p>A father-in-law who begins and then ceases to continue a prosecution against his daughter-in-law for adultery because he wants to profit from her dowry is refused the action for the recovery of her dowry because he did not care about benefiting from a dowry to the defense of his own house (Dig 48.5.12 (11).3)</p>

<p><i>Stuprum</i> is committed by someone who keeps a freewoman for the sake of sexual relations not marriage, unless she is a concubine; Adultery is committed with a married woman; <i>stuprum</i> is committed with a widow, a virgin, or a boy (Dig 48.5.35(34) pr. -1)</p>	<p>The lex Iulia applies only to the free persons who commit adultery or <i>stuprum</i>. The lex Aquilia applies where female slaves are concerned. There is a praetorian action for the corruption of a slave. (There is an implication that adultery/<i>stuprum</i> with a female slave is actionable in certain circumstances but it doesn't specify what those circumstances there (Dig 48.5.6 pr)</p>	<p>A girl under 12 who has formally been given in marriage commits adultery and then, shortly after, reaches the age of 12, moves to her husband's house and lives as a wife cannot be accused under a husband's right to accuse for adultery committed before she was married (Dig 48.5.14(13) 8)</p>	<p>A man charged with adultery can be prosecuted within the 5 years following the date of the offense, even though the woman is dead (Dig 48.5.12(11) 4)</p>
	<p>A husband who is a son-in-power is not distinguished in this law from a son who is <i>sui iuris</i> (Dig 48.5.6.2) The words of the statute "let no one knowing and with malicious intent commit <i>stuprum</i> or adultery" applies to those who counsel <i>stuprum</i> or adultery or him who brings it about (Dig 48.5.13(12)</p>	<p>A married woman cannot be accused by anyone if the male adulterer was acquitted. If she ceases to be married, she can be accused for the statute does not protect anyone apart from a married woman for as long as she is married (Dig 48.5.20(19) 3)</p>	<p>A father is given the right to kill an adulterer along with a daughter whom he has in power; no other class of father can do this, including a father who is a son-in-power (Dig 48.5.21(20) A man does not have anyone in his own power if he does not have power over himself (Dig 48.5.22(21))</p>

		<p>A man who marries his student in contravention of the SC and who is a tutor or curator and married the girl before she was 26 y.o., a woman who was not already betrothed to him by her father, who was not destined as his wife, especially in her father's will (Dig 48.5.7)</p>			<p>The right to kill is granted to the father in his own house, even if his daughter doesn't live there, or in his son-in-law's house; the term 'house' means 'domicile' as in the <i>lex Cornelia</i> on <i>injuria</i>; the person who has the power to kill an adulterer is legally able to inflict rough treatment on him (Dig 48.5.23(22) 1-3)</p>
		<p>A soldier who has his niece as his concubine is liable for the penalty of adultery even though there is no marriage (Dig 48.5.12 (11).1)</p>			<p>The father, and not the husband, is allowed to kill the woman and any adulterer because the concern for family duty implicit for a father takes counsel for his children but a husband might make too hasty a decision (Dig 48.5.23(22) 4)</p>

		<p>A charge of adultery cannot be brought against a concubine by her man unless he brings the accusation as a third party, he cannot use the right of a husband, as long as she did not lose the status of a matron by becoming a concubine (Dig 48.5.14(13) pr) This law applies to all marriages, if the wife is party to a <i>ius civile</i> or a <i>ius gentium</i> (Dig 48.5.14(13) 1)</p>			<p>The words of the statute "shall have caught the adulterer in his daughter" do not appear to be superfluous; the intention was that this power be available to the father only if he should catch his daughter actually engaged in the act of adultery (Dig 48.5.24(23) pr)</p>
		<p>If a person below the age of majority commits adultery, he is liable under the <i>lex Iulia</i> because the ability to commit this type of crime begins from puberty (Dig 48.5.37(36))</p>			<p>A father can only kill his daughter in his own house or in his son-in-law's house because the legislator thought it was a more serious outrage for her to dare to bring an adulterer into the house of her father or husband (Dig 48.5.24(23) 2) If the daughter is caught in a house that the father owns but does not live in, she cannot be killed (Dig 48.5.24(23) 3)</p>

			The words of the statute "may kill his daughter without delay" mean that she must be killed with almost the one blow and same outset as the male adulterer and with the same level of anger; however, if the daughter escapes while the father is killing the male adulterer to be caught hours later by her father who is pursuing her this counts as "killed without delay" (Dig 48.5.24(23) 4)
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				A husband could kill his wife's adulterer if he catches the man in adultery with his wife in his own house if the adulterer was a pimp, previously an actor or performed on the stage as a dancer or singer, condemned in criminal proceedings and 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 (either sole or joint property) or if he is a slave (Dig 48.5.25(24) pr)

				A husband who kills any of the above must divorce his wife without delay (Dig 48.5.25(24) 1)
				In the fifth chapter of the <i>lex Iulia</i> , it states that a husband who has caught an adulterer in his wife, that he does not wish or is not permitted to kill, may lawfully and with immunity detain him for a continuous period not exceeding twenty hours, by day and night, for the purposes of testifying for the case (Dig 48.5.26(25) pr)

					The above should also apply to the father (Dig 48.5.26(25) 1) If a husband detains the adulterer somewhere other than his own house, he can detain him but the adulterer cannot be brought back; If the detainee escapes and is brought back, he can be brought back for the purpose of testifying to the matter (Dig 48.5.26(25) 2-4)
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Interrogation under torture should be applied to slaves in respect of an accusation of incest against their masters if and only if the incest were said to have been committed in the course of an adulterous relationship (Dig 48.5.40(39) 8)	

[illegible]

[illegible]

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Who gets punished?	Who initiates the punishment?	Who isn't punished under the statute?
A woman cannot be punished for adultery until the man she committed adultery with has had the action completed against him (Dig 48.5.2 pr)	It was not permissible to initiate an accusation of adultery and then drop it under the right of an husband (Dig 48.5.2.1)	A husband who permits his wife to offend and despises his marriage and who is not angry at the defilement is not punished under the adultery statute (Dig 48.5.2.3)
A man who accuses his wife of adultery can also be condemned for <i>lenocinium</i> by the same person who is hearing the case of adultery against the man's wife (Dig 48.5.2.6)	A husband can make an accusation against his wife during a criminal trial despite an accusation of <i>lenocinium</i> ; the <i>lenocinium</i> hampers the husband but does not excuse his wife (Dig 48.5.2.5)	A husband cannot be accused of <i>lenocinium</i> by a man who has been accused of adultery as a result of the husband's actions (Dig 48.5.2.4)

A man who makes his house (defined as any sort of residence) available for stuprum or adultery with the <i>materfamilias</i> of another of for homosexual relations, or makes a profit from the adultery of his wife can be charged as an adultery (Dig 48.5.9 (8) and 1)	The 'judge' of an adultery case can bring an accusation of <i>lenocinium</i> against the husband without a separate accuser (Dig 48.5.2.6)	A third party who raises the issue of <i>lenocinium</i> after he himself has been accused does not help his own case and this does not result in the husband being subject to a penalty (Dig 48.5.2.7)
A man is liable if he has made the house of a friend available for <i>stuprum</i> or adultery or made his own house available for the planning of adultery or <i>stuprum</i> ; additionally, if he has made it possible for <i>stuprum</i> to be committed out of doors or in the baths (Dig 48.5.10 (9)	If a husband and a father of a woman come to make an accusation of adultery at the same time, the woman's husband is given priority because it is believed that a husband had more anger and a 'greater grief' and that the adultery would be more easily proved to the judges (Dig 48.5.2.8)	A husband cannot accuse a his wife of adultery she committed before she was married to him, nor can he accuse a concubine he has subsequently married or a daughter-in-power whose father has subsequently consented to her union (Dig 48.5.14(13)6)

A woman who suffered through incest or who was not able to be a wife through an impediment, even though she wanted to, can only be accused of adultery by the right of a third party, not a husband (Dig 48.5.14(13) 4)		If others make an accusation after the husband and the father, only he 'who has cognizance of the matter' can determine the proper accuser (Dig 48.5.2.9)	A woman who is captured by the enemy and subjected to violence cannot be accused of adultery or <i>stuprum</i> (Dig 48.5.14(13) 6)
A woman who is captured by the enemy and is not subjected to violence can be accused of adultery by the husband's right (Dig 48.5.14(13)7)		Unless a father can prove a husband is infamous or is colluding with his wife, he is placed behind the husband in terms of right to accuse of adultery (Dig 48.5.3)	A woman who is repudiated by her husband and then taken back as if it were a new marriage cannot then be accused of adultery; neither can a woman be accused of <i>stuprum</i> be a man she later marries as the man has effectively endorsed the woman by marrying her (Dig 48.5.14(13) 9-10)

A man or woman who try to buy their way out of a charge of adultery with money or another agreement will be charged with <i>lenocinium</i> (Dig 48.5.15(14) pr)	If a husband makes an accusation, time does not run out for the father to make an accusation; until one of them makes an action, time runs against them both. If the husband is the first to accuse, time does not run against him who cannot accuse. The rule for husbands and fathers is that time ceases to run for the accuser against the part (either adulterer or adulteress) (Dig 48.5.3.pr)	A person cannot be charged with adultery if they are absent at the time on public business and working for the state (as long as he is not deliberately evading) (Dig 48.5.16(15)1-2)
If a husband arranges an adulterer to blacken his wife's name, both the husband and the wife are liable to a charge of adultery (Dig 48.5.15(14)1)	After the 60-day period allotted to husbands and fathers, third parties are allowed 4 months to bring an accusation (Dig 48.5.4.1)	A person, male or female, cannot be accused of a crime under the <i>lex Iulia</i> , including <i>stuprum</i> , <i>lenocinium</i> or adultery, after a five-year period has elapsed from the date of the offense (Dig 48.5.30(29) 5-7)

<p>A slave accused of adultery can be interrogated under torture by the demands of the accuser but this accuser must then convey "to him whom this matter pertains" twice the slave's worth after he has been valued (Dig 48.5.28(27) This includes a buyer, a pledge creditor, someone who has usufruct in a slave <b>and</b> the owner and all the owners if a slave is owned by more than one master (Dig 48.5.28(27) 1-4)</p>	<p>Even if a woman has been acquitted of a charge brought by a third party, the husband can still bring a new accusation if he can provide good reasons for being prevented from initiating the accusation (Dig 48.5.4.2)</p>	<p>Once a husband has chosen one of the adulterers to accuse, he cannot accuse the other until the earlier trial has finished because two persons cannot lawfully be accused simultaneously by the same man; however, the accuser can accuse along with either the male or female adulterer the person who provided his house or advised how to go about committing the offense (Dig 48.5.33(32) 1)</p>
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<p>A freeman could not be tortured as if he were a slave; if this happened he would be granted an <i>actio utilis</i> against the man who assailed him through calumny (Dig 48.5.28(27) 5)</p>	<p>If a woman accused of adultery is a widow, the accuser has the choice to accuse the adulterer or the adulteress first; if the woman is remarried, an accuser should complete the action against the male adulterer, then the woman (Dig 48.5.5)</p>	<p>Incest committed by way of an illicit marital union is customarily excused on the grounds of sex or age, or even if the person liable attempts to make good in good faith (Dig 48.5.39(38) 7) Women who are mistaken in law are not liable to a charge of incest, although they have no defense to an adultery they have committed (Dig 48.5.39(38)4)</p>
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<p>The statute states that the male or female slaves of a man or woman who is the subject of a criminal investigation, or the parent of either of them, should be put to the torture, if those slaves were given by the parents for the use of the accused (Dig 48.5.28(27) 6)</p> <p>Hadrian stated in a rescript that torture may also be applied to slaves outside the household (Dig 48.5.28(27) 6)</p>		<p>A son can charge someone under this law against the will of his father (Dig 48.5.6.2)</p>	<p>A woman who has suffered violence has not committed an offence under the <i>lex Iulia</i> on adulteries, even though she forbade her injury to be reported immediately to her husband for the sake of protecting her modesty (Dig 48.5.40(39) pr.)</p>
<p>A slave who was working for another person but not owned by them can still be tortured because the issue is one of employment, not ownership (Dig 48.5.28(27)8)</p> <p>A slave who is due freedom by <i>fidecommissum</i> or by disposition can still be tortured (Dig 48.5.28(27) 9)</p>	<p>A man who is in custody and who wishes to accuse a woman of adultery will not have the days he is in custody counted against him in regards to the <i>dies utiles</i> (Dig 48.5.12(11) 5)</p>		

After a slave has been tortured he is made a <i>publici servi</i> so that they can speak the truth without intimidation or fear of punishment if they are returned to their intruder; slaves of third parties are not confiscated because there is no-one they can gratify by lying (Dig 48.5.28(27) 11-14)	If a husband does not have the opportunity to approach a governor to lay a charge of adultery within the first 60 days, he is granted a further 4 months (Dig 48.5.12(11) 6)	
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<p>A husband who catches an adulterer in the act and lets him go is punished for <i>lenocinium</i> under the statute because he should have avenged himself on the man and vented his rage on his wife, who violated their marriage; this applies when a husband can't defend his ignorance or feign disbelief so the words of the statute are "[who] lets go an adulterer caught in his house" because the intention is to punish the husband who catches the adulterer in the actual wrongdoing(Dig 48.5.30(29) pr)</p>		<p>A husband can punish adultery in a wife who is a prostitute even though, were she a widow, <i>stuprum</i> might be committed with her without penalty (Dig 48.5.14 (13) 2)</p>	
<p>Whoever takes anything on account of his knowledge of a <i>stuprum</i> is liable to be punished but not if he lets an offender go without payment (Dig 48.5.30 (29) 2)</p>		<p>The lex Iulia on adulteries expressly forbids certain people from bringing an accusation of adultery, such as someone below the age of 25, unless a person is pursuing an injury to his own marriage (Dig 48.5.16(15)6)</p>	

<p>Anyone who makes a profit out of his wife's adultery is punished whether he accepts something once or on multiple occasions; a husband is seen to be making a profit if he accepted anything in return for allowing his wife to commit adultery in the manner of a whore; if, however, he allows his wife to go astray through negligence or carelessness or excessive forbearance or credulity he is not punished under the statute (Dig 48.5.30(29)3-4)</p>	<p>A natural father is not distinguished from an adoptive father (Dig 48.5.23(22) pr)</p>	
<p>A person who has forcibly committed <i>stuprum</i> on either a male or female can be accused at any time, because he is committing <i>vis publica</i> (Dig 48.5.30(29) 9)</p>	<p>A father does not have a special right of accusation over a daughter who is a widow (Dig 48.5.23(22) 1)</p>	

<p>If anyone states that his own slave has committed adultery with his wife, he should accuse the woman rather than torture the slave as a preliminary to action against her (Dig 48.5.34(33) pr)</p>		<p>It does not matter if the husband is <i>sui iuris</i> or a son-in-power (Dig 48.5.25(24) 2)</p>	
<p>If a man keeps with him [as in, does not dismiss from the family], an adulterer who is a son caught with his stepmother or a freedman or slave with his wife, this man is punished under the spirit of the law, even though by the letter of the law, the adulterer is not covered by the statute (Dig 48.5.34(33) 1)</p>		<p>Only those who can bring an accusation under a father's or husband's right have the right to kill (Dig 48.5.25(24) 3)</p>	

<p>If a wife accepts a bribe for the adultery of her husband, she is liable under the <i>lex Iulia</i> as if she were an adulteress (Dig 48.5.34(33) 2)</p>		<p>As long as her marriage lasts, a wife cannot be accused of adultery by those persons, apart from her husband, who are allowed to make an accusation; no third party should upset and disturb a wife approved by her husband and a peaceful marriage unless the husband first be accused of <i>lenocinium</i> ; it is ok for an accusation abandoned by a husband to be revived another (Dig 48.5.27(26) pr-1)</p>	
<p>If adultery is committed along with incest, the woman will also suffer a similar punishment (Dig 48.5.39(38) A woman will only face a charge of incest if she has committed incest forbidden by the <i>ius gentium</i> ; if it is the observance of the <i>ius civile</i> in question, she is not charged with incest (Dig 48.5.39(38) 2)</p>		<p>A son-in-power can, without the consent of his father, bring criminal proceedings against his wife for adultery because he is pursuing satisfaction for his own personal distress (Dig 48.5.38(37)</p>	

<p>If the person who has acquired the <i>ius anulorum</i> commits adultery with his patron's wife or with his patroness, or with the wife of the father, or the mother, or with the wife of the son, or the daughter of his former patron he is liable to the punishment of freedmen because, in the statute, it was agreed for the preservation of marriages that these people be treated as freedmen and that it wasn't fair that patrons should be disadvantaged because of the benefit of the <i>ius anulorum</i> ) (Dig 48.5.43(42)</p>		<p>A freedman is not automatically allowed to disparage his patron's reputation but he is allowed to make an accusation of adultery as if he has suffered a very serious <i>injuria</i>; however, he is not allowed to kill him in the same way he is not allowed to seriously damage his patron's reputation (Dig 48.5.39(38) 9)</p>	
<p>On the death of a mother-in-law, her son-in-law may be charged with incest, as an adulterer can be after the death of a woman (Dig 48.5.45(44)</p>			

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	<p>A husband who is a son-in-power is not distinguished in this law from a son who is <i>sui iuris</i> (Dig 48.5.6.2)</p>	<p>A married woman cannot be accused by anyone if the male adulterer was acquitted. If she ceases to be married, she can be accused for the statute does not protect anyone apart from a married woman for as long as she is married (Dig 48.5.20(19) 3)</p>	<p><b>A man does not have anyone in his own power if he does not have power over himself (Dig 48.5.22(21))</b></p>

		<p>A man who marries his student in contravention of the SC and who is a tutor or curator and married the girl before she was 26 y.o., a woman who was not already betrothed to him by her father, who was not destined as his wife, especially in her father's will (Dig 48.5.7)</p>			<p>The right to kill is granted to the father in his own house, even if his daughter doesn't live there, or in his son-in-law's house; the term 'house' means 'domicile' as in the <i>lex Cornelia</i> on <i>injuria</i>; the person who has the power to kill an adulterer is legally able to inflict rough treatment on him (Dig 48.5.23(22) 1-3)</p>
		<p>A soldier who has his niece as his concubine is liable for the penalty of adultery even though there is no marriage (Dig 48.5.12 (11).1)</p>			<p>The father, and not the husband, is allowed to kill the woman and any adulterer because the concern for family duty implicit for a father takes counsel for his children but a husband might make too hasty a decision (Dig 48.5.23(22) 4)</p>



		<p>A charge of adultery cannot be brought against a concubine by her man unless he brings the accusation as a third party, he cannot use the right of a husband, as long as she did not lose the status of a matron by becoming a concubine (Dig 48.5.14(13) pr) This law applies to all marriages, if the wife is party to a <i>ius civile</i> or a <i>ius gentium</i> (Dig 48.5.14(13) 1) The words of the statute "let no one knowing and with malicious intent commit stuprum or adultery" applies to those who counsel stuprum or adultery or him who brings it about (Dig 48.5.13(12))</p>			<p>The words of the statute "shall have caught the adulterer in his daughter" do not appear to be superfluous; the intention was that this power be available to the father only if he should catch his daughter actually engaged in the act of adultery (Dig 48.5.24(23) pr)</p>
		<p>If a person below the age of majority commits adultery, he is liable under the <i>lex Iulia</i> because the ability to commit this type of crime begins from puberty (Dig 48.5.37(36))</p>			<p>A father can only kill his daughter in his own house or in his son-in-law's house because the legislator thought it was a more serious outrage for her to dare to bring an adulterer into the house of her father or husband (Dig 48.5.24(23) 2) If the daughter is caught in a house that the father owns but does not live in, she</p>

		Both male and females can commit adultery (Dig 48.5.2 pr.)			The words of the statute "may kill his daughter without delay" mean that she must be killed with almost the one blow and same outset as the male adulterer and with the same level of anger; however, if the daughter escapes while the father is killing the male adulterer to be caught hours later by her father who is pursuing her this counts as "killed without delay" (Dig 48.5.24(23) 4)
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				<b>A husband could kill his wife's adulterer if he catches the man in adultery with his wife in his own house if the adulterer was a pimp, previously an actor or performed on the stage as a dancer or singer, condemned in criminal proceedings and 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 (either sole or joint property) or if he is a slave (Dig 48.5.25(24) pr)</b>

A husband who kills any of the above must divorce his wife without delay (Dig 48.5.25(24) 1)

				<p>In the fifth chapter of the <i>lex Iulia</i> , it states that a husband who has caught an adulterer in his wife, that he does not wish or is not permitted to kill, may lawfully and with immunity detain him for a continuous period not exceeding twenty hours, by day and night, for the purposes of testifying for the case (Dig 48.5.26(25) pr)</p>
				<p>The above should also apply to the father (Dig 48.5.26(25) 1) If a husband detains the adulterer somewhere other than his own house, he can detain him but the adulterer cannot be brought back; If the detainee escapes and is brought back, he can be brought back for the purpose of testifying to the matter (Dig 48.5.26(25) 2)</p>

Interrogation under torture should be applied to slaves in respect of an accusation of incest against their masters if and only if the incest were said to have been committed in the course of an adulterous relationship (Dig 48.5.40(39) 8)	

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Who gets punished?	Who initiates the punishment?	Who isn't punished under the statute?
A woman cannot be punished for adultery until the man she committed adultery with has had the action completed against him (Dig 48.5.2 pr)	It was not permissible to initiate an accusation of adultery and then drop it under the right of an husband (Dig 48.5.2.1)	A husband who permits his wife to offend and despises his marriage and who is not angry at the defilement is not punished under the adultery statute (Dig 48.5.2.3)
A man who accuses his wife of adultery can also be condemned for <i>lenocinium</i> by the same person who is hearing the case of adultery against the man's wife (Dig 48.5.2.6)	A husband can make an accusation against his wife during a criminal trial despite an accusation of <i>lenocinium</i> ; the <i>lenocinium</i> hampers the husband but does not excuse his wife (Dig 48.5.2.5)	A husband cannot be accused of <i>lenocinium</i> by a man who has been accused of adultery as a result of the husband's actions (Dig 48.5.2.4)

A man who makes his house (defined as any sort of residence) available for stuprum or adultery with the <i>materfamilias</i> of another of for homosexual relations, or makes a profit from the adultery of his wife can be charged as an adultery (Dig 48.5.9 (8) and 1)	The 'judge' of an adultery case can bring an accusation of <i>lenocinium</i> against the husband without a separate accuser (Dig 48.5.2.6)	A third party who raises the issue of <i>lenocinium</i> after he himself has been accused does not help his own case and this does not result in the husband being subject to a penalty (Dig 48.5.2.7)
A man is liable if he has made the house of a friend available for <i>stuprum</i> or adultery or made his own house available for the planning of adultery or <i>stuprum</i> ; additionally, if he has made it possible for <i>stuprum</i> to be committed out of doors or in the baths (Dig 48.5.10 (9))	If a husband and a father of a woman come to make an accusation of adultery at the same time, the woman's husband is given priority because it is believed that a husband had more anger and a 'greater grief' and that the adultery would be more easily proved to the judges (Dig 48.5.2.8)	A husband cannot accuse a his wife of adultery she committed before she was married to him, nor can he accuse a concubine he has subsequently married or a daughter-in-power whose father has subsequently consented to her union (Dig 48.5.14(13)6)

A woman who suffered through incest or who was not able to be a wife through an impediment, even though she wanted to, can only be accused of adultery by the right of a third party, not a husband (Dig 48.5.14(13) 4)		If others make an accusation after the husband and the father, only he 'who has cognizance of the matter' can determine the proper accuser (Dig 48.5.2.9)		A woman who is captured by the enemy and subjected to violence cannot be accused of adultery or <i>stuprum</i> (Dig 48.5.14(13) 6)
A woman who is captured by the enemy and is not subjected to violence can be accused of adultery by the husband's right (Dig 48.5.14(13)7)		Unless a father can prove a husband is infamous or is colluding with his wife, he is placed behind the husband in terms of right to accuse of adultery (Dig 48.5.3)		A woman who is repudiated by her husband and then taken back as if it were a new marriage cannot then be accused of adultery; neither can a woman be accused of <i>stuprum</i> be a man she later marries as the man has effectively endorsed the woman by marrying her (Dig 48.5.14(13) 9-10)

A man or woman who try to buy their way out of a charge of adultery with money or another agreement will be charged with <i>lenocinium</i> (Dig 48.5.15(14) pr)	If a husband makes an accusation, time does not run out for the father to make an accusation; until one of them makes an action, time runs against them both. If the husband is the first to accuse, time does not run against him who cannot accuse. The rule for husbands and fathers is that time ceases to run for the accuser against the part (either adulterer or	A person cannot be charged with adultery if they are absent at the time on public business and working for the state (as long as he is not deliberately evading) (Dig 48.5.16(15)1-2)
If a husband arranges an adulterer to blacken his wife's name, both the husband and the wife are liable to a charge of adultery (Dig 48.5.15(14)1)	After the 60-day period allotted to husbands and fathers, third parties are allowed 4 months to bring an accusation (Dig 48.5.4.1)	A person, male or female, cannot be accused of a crime under the <i>lex Iulia</i> , including <i>stuprum</i> , <i>lenocinium</i> or adultery, after a five-year period has elapsed from the date of the offense (Dig 48.5.30(29) 5-7)

<p>A slave accused of adultery can be interrogated under torture by the demands of the accuser but this accuser must then convey "to him whom this matter pertains" twice the slave's worth after he has been valued (Dig 48.5.28(27) This includes a buyer, a pledge creditor, someone who has usufruct in a slave and the owner and all the owners if a slave is owned by more</p>	<p>Even if a woman has been acquitted of a charge brought by a third party, the husband can still bring a new accusation if he can provide good reasons for being prevented from initiating the accusation (Dig 48.5.4.2)</p>	<p>Once a husband has chosen one of the adulterers to accuse, he cannot accuse the other until the earlier trial has finished because two persons cannot lawfully be accused simultaneously by the same man; however, the accuser can accuse along with either the male or female adulterer the person who provided his house or advised how to go about committing the offense (Dig 48.5.33(32) 1)</p>
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<p><b>A free man (liber homo) could not be tortured as if he were a slave; if this happened he would be granted an <i>actio utilis</i> against the man who assailed him through calumny (Dig 48.5.28(27) 5)</b></p>	<p>If a woman accused of adultery is a widow, the accuser has the choice to accuse the adulterer or the adulteress first; if the woman is remarried, an accuser should complete the action against the male adulterer, then the woman (Dig 48.5.5)</p>	<p>Incest committed by way of an illicit marital union is customarily excused on the grounds of sex or age, or even if the person liable attempts to make good in good faith (Dig 48.5.39(38) 7) Women who are mistaken in law are not liable to a charge of incest, although they have no defense to an adultery they have committed (Dig 48.5.39(38)4)</p>
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<p>The statute states that the male or female slaves of a man or woman who is the subject of a criminal investigation, or the parent of either of them, should be put to the torture, if those slaves were given by the parents for the use of the accused (Dig 48.5.28(27) 6) Hadrian stated in a rescript that torture may also be applied to slaves outside the household (Dig 48.5.28(27) 6)</p>		<p>A son can charge someone under this law against the will of his father (Dig 48.5.6.2)</p>	<p>A woman who has suffered violence has not committed an offence under the <i>lex Iulia</i> on adulteries, even though she forbade her injury to be reported immediately to her husband for the sake of protecting her modesty (Dig 48.5.40(39) pr.)</p>
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<p><b>A slave who was working for another person but not owned by them can still be tortured because the issue is one of employment, not ownership (Dig 48.5.28(27)8) A slave who is due freedom by <i>fidecommisum</i> or by disposition can still be tortured (Dig 48.5.28(27) 9)</b></p>	<p>A man who is in custody and who wishes to accuse a woman of adultery will not have the days he is in custody counted against him in regards to the <i>dies utiles</i> (Dig 48.5.12(11) 5)</p>	
<p>After a slave has been tortured he is made a <i>publici servi</i> so that they can speak the truth without intimidation or fear of punishment if they are returned to their intruder; slaves of third parties are not confiscated because there is no-one they can gratify by lying (Dig 48.5.28(27) 11)</p>	<p>If a husband does not have the opportunity to approach a governor to lay a charge of adultery within the first 60 days, he is granted a further 4 months (Dig 48.5.12(11) 6)</p>	

<p>A husband who catches an adulterer in the act and lets him go is punished for <i>lenocinium</i> under the statute because he should have avenged himself on the man and vented his rage on his wife, who violated their marriage; this applies when a husband can't defend his ignorance or feign disbelief so the words of the statute are "[who] lets go an adulterer caught in his house" because the intention is to punish the husband who catches the adulterer in the actual</p>	<p>A husband can punish adultery in a wife who is a prostitute even though, were she a widow, <i>stuprum</i> might be committed with her without penalty (Dig 48.5.14 (13) 2)</p>	
<p>Whoever takes anything on account of his knowledge of a <i>stuprum</i> is liable to be punished but not if he lets an offender go without payment (Dig 48.5.30 (29) 2)</p>	<p>The lex Iulia on adulteries expressly forbids certain people from bringing an accusation of adultery, such as someone below the age of 25, unless a person is pursuing an injury to his own marriage (Dig 48.5.16(15)6)</p>	

Anyone who makes a profit out of his wife's adultery is punished whether he accepts something once or on multiple occasions; a husband is seen to be making a profit if he accepted anything in return for allowing his wife to commit adultery in the manner of a whore; if, however, he allows his wife to go astray through negligence or carelessness or excessive forbearance or credulity he is not punished under the statute (Dig 48.5.30(29)3-4)	A natural father is not distinguished from an adoptive father (Dig 48.5.23(22) pr)	
A person who has forcibly committed <i>stuprum</i> on either a male or female can be accused at any time, because he is committing <i>vis publica</i> (Dig 48.5.30(29) 9)	A father does not have a special right of accusation over a daughter who is a widow (Dig 48.5.23(22) 1)	

	<b>If anyone states that his own slave has committed adultery with his wife, he should accuse the woman rather than torture the slave as a preliminary to action against her (Dig 48.5.34(33) pr)</b>		It does not matter if the husband is <i>sui iuris</i> or a son-in-power (Dig 48.5.25(24) 2)	
	<b>If a man keeps with him [as in, does not dismiss from the family], an adulterer who is a son caught with his stepmother or a freedman or slave with his wife, this man is punished under the spirit of the law, even though by the letter of the law, the adulterer is not</b>		Only those who can bring an accusation under a father's or husband's right have the right to kill (Dig 48.5.25(24) 3)	

<p>If a wife accepts a bribe for the adultery of her husband, she is liable under the <i>lex Iulia</i> as if she were an adulteress (Dig 48.5.34(33) 2)</p>	<p>As long as her marriage lasts, a wife cannot be accused of adultery by those persons, apart from her husband, who are allowed to make an accusation; no third party should upset and disturb a wife approved by her husband and a peaceful marriage unless the husband first be accused of <i>lenocinium</i> ; it is ok for an accusation abandoned by a husband to be revived another (Dig 48.5.27(26) pr-</p>	
<p>If adultery is committed along with incest, the woman will also suffer a similar punishment (Dig 48.5.39(38) A woman will only face a charge of incest if she has committed incest forbidden by the <i>ius gentium</i> ; if it is the observance of the <i>ius civile</i> in question, she is not charged with incest.</p>	<p>A son-in-power can, without the consent of his father, bring criminal proceedings against his wife for adultery because he is pursuing satisfaction for his own personal distress (Dig 48.5.38(37)</p>	

<p>If the person who has acquired the <i>ius anulorum</i> commits adultery with his patron's wife or with his patroness, or with the wife of the father, or the mother, or with the wife of the son, or the daughter of his former patron he is liable to the punishment of freedmen because, in the statute, it was agreed for the preservation of marriages that these people be treated as freedmen and that it wasn't fair that patrons should be disadvantaged because of the benefit</p>	<p><b>A freedman is not automatically allowed to disparage his patron's reputation but he is allowed to make an accusation of adultery as if he has suffered a very serious <i>injuria</i>; however, he is not allowed to kill him in the same way he is ot allowed to seriously damage his patron's reputation (Dig 48.5.39(38) 9)</b></p>	
<p>On the death of a mother-in-law, her son-in-law may be charged with incest, as an adulterer can be after the death of a woman (Dig 48.5.45(44))</p>		



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