

STUDIES IN THE MARRIAGE LEGISLATION  
OF  
AUGUSTUS

A Thesis

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by

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## PREFACE

There is a rich tradition of scholarship on the Augustan marriage legislation. Much of it has focussed on reconstructing the terms of the laws, the text of which has not been preserved. Knowledge of their provisions has been developed by painstaking collection and interpretation of references to and occasional quotations from the legislation, which are widely scattered through the literary works of contemporary and later writers, through papyrological sources, and through a variety of legal sources such as the commentaries, textbooks and monographs of jurists, the excerpts of jurists' works and imperial rescripts collected in the Digesta, and the codes of Justinian and Theodosius. Perspicacity and perseverance have largely overcome the problems of corrupt texts, lacunae, changes in phraseology and the meaning of words in the five centuries from the Augustan legislation to the codification of Justinian, and the adulteration of the original provisions of the laws by subsequent amendments and interpolations. The work of several scholars is particularly noteworthy. The first major work of the modern period which deals with the Augustan legislation is the sixteenth-century compilation of sources of Roman civil law by Gothofredus, the Fontes Iuris Civilis of 1563. In the eighteenth century two notable

works of reconstruction were published : Heineccius, Ad legem Iuliam et Papiam Poppaeam (1726), and Hoffmann, Ad legem Iuliam de adulteriis coercendis (1752). Heineccius' study was amended and supplemented by Van Hall in Instituator disputatio de Heineccii meritis in restitutionem legis Papiae Poppaeae (1828). The work of reconstruction continued in the late nineteenth century. P. Jörs' doctoral dissertation of 1882, Ueber das Verhältnis der lex Iulia de maritandis ordinibus zur lex Papia Poppaea, is still of considerable importance for any discussion of the legal and historical relationship between the two enactments. Twelve years later he brought forth Die Ehegesetze des Augustus. Combining careful study of the legal sources with a thorough and erudite examination of the literary evidence, it remains, despite its brevity, perhaps the most perspicacious and valuable treatment of the Augustan laws. More recently, two works have significantly added to our knowledge of their provisions. S. Riccobono's Acta Divi Augusti (1945) contains the most complete compilation to date of the legal and historical evidence. Twentieth-century discoveries of papyrological sources of evidence are discussed and incorporated in the body of scholarship by P. Csillag in The Augustan Laws on Family Relations (1976). Thanks to the contributions of a series of able scholars it has not been necessary in the preparation of this thesis to reconstruct the legislation's terms or to establish the principal texts.

Other scholars explore the historical and social

significance of the marriage laws. Th. Mommsen examines their political and constitutional implications in Römisches Staatsrecht (3rd ed., 1887-8) and their effects on Roman penal law in Römisches Strafrecht (1899). H. Last, in "The Social Policy of Augustus" in the Cambridge Ancient History (1934), discusses the relationship between the marriage laws and Augustus' legislation on luxury and the manumission of slaves, and examines the place of moral and social reform in the political and constitutional settlement of the Augustan principate. J.H. Fichter's doctoral dissertation, The Sociological Implications of the lex Iulia et Papia Poppaea : An Analysis of a Legislative Technique of Social Control (Harvard, 1947), considers the laws' effects on family relationships and on the legal and social status of, among others, senators, freed persons and concubines. My thesis uses the groundwork laid by these and other scholars as a starting point for further study.

There were two major Augustan enactments on marriage and childbearing, the lex Iulia de maritandis ordinibus of 18 B.C. and the lex Papia Poppaea of A.D.9. They established rewards for parenthood and penalties for celibacy and childlessness (orbitas). Scholars have long been divided on the question of which law first penalized orbitas, primarily because the jurists and legal commentators regularly fail to distinguish between the terms of the two laws. The first chapter of the thesis offers an answer based largely on a study of the evidence of the historian Cassius Dio and

on an examination of the historical context of the passage of the lex Papia Poppaea.

From a wide range of literary and legal sources the second chapter brings together evidence of the contemporary response to the marriage legislation. It examines the level of support for and opposition to the laws, and discusses some of the more common methods which were used to evade their provisions.

The trend of recent scholarship has been to emphasize that the laws were designed to raise the birth-rate and to reform sexual morality. On the basis of an examination of the terms of the legislation and of references and allusions to it in the literature of the Augustan principate, I argue in the third chapter that Augustus' goals were more complex.

The fourth chapter studies the legislation's effects on the rights, independence and status of women, a subject which has not yet received comprehensive treatment. It brings together the pertinent evidence, primarily from legal sources such as Gaius, Institutiones, Paulus, Sententiae, Ulpianus, Regulae, the Codex Iustinianus and the Digesta.

An appendix reconsiders the question of whether or not Augustus held a cura legum et morum (curatorship of laws and morals).

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TABLE OF ABBREVIATIONS

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<u>AJP</u>	<u>American Journal of Philology</u>
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## INTRODUCTION

The defeat of Marcus Antonius and Cleopatra at Actium in 31 B.C. ushered in a new age - peace and the principate.<sup>1</sup> The triumph of the Caesarian faction marked an end to the political and social disorder which had begun in 133 B.C. with Tiberius Gracchus' proposals for land redistribution. The first century B.C. was characterized largely by struggle between optimates and populares for political preëminence. The "best men" protected their vested interests by repression and coercion; the "men of the people", spurred on by individualism and self-interest, used methods which were no less violent. Sulla stood for order and stability - he captured Rome by force and proscribed forty senators and 1600 equestrians. Claiming that he was championing the rights and liberties of the Roman people, Julius Caesar invaded Italy. Brutus, the assassin of Caesar, was the defender of republicanism and libertas;<sup>2</sup> yet he bled dry Salamis, Macedonia and Lycia. The second triumvirate brought the arbitrary brutality of Marcus Lepidus, Antonius and Octavianus, who could later claim with pride that he had raised a private army when he was 19.<sup>3</sup> In 36 B.C., Lepidus fell from power and in 35 Sextus Pompeius was killed; in 30, Antonius in defeat committed suicide.

Octavianus alone was left to rule the Roman world.

According to his own words he returned the res publica to the senate and people of Rome in 28 and 27 B.C.<sup>4</sup> A grateful senate, he records, rewarded him with the name Augustus.<sup>5</sup> Many scholars view the political settlement of these years as a carefully contrived sham - monarchy cloaked in republican institutions.<sup>6</sup> However few of Augustus' contemporaries and probably only those who had lost most in the turbulence of the civil wars will have been inclined to challenge his claim. The pax Augusta offered a welcome respite from the violence and economic dislocation precipitated by the narrow-minded politicking of ambitious men.

But for men like Livy and Horace the restoration of the Roman state was not complete without a reaffirmation of traditional Roman values, customs and religious beliefs. They viewed the political and social unrest of the late Republic as a consequence, at least in part, of neglect of the gods,<sup>7</sup> instability in the family<sup>8</sup> and moral degeneration.<sup>9</sup> Augustus seems to have shared their sentiments. He vigorously encouraged worship of the traditional state gods.<sup>10</sup> The antiquated Arval Brethren were reconstituted,<sup>11</sup> Egyptian rites in Rome curtailed<sup>12</sup> and no less than eighty-two temples restored by the princeps in 28 B.C. alone.<sup>13</sup> He enacted legislation to curb luxury (lex sumptuaria)<sup>14</sup> and three laws on marriage and morality : the lex Iulia de maritandis ordinibus

(the Julian law on the marriage of the orders), the lex Iulia de adulteriis coercendis (the Julian law on restricting adulteries), and the lex Papia Poppaea, which took its name from the consules suffecti of A.D.9, Marcus Papius Mutilus and Quintus Poppaeus Secundus.<sup>15</sup> The legislation strongly encouraged marriage and childbearing, and prescribed a code of moral behavior which closely reflected traditional Roman values.

The most likely date for the passage of the lex Iulia de maritandis ordinibus is 18 B.C. Cassius Dio places it in his account of that year.<sup>16</sup> His testimony is corroborated by a senatorial decree and by a poem of Horace. The senatus consultum de ludis saecularibus of May 23, 17 B.C. refers to those qui lege de marita[ndis ordinibus tenentur].<sup>17</sup> Horace, in celebrating the secular games of 17 B.C., mentions a law on marriage (lex marita) which promoted childbearing.<sup>18</sup> We can be less certain about the date of the lex Iulia de adulteriis coercendis. There may be allusions to the law in Book IV of Propertius' Elegies<sup>19</sup> and in Book IV of Horace's Odes,<sup>20</sup> works which were completed around 16 and 13 B.C. respectively.<sup>21</sup> It can be inferred from Dio that the law was passed at the same time as the lex Iulia de maritandis ordinibus.<sup>22</sup> In discussing the recalcitrance of some senators after the lex Iulia de maritandis ordinibus was enacted, he records that Augustus told them that stringent regulations had been laid down to curb the ungovernableness of women, probably a reference

to the lex Iulia de adulteriis coercendis.<sup>23</sup> The lex Papia Poppaea, which modified the lex Iulia de maritandis ordinibus, is datable from the names of the consuls who passed it.

Augustus' legislation represents a sharp increase in the role of the state in promoting marriage and procreation and in regulating moral conduct. Traditionally, encouraging marriage and childbearing was the duty of the censors, who occasionally levied small fines on unmarried men.<sup>24</sup> The Augustan legislation introduced a pervasive system of rewards for parents and harsh penalties for the unmarried (caelibes) and for the childless (orbi). Before 18 B.C., the family was largely responsible for maintaining standards of sexual morality. For example, an adulterous woman was usually punished by banishment beyond two hundred miles from Rome on order of a tribunal composed of her husband and male relatives.<sup>25</sup> In place of the family's jurisdiction Augustus established a standing public court (quaestio perpetua).

Despite their comprehensive nature the laws do not seem to have been successful, at least in the long term, in curbing adultery and raising the birth-rate. Tacitus (c.A.D.56 - post A.D.112/13) remarks on the magna adulteria of his age,<sup>26</sup> and Juvenal (c.A.D.55 - post 127), in describing the prevalence of adultery, asks, ubi nunc lex Iulia dormis?<sup>27</sup> Of the lex Papia Poppaea Tacitus writes : nec ideo coniugia et educationes liberum frequentabantur praevalida orbitate.<sup>28</sup>

The Christian apologist Tertullian (c.A.D.160 - c.240) labels the laws on marriage and childbearing vanissimae.<sup>29</sup>

Nevertheless, the legislation survived, at least in part, until the sixth century A.D. Its longevity was perhaps due to the revenue which it generated for the state - property bequeathed to the unmarried and the childless in contravention of the laws could be seized by the public treasury.<sup>30</sup> The laws were revised several times, even as early as A.D.20. The emperor Tiberius established a committee to redraft the provisions of the lex Papia Poppaea which had given rise to the spread of delatores (informers), who searched out and prosecuted the illegal acceptance of bequests by caelibes and orbi.<sup>31</sup> The senatus consultum Pegasianum of A.D.73 regulated the operation of fideicommissa (trusts) by which the unmarried and the childless tried to evade the restrictions on their rights of inheritance.<sup>32</sup> The senatus consultum Tertullianum of the reign of Hadrian (ruled A.D.117-38) enhanced the inheritance rights of women with children.<sup>33</sup> A rescript of Marcus Aurelius (ruled A.D.161-80) reiterated the Augustan prohibition on marriage between persons of senatorial rank and freed persons, actors and actresses.<sup>34</sup> For the laws, the rise of Christianity marked the beginning of the end. Celibacy was a virtue in Christian teaching and consequently the penalties for the unmarried and the childless were viewed with increasing hostility.<sup>35</sup> In A.D.410, the emperors Honorius and Arcadius granted the ius trium liberorum (the right to the awards

accruing to the parents of three children) to all inhabitants of the empire.<sup>36</sup> The Augustan prohibition which Marcus Aurelius had tried to shore up was revoked in A.D. 522 by Justin I on behalf of his nephew Justinian, who wished to marry the actress Theodora.<sup>37</sup> Twelve years later Justinian abolished the penalties for celibacy and childlessness.<sup>38</sup>

## CHAPTER ONE

### The Relationship between the lex Iulia de maritandis ordinibus and the lex Papia Poppaea

Augustus legislated rewards for the parents of large families and penalties for the unmarried (caelibes) and the married but childless (orbi). Legal historians from Mommsen to Csillag have explored many of the political, constitutional and social implications of the complex system of incentives and disabilities. There has been little agreement on the relationship between the penalties of the lex Iulia de maritalibus ordinibus and those of the lex Papia Poppaea; scholars are divided on the questions of which of these enactments first punished orbitas (childlessness), and whether the lex Papia Poppaea moderated or exacerbated the penalties which had been established in 18 B.C. Some argue that the lex Iulia de maritalibus ordinibus punished both caelibes and orbi and that the lex Papia Poppaea mitigated the penalties for childlessness;<sup>1</sup> others that orbitas was not penalized until the passage of the lex Papia Poppaea in A.D.9.<sup>2</sup> P. Jörs, in Die Ehegesetze des Augustus, hypothesizes that the lex Iulia de maritalibus ordinibus punished only caelibatus (celibacy) and that penalties for orbitas were added by a law passed in A.D.4, which, for want of a

name, he designates the lex caducaria. This law, he argues, was then moderated by the lex Papia Poppaea.<sup>3</sup>

Our knowledge of ancient historiography and of the last years of the Augustan principate arising from the philological and historical studies of scholars such as F. Millar, A Study of Cassius Dio, and R. Syme, The Roman Revolution and History in Ovid, warrants a fresh look at the legal sources and, particularly, at the literary sources and the historical background of the lex Papia Poppaea.

### The Legal Sources

The text of the laws has not been preserved; our knowledge of them is based almost solely on the commentaries and opinions of jurists writing long after their promulgation and on the judicial decisions of subsequent emperors. Much of the legal evidence is indirect; for example, commentaries on the civil law of dowry<sup>4</sup> or on the judicial procedure for adultery<sup>5</sup> contain scattered references. Pieced together, they provide a composite but far from complete picture of the legislation. A further difficulty is that the jurists regularly fail to distinguish between the lex Iulia de maritandis ordinibus and the lex Papia Poppaea,<sup>6</sup> and treat them as a single piece of legislation: Gaius<sup>7</sup> writes of the "lex Iulia et Papia Poppaea"; Ulpianus<sup>8</sup> of the "lex Iulia Papiave"; the Codex Iustinianus<sup>9</sup> designates the laws "lex Iulia miscella", and they are often described simply as "leges".<sup>10</sup> The jurists are sometimes confused; for example

Celsus attributes to the lex Papia Poppaea<sup>11</sup> the ban on marriage between persons of senatorial rank and freed persons which was implemented by the lex Iulia de maritandis ordinibus.<sup>12</sup>

Gaius, Institutiones, 2.286 is frequently brought forward as proof that the lex Papia Poppaea was the first to introduce penalties for orbitas; Csillag contends that it "may be accepted as . . . settling the dispute".<sup>13</sup> According to Gaius, caelibes . . . per legem Iuliam hereditates legataque capere prohibentur.<sup>14</sup> Similarly, orbi . . . per legem Papiam ob id, quod liberos non habent, dimidias partes hereditatum legatorumque perdunt.<sup>15</sup> Csillag infers that the lex Papia Poppaea added inheritance disabilities (dimidias partes) for orbi to those imposed on caelibes by the lex Iulia de maritandis ordinibus. But the passage does not prove the absence of penalties for orbitas before the lex Papia Poppaea. Gaius says only that per legem Papiam orbi lose one half (dimidias partes) of bequests; nothing rules out the possibility that prior to the law, they, like caelibes, lost the whole inheritance or legacy. He does not, it is true, mention penalties for orbitas per legem Iuliam. But that appears less significant if the passage is viewed in its historical context. The present tense of the verb perdo ("lose" not "lost") is a signal that Gaius is writing of the penalties for orbi operative in his own time - the second century A.D. He had no good reason then to discuss penalties introduced by the lex Iulia de maritandis ordinibus if they

were in fact superseded by those of the lex Papia Poppaea. Gaius was not an historian; antiquated penalties per legem Iuliam would have been out of place in his commentary on the civil law of the day. The passage is, in itself, inconclusive.

### The Literary Sources

Many scholars, focussing their investigations solely on the legal texts, have, not surprisingly, despaired of separating the punitive measures of the two laws.<sup>16</sup> Few have looked to the literary sources for help<sup>17</sup> despite several pertinent passages in the histories of Tacitus<sup>18</sup> and, particularly, of Cassius Dio.<sup>19</sup> Five texts deserve discussion: Tacitus, Annales, 3.25, and Dio, Historia Romana, 54.16.2, 55.2.5, 56.1.2 and 56.10.1.

Annales, 3.25. Tacitus writes of the lex Papia Poppaea:

relatum dein de moderanda Papia Poppaea, quam senior Augustus post Iulias rogationes incitandis caelibum poenis et augendo aerario sanxerat.<sup>20</sup>

If incitandis caelibum poenis means "to sharpen the penalties of celibacy" (J. Jackson),<sup>21</sup> the lex Papia Poppaea clearly exacerbated the penalties, at least for caelibes, which had been established by the lex Iulia de maritandis ordinibus. However this phrase refers to more effective enforcement of the existing penalties for the unmarried, not to increased penalties. Tacitus' usage of the word poena strongly suggests that it here means the act of punishment rather than "penalty".<sup>22</sup> Study of the context of Annales, 3.25 offers confirmation.

Tacitus had in mind the spread of delatores (informers). They reported the illegal acceptance of inheritances and bequests by caelibes and orbi, who were then brought to trial. If they were convicted, the state confiscated the inheritance or legacy and the delator received a reward - a portion of the confiscated estate. Thus the rewards for delatores frequently resulted in the prosecution of caelibes, i.e., they intensified, at least indirectly, the punishment of the unmarried (incitandis caelibum poenis); elsewhere Tacitus writes of the law: multitudo periclitantium gliscebat, cum omnis domus delatorum interpretationibus subverteretur.<sup>23</sup> Unfortunately then, the passage is of little help in distinguishing the penalties of the laws - incitandis caelibum poenis does not refer to penalties for celibacy and there is no mention of penalties for orbitas.

Dio, Historia Romana, 54.16.2. In his account of the passage of the lex Iulia de maritandis ordinibus,<sup>24</sup> Dio records that Augustus:

τοὺς τε ἀγάμους καὶ τοὺς ἀνάνδρους βαρύτερα  
τὰ ἐπιτίμια ἐπέταξε, καὶ ἔμπαλιν τοῦ τε γάμου  
καὶ τῆς παιδοποιίας ἄθλα ἔθηκεν.<sup>25</sup>

He does not mention penalties for orbitas; he indicates only that the lex Iulia de maritandis ordinibus penalized the unmarried (ἀγάμους . . . ἀνάνδρους) and offered rewards for the begetting of children (τῆς παιδοποιίας ἄθλα). It can be inferred that this law did not penalize the childless. But the conclusion must be tentative; argument from silence, i.e. that because he does not mention orbi the lex Iulia de

maritandis ordinibus therefore did not punish them, is, at best, negative evidence. The lack of any reference to such penalties may be no more than omission through oversight or error. Dio's touch appears less than sure here. Βαρύτερα τὰ ἐπιτίμια ("more severe penalties") is ambiguous and perhaps a mistake: it was a Roman tradition to encourage marriage<sup>26</sup> but we have no evidence of legislative penalties for celibacy before the lex Iulia de Maritandis Ordinibus. Perhaps he had in mind the fines traditionally imposed by the censors<sup>27</sup> on men reluctant to marry<sup>28</sup> or it may be that the antecedent of τὰ ἐπιτίμια is recorded in a lost portion of his work. Whatever the explanation, Dio's testimony cannot rule out the existence of penalties for orbitas before A.D.9.

Dio, Historia Romana, 55.2.5. In 9 B.C. Drusus, the stepson of Augustus, died while campaigning in Germany. By way of consolation the senate granted his mother Livia the ius trium liberorum (the privilege awarded to parents of three children) - ἐς τὰς μητέρας τὰς τρεῖς τεκούσας ἐσεγγράφη.<sup>29</sup> Men and women with fewer than three children who obtained the privilege could enjoy the rewards for large families introduced by the lex Iulia de Maritandis Ordinibus (τῆς παιδοποιούσας ἄθλα).<sup>30</sup> For example, Livia would have gained greater rights of inheritance in the estates of freedmen.<sup>31</sup> The privilege also freed childless men and women from penalties such as inheritance disabilities. If the latter feature of the ius trium liberorum was in operation by 9 B.C. it would prove

that orbitas was penalized at that time - there could be no exemption from penalties which did not exist. However there is no good evidence to suggest that this feature of the privilege was in operation. The senate's dispensation could not have been intended to exempt Livia from penalties for orbitas - she was not childless: even her one surviving child Tiberius was sufficient under the law to remove the stigma.<sup>32</sup> Its only purpose then seems to have been to entitle her to the rewards of fecundity. Thus it may be that in 9 B.C. the ius trium liberorum entitled its holders to the rewards for large families but did not exempt them from penalties for orbitas. Its grant to Livia does not prove that orbitas was penalized by 9 B.C.

Dio, Historia Romana, 56.1.2. During the triumphal games in the forum in early A.D.9<sup>33</sup> members of the equestrian order<sup>34</sup> demanded the repeal of the law περὶ τῶν μῆτε γαμοῦντων μῆτε τεκνοῦντων.<sup>35</sup> The law, unnamed but undoubtedly the lex Iulia de maritandis ordinibus - the demonstration occurred before the lex Papia Poppaea was framed - clearly affected the childless (περὶ . . . μῆτε τεκνοῦντων). Dio includes orbi among the ranks of the protesters - he distinguishes between the equites who are married (γεγαμηκότες) and those who have children (τέκνα ἔχοντες). Would the childless have called for the abolition of a law which did not penalize them?

Suetonius<sup>36</sup> corroborates Dio's account of the demonstration:

sic quoque abolitionem eius publico spectaculo pertinaciter postulante equite, accitos Germanici liberos receptosque partim ad se partim in patris gremium ostentavit, manu vultuque significans ne gravarentur imitari iuvenis exemplum.<sup>37</sup>

He provides no date but the presence of Germanicus and his children shows that it occurred no earlier than A.D.7 - his second child Drusus was born in late A.D.7 or early A.D.8.<sup>38</sup>

Thus Suetonius and Dio probably describe the same event - it is unlikely that the equites twice demanded the repeal of the lex Iulia de maritandis ordinibus at separate public ceremonies between A.D.7 and 9. Further, there are several close correspondances between the two accounts: καταλυθῆναι . . . abolitionem, θεᾶς ἐπιτυκίους . . . publico spectaculo, οἱ ὑπῆς ἡξίου . . . postulante equite, and πολλῆ σπουδῆ . . . pertinaciter.<sup>39</sup>

But if, as Dio's account of the demonstration suggests, the lex Iulia de maritandis ordinibus did in fact penalize orbi as well as caelibes, how, if at all, did their penalties differ? Dio also provides the answer.

Dio, Historia Romana, 56.10.1. In A.D. 9 by the lex Papia Poppaea Augustus "increased the rewards for those with children and distinguished between caelibes and orbi by differentiating their penalties":

τοῖς μὲν τὰ τέκνα ἔχουσι τὰ γέρα προσεπηύξησε,  
τοὺς δὲ γεγαμηκότας ἀπὸ τῶν ἀγύνων τῶ τῶν  
ἐπιτυκίων διαφόρῳ διεχώρισε.<sup>40</sup>

The passage confirms that there were penalties for orbitas before the lex Papia Poppaea, but more importantly, it reveals that caelibes (τῶν ἀγύνων) and orbi (τοὺς . . . γεγαμηκότας).

were in fact similarly penalized. We know from Gaius, 2.286 that by the lex Iulia de maritandis ordinibus caelibes were barred from accepting most inheritances and legacies. On the basis of Dio's testimony we can assume that the lex Iulia de maritandis ordinibus also prevented orbi from receiving most bequests. Gaius records too that by the lex Papia Poppaea orbi could accept one half of all inheritances and legacies (dimidias partes). The evidence points to one conclusion: the lex Papia Poppaea moderated the penalties for orbi which had been established by the lex Iulia de maritandis ordinibus by granting them greater rights of inheritance (dimidias partes).

#### The Historical Argument

The historical background of the lex Papia Poppaea - notably the civil unrest and military insecurity of the years A.D.6-9 - points in the same direction. Pliny the Elder<sup>41</sup> paints a dark picture of these years:

iuncta deinde tot mala, inopia stipendii,  
 rebellio Illyrici, servitorum dilectus,  
 iuventutis penuria, pestilentia urbis,  
 fames Italiae.<sup>42</sup>

The rebellion in Illyricum which began in A.D.6 cut short a planned invasion of Bohemia and engaged the full attention of Tiberius for three years.<sup>43</sup> There was alarm in Rome - Augustus warned that the enemy could be in the city in ten days.<sup>44</sup> An acute shortage of manpower (iuventutis penuria) forced him to enroll freedmen in the legions for the first time;<sup>45</sup> he even purchased and manumitted slaves so that they could be enlisted (servitorum dilectus).<sup>46</sup> He demanded the

financial support of senators and equestrians and compelled people to furnish freedmen in proportion to their income.<sup>47</sup>

Eventually ten of the twenty-eight legions were stationed in Pannonia; more had not been assembled in a single place since Actium.<sup>48</sup>

Shortage of food (fames Italiae), pestilence in Rome (pestilentia urbis), and a major fire in A.D.6 fostered unrest among the lower social orders - Dio records that they openly discussed plans for revolution.<sup>49</sup> The vigiles (watchmen), seven thousand in number, were established in A.D.6, ostensibly to fight conflagrations, perhaps also to police social disturbances.<sup>50</sup>

Dynastic complications undermined Augustus' auctoritas and diminished the prestige of the principate. In A.D.7 he had his adopted son Agrippa Postumus banished.<sup>51</sup> The reason was Agrippa's alleged brutish and depraved character; he may also have been sacrificed to the rising political star of Tiberius. But Tiberius himself was growing old and, perhaps, impatient. In A.D.8 Julia, the granddaughter of Augustus, was exiled, officially for licentiousness, possibly for political conspiracy.<sup>52</sup>

In A.D.9 the equites vigorously demonstrated against the marriage legislation.<sup>53</sup> With his auctoritas weakened and faced with civil unrest and with a continuing military crisis, could Augustus have risked their further alienation by introducing penalties for orbitas? More likely, he mitigated the penalties imposed on orbi by the lex Iulia de maritandis ordinibus in order to placate those opposed to the law. The lex Papia Poppaea was a concession, directed primarily at the equites, whose support in the military crisis was crucial: they constituted the major source of army officers, filled many administrative

posts and represented a significant reservoir of taxation revenue.<sup>54</sup> It cannot be objected that moderating the penalties for those who failed to produce offspring would have worked against Augustus' objective of alleviating the manpower shortage in A.D.6-9 (iuventutis penuria) - its effects on the birth rate, if any, would not have shown up until a generation after the crisis. Augustus no doubt recognized that it might eventually result in a slower rate of population growth. But, in light of the Illyrian revolt and civil unrest, he may well have deemed that less important than the immediate concern of fostering support for the principate.

In the same spirit of moderation he granted the privileges of the ius trium liberorum to the Vestal Virgins in A.D.9<sup>55</sup> and allowed some women to inherit more than the 100,000 sestertii<sup>56</sup> allowed by the lex Voconia.<sup>57</sup> The lex Iulia de maritandis ordinibus had obliged women to remarry within one year after the death of a husband and within six months after a divorce. The lex Papia Poppaea allowed them two years and eighteen months respectively.<sup>58</sup> Augustus also granted caelibes and orbi a one year exemption from the operation of the law so that they could comply with its requirements.<sup>59</sup>

This was the settlement of A.D.9. To conciliate the equites Augustus mitigated the penalties for orbitas. He did not, however, yield without a struggle - through the rewards offered to delatores he ensured the rigorous enforce-

ment of the penalties which remained.

Was a law on marriage passed in A.D.4?

Several scholars, most ably Paul Jörs,<sup>60</sup> postulate the passage of a marriage law in A.D.4, which, they claim, added penalties for orbi to those established for caelibes by the lex Iulia de maritandis ordinibus. To facilitate discussion of the law Jörs labels it the lex caducaria (the law on ownerless property). His thesis is based largely on Suetonius, Augustus, 34:

leges retractavit et quasdam ex integro sanxit, ut sumptuariam et de adulteriis et de pudicitia, de ambitu, de maritandis ordinibus. hanc cum aliquanto severius quam ceteras emendasset, prae tumultu recusantium perferre non potuit nisi adempta demum lenitate parte poenarum et vacatione trienni data auctisque praemiis.<sup>61</sup>

On the basis of Dio, 56.10.1 he concludes that prior to A.D.9 caelibes and orbi were similarly penalized. But he rejects the possibility that the lex Iulia de maritandis ordinibus punished orbitas. Instead, he takes Suetonius' hanc . . . aliquanto severius . . . emendasset - he dismisses quam ceteras as the gloss of a scribe - as evidence for the passage of a revised (emendasset), harsher (severius) version of the lex Iulia de maritandis ordinibus (hanc). This new law, he posits, was harsher because it introduced penalties for childlessness. He dates it to A.D.4 on the basis of Dio, 56.7.3, part of a speech which Dio attributes to Augustus and assigns to the time of the equestrian demonstration in A.D.9. Augustus reminded his audience that

he had given them a chance to comply with his regulations on marriage by delaying their implementation for five years:

καὶ οὐδὲ ἐς ταῦτα μέντοι κατήπειξα ὑμᾶς, ἀλλὰ τὸ μὲν πρῶτον τρία ἔτη ὄλα πρὸς παρασκευὴν ὑμῶν ἔδωκα, τὸ δὲ δεῦτερον δύο.<sup>62</sup>

Jörs accepts Dio's date for the speech and assumes that the vacationes (periods of grace) of first three years (τρία ἔτη ὄλα) and later two (δύο) applied to the period immediately preceding the speech, i.e. A.D.4-9. He infers that a harsh law on marriage must have been passed in A.D.4. Citing Gaius, 2.286, he concludes that the lex Papia Poppaea moderated this law by allowing orbi to accept one half of inheritances and legacies.

His theory continues to interest scholars - a recently published monograph raises again the specter of the lex caducaria.<sup>63</sup> Yet his argument rests on a less than circumspect interpretation of hanc . . . emendasset and on an uncritical acceptance of Dio's date for the speech of Augustus.

Hanc probably refers to a draft proposal of the lex Iulia de maritandis ordinibus, not, as Jörs contends, to the enacted legislation. It was presumably published in order to elicit public opinion; Dio records that Augustus not infrequently promulgated proposed laws:

οὐ μέντοι καὶ πάντα ἰδιογνωμονῶν ἐνομοθέτει, ἀλλ' ἔστι μὲν ἃ καὶ ἐς τὸ δημόσιον προεξετίθει, ὅπως, ἂν τι μὴ ἀρέσῃ τινα, προμαθῶν ἐπανορθώσῃ· προετρέπει δὲ γὰρ πάνθ' ὄντινοῦν συμβουλεύειν οἱ, εἴ τις τι ἄμεινον αὐτῶν ἐπινοήσειεν, καὶ παρησίαν σφίσι πολλὴν ἔνεμε, καὶ τινα καὶ μετέγραφε.<sup>64</sup>

The practice would not have been an innovation; there were precedents under the late Republic when proposed laws were frequently brought forward for discussion in the senate and for public reaction.<sup>65</sup> Occasionally, changes were made in a law after senatorial and public debate<sup>66</sup> and sometimes its author or sponsor was induced to withdraw it.<sup>67</sup>

There is no evidence to support Jörs' contention that quam ceteras does not belong in the manuscript; emendasset applies not only to the lex Iulia de maritandis ordinibus (hanc) but also to the other four laws which Suetonius names (ceteras as well as hanc). Suetonius uses emendasset to mean the same thing as retractavit; it does not, as Jörs argues, refer to a later revision of the law. It appears then that Augustus carried out reforms in five areas of law, the draft proposal of the lex Iulia de maritandis ordinibus (hanc) being more harsh than the others (quam ceteras).

The rigor of the draft proposal (hanc) precipitated vigorous protest (tumultus). The tumultus occurred then in 18 B.C. Augustus was unable to enact the legislation (perferre non potuit) until he had granted concessions: he abolished some penalties and mitigated others (adempta . . . lenitave parte poenarum), increased the rewards (auctis praemiis)<sup>68</sup> and granted a three year respite from the operation of the law (vacatio trienni). The vacatio therefore applied to the period immediately following the passage of the lex Iulia de maritandis ordinibus, i.e., 18-15 B.C.<sup>69</sup> Jörs dates it to A.D.4-7 on the basis of Augustus' speech

in Dio. An examination of the context of Dio, 56.7.3 reveals that the vacationes which he mentions do not necessarily apply to the period immediately preceding the speech. But more importantly, it appears likely that Augustus did not even address the equites in A.D.9.

Suetonius records the equestrian demonstration but not the speech attributed to Augustus by Dio. He states elsewhere, however, that Augustus did read a speech on marriage and procreation (de prole augenda), composed by the censor of 131 B.C., Quintus Metellus Macedonicus,<sup>70</sup> to the senate.<sup>71</sup> Livy<sup>72</sup> dates the reading of the speech to 18 B.C., cum de maritandis ordinibus ageret.<sup>73</sup> It is unlikely that Augustus delivered two speeches remarkably similar in content, one in the senate in 18 B.C. and the other to the equites in A.D.9. There was probably only one speech, read by Augustus in the senate at the time of the passage of the lex Iulia de maritandis ordinibus. Aware of this speech, perhaps from Livy, Dio composed his own set speech on marriage and child-bearing, ascribed it to Augustus and placed it in his account of A.D.9. His grounds were probably literary - the equestrian demonstration was a suitable setting for presenting such a speech in anticipation of his discussion of the lex Papia Poppaea. His speeches are unreliable, both for dating and for historical content - the historical standards in this genre were not rigorous.<sup>74</sup> Seneca<sup>75</sup> records the conspiracy of a certain Cornelius Cinna;<sup>76</sup> it can be dated to before 7 B.C. He adds that Cinna received the consulship after the conspiracy. Dio, uncertain of its date but aware of

Cinna's consulship in A.D.5, places the conspiracy in A.D.4 and seizes the opportunity to present a set dialogue between Augustus and Livia on the merits of clemency.<sup>77</sup> It is a literary and didactic exercise, almost wholly devoid of historical fact - such was the nature of the genre.

Thus it is unlikely that Augustus delivered a speech to the equestrians in A.D.9. It is a salient weakness in Jörs' argument that it relies on a speech in Dio.

There is only tenuous literary evidence then for the passage of a law on marriage in A.D.4.<sup>78</sup> Significantly, none of the legal sources records its enactment.

### Conclusion

The lex Iulia de maritandis ordinibus punished both caelibes and orbi. Undoubtedly it was modified between its passage in 18 B.C. and the enactment of the lex Papia Poppaea in A.D.9. But, contrary to the thesis of P. Jörs, no law modifying the lex Iulia de maritandis ordinibus was passed in A.D.4. Confronted with opposition to the legislation, with civil unrest and with a military crisis in the years A.D.6-9, Augustus moderated the penalties for orbitas - the lex Papia Poppaea granted orbi greater rights of inheritance. At the same time, the financial rewards promised to delatores as part of the lex Papia Poppaea assured its uncompromising application.

## CHAPTER TWO

### The Response to the Marriage Legislation

Few of Augustus' contemporaries escaped the attention of his laws on marriage and morality. Women between twenty and fifty years of age and men between twenty-five and sixty were required to be married;<sup>1</sup> the rigorous code of sexual behavior prescribed by the lex Iulia de adulteriis coercendis applied to all except prostitutes, other women of low social status and slaves.<sup>2</sup> Drawing on a wide range of literary and legal sources I have tried to piece together a picture of the response to the laws.<sup>3</sup> Specifically, this chapter examines the support for and opposition to the Augustan reforms, and attempts to identify some of the methods employed to evade their provisions.

### The First Attempt at Reform

Nature and date. Augustus seems to have introduced legislation on marriage between 29 and 27 B.C.<sup>4</sup> Firm evidence is lacking.<sup>5</sup> Propertius,<sup>6</sup> writing between 28 and 25 B.C.,<sup>7</sup> rejoices at the withdrawal of a law which had threatened his relationship with his mistress Cynthia<sup>8</sup>:

gavisa est certe sublatam Cynthia legem,  
qua quondam edicta flemus uterque diu,  
ni nos divideret.<sup>9</sup>

He does not reveal why the law would have forced their separation (ni nos divideret). A plausible explanation is that it made marriage obligatory but did not permit men of rank to marry women of low social status.<sup>10</sup> A similar provision was in fact implemented by the lex Iulia de maritandis ordinibus : men of senatorial rank could not marry freedwomen or actresses.<sup>11</sup> Propertius was a bachelor and an equestrian,<sup>12</sup> Cynthia was probably a courtesan.<sup>13</sup>

The legislation may have included measures to restrict adultery and licentiousness. Writing in 28 B.C.,<sup>14</sup> Horace<sup>15</sup> urges Augustus refrenare licentiam<sup>16</sup> and depicts Roman society as stained by the adultery of wives and the complicity of husbands.<sup>17</sup> These were practices attacked in 18 B.C. by the lex Iulia de adulteriis coercendis.<sup>18</sup> There are no other clues to the law's nature.<sup>19</sup>

There is equally little evidence for its date. 28 B.C. seems most likely. Discussing the decline of mos (custom) and ius (law) in the late Republic, Tacitus remarks that in his sixth consulship (28 B.C.) Augustus dedit iura, quis pace et principe uteremur.<sup>20</sup> The nature of the iura cannot be pinned down but the context suggests that they may have included legislation on morality.<sup>21</sup>

Response. From Propertius' lex . . . sublata it is clear that Augustus' first attempt at reform was abortive.<sup>22</sup> No surviving source specifies the cause. G. Williams argues that opposition to the legislation forced its abandonment.<sup>23</sup>

Such certainty is not warranted - the evidence is only circumstantial. At most, it can be inferred from Horace and Livy that moral reform was unpopular.

In Odes, 3.24, written in 28 B.C. shortly after the law's failure,<sup>24</sup> Horace declares that whoever wishes to be called father of the cities (pater urbium) should dare (audeat) to curb licentiousness.<sup>25</sup> Pater urbium is undoubtedly an allusion to Augustus.<sup>26</sup> The verb audeo implies that his plans to reform sexual morality would require boldness in the face of recalcitrance. Writing in 27 B.C.,<sup>27</sup> Livy laments : nec vitia nostra nec remedia pati possumus.<sup>28</sup> Did he have in mind the Augustan reforms? Perhaps they were the remedia which his countrymen were unable to bear.<sup>29</sup> Livy was an ardent proponent of reform<sup>30</sup> and no doubt disappointed when the law was withdrawn; it is not implausible that he intended his remarks for those responsible.

Augustus set aside his plans. But his resolve was not abated and ten years later he tried again.

### The Leges Iuliae

Senators and Equestrians. The lex Iulia de maritandis ordinibus met with a storm of protest (tumultus recusantium).<sup>31</sup> Augustus could not get it enacted until he had granted concessions.<sup>32</sup> Suetonius does not identify the protesters (recusantes). But we can safely assume that they included senators and equestrians; it is unlikely that anyone else

could have induced him to modify the law. Suetonius' usage of the word tumultus suggests acute discontent; elsewhere he uses it to describe a possible uprising in Rome after the loss of three legions under Quinctilius Varus in Germany in A.D.9,<sup>33</sup> disorder in Rome during times of food shortage,<sup>34</sup> riots which might be precipitated by the news of Augustus' critical illness in A.D.14,<sup>35</sup> the conspiracy led by Cassius Chaerea against the emperor Gaius in A.D.41,<sup>36</sup> a military revolt in Spain organized by Servius Sulpicius Galba and directed against the emperor Nero in A.D.68,<sup>37</sup> and, in the plural, a number of plots against Augustus, including those of Marcus Aemilius Lepidus, Varro Murena, Fannius Caepio, and Lucius Aemilius Paullus.<sup>38</sup>

Livy confirms that at least some senators were recalcitrant.<sup>39</sup> Augustus read to them a speech "de prole augenda" of Q. Metellus Macedonicus, censor in 131 B.C., cum de maritandis ordinibus ageret (18 B.C.).<sup>40</sup> Presumably it was intended to counter their reluctance to marry and raise children. The verb ago is a signal; in Livy it not infrequently means "to urge" and, more specifically, "to plead a case".<sup>41</sup> Aulus Gellius<sup>42</sup> provides corroboration. He reports that Metellus, and thereby Augustus, argued that, although men could live happily neither with nor without wives, the well-being of the state required that they marry and raise families.<sup>43</sup> Livy's testimony is authoritative; he was a contemporary of the event and aware of the senatorial reaction.

Though there was clearly opposition in the senate, Augustus must have had the support of some senators and equestrians prominent in 18 B.C. He could not have carried the laws alone, especially in the face of widespread agitation. The Augustan principate was oligarchy not autocracy.<sup>44</sup> Writing of his program of moral reform, he claimed to be acting on the senate's initiative: quae tum per me geri senatus voluit, per tribuniciam potestatem perfeci.<sup>45</sup> Senatus voluit is too strong but it is exaggeration not mendacity. Horace also closely associated the legislation with the senate:

diva, producas subolem patrumque  
 prosperes decreta super iugandis  
 feminis prolisque novae feraci  
 lege marita.<sup>46</sup>

Those favorable to the laws are not easily identified; Dio notes that with the advent of the principate important political decisions were made privately and in secret.<sup>47</sup> But we do know the names of some of Augustus' influential friends and advisers around 18 B.C., most of whom are likely to have supported him.

Two of his closest friends may be discounted, C. Maecenas and P. Vedius Pollio. Maecenas, though an able and tireless worker, was effeminate and luxurious; Vedius Pollio was cruel and debauched.<sup>48</sup> Neither was likely to support sincerely the moral conservatism of the reforms. But there were others at hand. Perhaps the most notable is Marcus Vipsanius Agrippa. He was Augustus' second in command and,

for a time, his most likely successor. In 18 B.C., already married to Augustus' daughter Julia,<sup>49</sup> he was given the tribunicia potestas.<sup>50</sup> He was a man of rustic tastes,<sup>51</sup> dour and puritan.<sup>52</sup> Paullus Aemilius Lepidus, censor in 22 B.C.,<sup>53</sup> was another distinguished and loyal ally of the princeps. In 16 B.C. he married Marcella, the daughter of Octavia and niece of Augustus.<sup>54</sup> Two aged but still influential partisans could lend their auctoritas, C. Sentius Saturninus and Cn. Domitius Calvinus. Saturninus' consulship in 19 B.C. was characterized by old-fashioned severity and sternness.<sup>55</sup> In 17 B.C. he was deputy master in charge of the secular games which marked the inauguration of a golden age and celebrated the moral regeneration of the Roman people through Augustus' legislation on marriage.<sup>56</sup> Moreover, he had three children.<sup>57</sup> Domitius Calvinus, consul in 53 B.C., magister equitum in 43 and governor of Spain from 39-36, was a man of equal severity and traditional morality.<sup>58</sup> In 17 B.C. he was magister of the Arval brothers,<sup>59</sup> an ancient college of twelve priests, resurrected by Augustus, which made annual offerings to the gods of the fields. Augustus needed expert legal advice in framing the laws. He regularly employed distinguished jurists as an advisory council.<sup>60</sup> At hand in 18 B.C. was the learned, conservative and compliant C. Ateius Capito. His subservience gained him imperial favor and a consulship in A.D.5.<sup>61</sup> More importantly, we see him in 17 B.C. interpreting the Sibylline books to justify the celebration of the secular games.<sup>62</sup>

M. Vinicius, consul suffectus in 19 B.C. and proconsular governor of Illyricum from 17-16,<sup>63</sup> was an intimate friend of Augustus and, in 17 B.C., a member of the quindecimviri sacris faciundis,<sup>64</sup> an exclusive college of priests who were in charge of the Sibylline books. Q. Lucretius Vespillo, consul in 19 B.C., and author of the Laudatio Turiae,<sup>65</sup> an inscriptional eulogy of his deceased wife Turia, is likely to have supported the legislation : he was so disheartened by the infertility of their marriage that Turia proposed a divorce in order that he might remarry.<sup>66</sup> The knight C. Proculeius, though largely abstaining from public life,<sup>67</sup> was another close friend of the princeps - he was considered by Augustus as a candidate for marriage to his daughter Julia.<sup>68</sup> Lastly, we can safely place among Augustus' partisans the consuls of 18 B.C., P. Cornelius Lentulus Marcellinus and Cn. Cornelius Lentulus.

The controversy sparked by Augustus' proposals did not subside after the laws were enacted. Enforcing them fostered further agitation. Dio reports that Augustus left Rome for Gaul in 16 B.C. partly because his enforcement of the rigorous penalties of the leges Iuliae<sup>69</sup> was creating widespread resentment.<sup>70</sup>

There follows a long period of silence in the sources; we do not hear of the laws again until A.D.9. But the opposition was now more vociferous than ever. During the triumphal games equestrians vigorously (pertinaciter) demanded the abolition of the lex Iulia de maritandis

ordinibus.<sup>71</sup> It is unlikely that their protest surfaced only in A.D.9. Would they have waited twenty-seven years from the law's enactment to declare their disapproval? More likely, the demonstration was only the most conspicuous manifestation of their agitation against the reforms. It is also significant that they voiced their demands at a public show. Did they hope to persuade Augustus to moderate or abolish the law by publicly embarrassing him? Such a course of action would suggest deep-seated grievances.

#### Contemporary Literature

Horace, Livy and Virgil<sup>72</sup> are likely to have supported Augustus' efforts to reform morality and to promote marriage and childbearing. Horace saw moral reform as a precondition of peace and prosperity.<sup>73</sup> In the Carmen Saeculare of 17 B.C. he wrote:

iam Fides et Pax et Honor Pudorque priscus  
et neglecta redire Virtus audet.<sup>74</sup>

Livy's sentiments are equally clear. The preface to his history centers on the theme of moral decay as a fundamental cause of the civil wars of the late Republic and on the need for reform as part of the foundation of lasting order.<sup>75</sup> Virgil too shared the attitudes and values of the princeps. The traditional moral conservatism of the Augustan reforms is evident in the Eclogues and in the Georgics. In the Aeneid, especially in Books II and VI, he celebrates the Augustan ideal of marriage and family.<sup>76</sup> Even Propertius, in Book IV of the Elegies, written between 22 and 16 B.C.,

expresses a sentiment harmonious with Augustus' view that the proper object for a woman's love is a publicly acknowledged husband : omnis amor magnus, sed aperto in coniuge maior.<sup>77</sup> Perhaps he had tempered his dislike for marriage. Or had his rejoicing at the failure of the law in 28 B.C. drawn a rebuke? The words are addressed by a woman to her long absent husband - he may have felt simply that they were suitable for the occasion.<sup>78</sup> We know that he never married. But neither did Horace or Virgil.

Syme argues that Horace, Livy and Virgil reflect the sentiments of Augustus' middle class partisans, the beneficiaries of the political and social revolution: "it is not enough to acquire power and wealth : men wish to appear virtuous and to feel virtuous".<sup>79</sup> Rural Italy, he contends, strongly supported Augustus' attempt to inculcate a moral standard which Horace regularly associates with the hardy, peasant Italic stock.<sup>80</sup> His theory is plausible but as yet unsubstantiated; there is simply too little evidence of the views of the middle and lower classes.<sup>81</sup>

But if several writers were favorable to moral reform, Ovid<sup>82</sup> was patently unsympathetic.<sup>83</sup> The Amores and the Ars Amatoria frequently espouse adulterous love:

et bene dic dominae, bene, cum quo dormiat illa;  
sed, male sit, tacita mente precare, viro.<sup>84</sup>

He professed conformity to Augustus' moral code: nos venerem tutam concessaque furta canemus.<sup>85</sup> But his heart was not in it and he paid the penalty. In A.D.8, he was exiled by

Augustus to Tomis for carmen et error. The nature of the error is not known; the carmen was the Ars Amatoria.

### The Lex Papia Poppaea

In A.D.9 by the lex Papia Poppaea Augustus moderated the penalties for childlessness which had been introduced by the lex Iulia de maritandis ordinibus. However at the same time, in order to ensure the law's enforcement, he increased the rewards for delatores (informers). They searched out and prosecuted caelibes and orbi who accepted bequests in contravention of the regulations. On successful conviction the informers were rewarded with a portion of the confiscated property, the remainder of which went to the public treasury (aerarium).<sup>86</sup> Urged on by these financial inducements, delation spread quickly:

acriora ex eo vincla, inditi custodes et lege  
Papiae Poppaeae praemiis inducti ut, si a privilegiis  
parentum cessaretur, velut parens omnium  
populus vacantia teneret. sed altius penetrabant  
urbemque et Italiam et quod usquam civium  
corripuerant, multorumque excisi status. et  
terror omnibus intentabatur.<sup>87</sup>

The activities of the delatores prompted vehement protest. In A.D.20 the emperor Tiberius established a committee composed of five ex-consuls, five ex-praetors and five other senators to redraft the legislation in a way that would inhibit the assiduity of the informers. According to Tacitus it had some success : for a time (in praesens) there was a measure of relief.<sup>88</sup>

### Evasion of the Laws

Trusts. The jurist Gaius states that caelibes, who were unable to accept most inheritances and legacies, and orbi, who lost one half of most bequests, were apparently at one time able to receive property in the form of a trust: olim . . . fideicommissa videbantur capere posse.<sup>89</sup>

Fideicommissa (trusts) operated as follows. If someone was legally prevented from receiving a bequest because he was not married, it could be left to someone else in trust for him. The person who received it in trust had to be married but the designated legatee, though still unmarried, could then take it in turn. A hypothetical example provides clarification. Titus wants to leave his farm to his wife's cousin Quintus. But Quintus is unmarried and so cannot legally take ownership. Titus, however, has a brother Publius who is married with four children. Titus could will the farm to Publius in trust for Quintus who, still celibate, could then accept ownership from Publius.

Not surprisingly, Gaius' statement has engendered considerable controversy - if the laws could be so easily evaded why would anyone obey or oppose them? The most plausible explanation to date is that of D. Daube.<sup>90</sup> The operation of trusts, he suggests, went through four stages. In the late Republic they were not legally enforceable and depended on the good will of the trustee.<sup>91</sup> But a marked change occurred under Augustus. A certain Lucius Lentulus, in a codicil to his will, asked the princeps to execute a

trust. Augustus convened a group of prominent juriconsults (prudentes) and inquired whether trusts were not contrary to the spirit of the law. At length, he was persuaded by the eminent Trebatius that they were both useful and necessary.<sup>92</sup> It appears that from this time they operated without restriction. This is the period to which Gaius refers, though himself hardly able to believe his source (videbantur). There followed a flood of fideicommissa until Augustus established a praetor fideicommissarius to regulate them.<sup>93</sup> This magistrate, we may assume, declared legal only those trusts of which the princeps would approve. Finally, the senatus consultum Pegasianum of A.D.73 decreed that trusts were legally equivalent to legacies and thereby subject to the same penalties.<sup>94</sup> This explains Gaius' use of olim ("once") - in his day, trusts were no longer a means of evading legal disabilities.

Prostitution. Prostitutes and other women of poor reputation could not be prosecuted for adultery.<sup>95</sup> Accordingly, some women of rank registered as prostitutes to avoid the harsh penalties of the lex Iulia de adulteriis coercendis:

feminae famosae, ut ad evitandas legum  
poenas iure ac dignitate matronali  
exsolventur, lenocinium profiteri  
coeperant.<sup>96</sup>

In his account of the year A.D.19, Tacitus records the case of Vistilia, the wife of Titidius Labeo, ex-praetor and proconsular governor of Gallia Narbonensis.<sup>97</sup> She openly acknowledged her licentiousness and tried to register as a

prostitute:

nam Vistilia, praetoria familia genita,  
 licentiam stupri apud aedilis vulgaverat,  
 more inter veteres recepto, qui satis poenarum  
 adversum impudicas in ipsa professione  
 flagitii credebant.<sup>98</sup>

Her plan, designed as a snub to her profligate mother but also as a means of avoiding punishment for adultery,<sup>99</sup> misfired. She was exiled to the island of Seriphos and her husband barely avoided a charge of pandering (lenocinium).<sup>100</sup> The senate then decreed that all women whose grandfather, father or husband was of equestrian rank (equus Romanus) be barred from prostitution.

Betrothal. The lex Iulia de maritandis ordinibus prescribed that all men between the ages of twenty-five and sixty be married.<sup>101</sup> However it had long been a custom for Roman men to become betrothed to young girls, who could not legally marry until age twelve.<sup>102</sup> Under the Augustan regulations such men would have been penalized as bachelors until their fiancées reached the marriageable age. So in a spirit of accommodation Augustus conferred upon them the status of married men. Evidently, he assumed that marriage would follow. But so many took advantage of his leniency by betrothing themselves to very young girls whom they had no intention of marrying that, shortly after the legislation was enacted, he was compelled to set the minimum age for betrothal at ten and to limit the length of engagements to two years.<sup>103</sup>

Adoption and Surrogate Parenthood. At least some infertile couples evaded the spirit of the laws either by adopting children or by hiring a surrogate parent. In his commentary on the lex Iulia et Papia Poppaea Ulpianus declares that:

is cui in tempus liberorum tertia pars  
relicta est, utique non poterit adoptando  
tertiam partem consequi.<sup>104</sup>

Juvenal,<sup>105</sup> writing in the second century A.D., mentions a certain Naevolus, who, for a price, inseminated other men's wives so that their husbands could enjoy the benefits of the laws. Addressing a client, Naevolus boasts that by his work he has already given the man the right to full inheritance and that by further efforts he can obtain for him the laws' rewards:

iura parentis habes, propter me scriberis  
heres, legatum omne capis nec non et  
dulce caducum. comoda praeterea  
iungentur multa caducis, si numerum, si  
tres implevero.<sup>106</sup>

### Conclusion

Augustus' program to encourage marriage and procreation and to reform sexual morality met with resistance at every stage. The legislation of 28 B.C. had to be withdrawn, perhaps because of its unpopularity. The Julian laws were enacted in 18 B.C. only after Augustus had agreed to moderate the lex Iulia de maritandis ordinibus. Even then he was hard pressed to generate support in the senate and twenty seven years after the law's enactment equestrians were still calling for its abolition. The lex Papia Poppaea, though

designed to be conciliatory, fared little better. By increasing the rewards offered to delatores in the interest of enforcement it sparked such protest that Tiberius was eventually forced to revise it. On the other hand, there was support for the reforms. Horace, Livy and Virgil were sympathetic. We may assume, though the sources are in fact silent on this point, that prominent senators and equestrians were favorable. Lastly, the evidence suggests that there was a third group of Romans who neither opposed nor supported the laws but instead surreptitiously did their best to evade them.

## CHAPTER THREE

### The Purposes of the Marriage Legislation

There is a wide variety of opinion on the purposes of the Augustan marriage laws. P.A. Brunt suggests that they were designed primarily to stimulate the birth-rate and thereby guarantee a supply of recruits for the legions.<sup>1</sup> J.H. Fichter views them as an attempt to promote sexual morality and to stabilize conjugal relationships.<sup>2</sup> Others such as G. Ferrero posit a financial motivation for the laws - enrichment of the public treasury through confiscation of property bequeathed to the unmarried and the childless.<sup>3</sup> J.A. Field Jr. argues that they were intended solely to restore the ranks of the upper classes, which, he suggests, had been decimated by the proscriptions of the second triumvirate and by the civil wars of the late Republic.<sup>4</sup> While it is clear enough that the laws were intended to raise the birth-rate and to reform sexual morality, an examination of their terms and of the literature of the Augustan principate reveals that Augustus' goals were in fact more complex.

Background to the Laws. Rome's territorial expansion in the second and first centuries B.C. brought an influx of slaves of foreign origin into Italy.<sup>5</sup> Slaves who were

manumitted by Roman masters became Roman citizens.<sup>6</sup> In the late Republic the number of freed persons of foreign origin with the citizenship rose dramatically. Dionysius of Halicarnassus,<sup>7</sup> writing early in the Augustan principate, protests the wholesale manumission of slaves of foreign extraction without regard to their moral fitness. Many men, he relates, often as a theatrical gesture of philanthropy, ordered in their wills that their slaves be freed without exception.<sup>8</sup>

At the same time, the fertility of the Italian stock, both free born and freed, was declining.<sup>9</sup> Though the census returns for the first century B.C. show a rise in the number of Roman citizens,<sup>10</sup> Brunt concludes that few of the newly enfranchised were Italians; most of the increase was due to the manumission of slaves of foreign origin, much of the rest came in 49 B.C. when the inhabitants of Transpadana (the province of Cisalpine Gaul north of the river Po) were given the citizenship.<sup>11</sup> Ironically, the falling birth-rate among free-born Italians was due in part to the profusion of slaves, which sharply reduced the demand for free labor.<sup>12</sup>

Thus the Italian stock was increasingly diluted by slaves and freed persons of foreign origin (many of the latter with the citizenship). The resultant fusion of nationalities and cultures was so pronounced by the time of the Augustan principate that Propertius was prompted to lament : nil patrium nisi nomen habet Romanus alumnus.<sup>13</sup>

The first century B.C. was also a period of political disorder - factious politicking and civil wars. It was accompanied by social instability<sup>14</sup> and, at least in the view of men such as Livy and Horace, by increasing immorality.<sup>15</sup> There was a gradual loosening of family and marital bonds. Livy bemoans the cheapened familial authority of husbands and fathers.<sup>16</sup> Some women such as Clodia, Fulvia and Sempronia assumed a more direct and, for some men, uncomfortably visible role in political and social life.<sup>17</sup> Celibacy became more common<sup>18</sup> and divorce more frequent.<sup>19</sup> Marriage was often sacrificed to political opportunism; for example, the viri magni, Sulla, Pompeius, Julius Caesar and Octavianus himself, each had several wives, interchangeable as the instruments of political and dynastic alliances.<sup>20</sup> Small wonder that the author of the Laudatio Turiae could claim with pride and some surprise that his marriage had lasted forty years.<sup>21</sup>

The Laws and the Birth-Rate. In celebrating the passage of the lex Iulia de maritandis ordinibus (lex marita) Horace points to one of the major goals of the marriage legislation - a higher birth-rate:

diva, producas subolem patrumque  
 prosperes decreta super iugandis  
 feminis prolisque novae feraci  
 lege marita.<sup>22</sup>

The lex Iulia de maritandis ordinibus and the lex Papia Poppaea encouraged Italians in particular to marry and raise families : they applied only to Roman citizens, the bulk of whom were

of Italian origin.<sup>23</sup> Augustus, for a number of reasons, hoped to reverse the falling Italian birth-rate. He needed Italian senators and equestrians for civil and military administrative posts and Italians of the lower social orders for the ranks of the legions; Rome could not justifiably claim the right to impose its civilization on the empire without Roman citizens of Italian extraction governing and defending it.<sup>24</sup> A growing stock was essential in order to maintain Romanitas ("the Roman way of life") in the face of foreign culture and beliefs. It is true that by focussing the laws on Roman citizens he also promoted the fertility of those freed persons of foreign origin who held the citizenship. But that was unavoidable - he could hardly have withdrawn their citizenship. Moreover, the children of those freed persons would presumably be more "Romanized" than their parents. He did take measures to curb the rate of manumission in the future : the lex Fufia Caninia of 2 B.C. and the lex Aelia Sentia of A.D.4 sharply limited the number of slaves an owner could free during his lifetime and in his will.<sup>25</sup> Encouraging married couples to raise families served another purpose - the family unit was the traditional focal point of Roman social organization and a key to social stability.<sup>26</sup>

Augustus encouraged procreation by several methods. Tacitus records that he granted Marcus Hortensius Hortalus, the impoverished grandson of the distinguished orator Q. Hortensius Hortalus (consul in 69 B.C.), one million sestertii

to marry and raise a family.<sup>27</sup> Art could be used to influence public opinion. On the Ara Pacis (altar of peace) dedicated by the senate in 13 B.C. and inaugurated in the Campus Martius in 9,<sup>28</sup> children are depicted prominently in the processions of magistrates, priests and the imperial family, and Terra Mater is shown seated with children in her lap.<sup>29</sup> Above all, he introduced a complex system of rewards for parenthood and penalties for celibacy and childlessness.

The Birth-Rate : Rewards and Penalties. The first step toward a higher birth-rate was an increase in the number of marriages. Men between the ages of twenty-five and sixty and women between twenty and fifty were required to be married.<sup>30</sup> Those who failed to comply were barred from accepting inheritances and legacies<sup>31</sup> unless they were blood relatives of the testator within the seventh degree.<sup>32</sup> They were also prohibited from attending games and public shows.<sup>33</sup> Augustus tried to prevent arbitrary and, in his view, unnecessary restrictions on the right of marriage. Parents could no longer forbid their children to marry,<sup>34</sup> and persons could not be required to remain unmarried as a condition of accepting an inheritance or legacy.<sup>35</sup> For example, if Titus declared in his will that his son-in-law Quintus could take a certain bequest only if he agreed not to marry Lucretia, the stipulation would be declared legally void and the bequest would pass to Quintus regardless of whether or not he married her. By the lex Papia Poppaea divorced and widowed spouses were required to be married within eighteen

months after a divorce and within two years after the death of a spouse.<sup>36</sup>

The next step in raising the level of population was to encourage married couples to raise families. The pervasiveness of the measures which he introduced reveals something of Augustus' determination. The childless lost one half of inheritances and legacies<sup>37</sup> unless they were blood relatives of the testator within the seventh degree.<sup>38</sup> Free-born women over fifty years of age with fewer than three children and freedwomen over fifty with fewer than four could not accept bequests.<sup>39</sup> Like caelibes, orbi were not allowed to attend public shows or games.<sup>40</sup> A childless man or woman could take only one tenth of the property of a deceased spouse.<sup>41</sup> For each child resulting from a previous marriage the surviving spouse was entitled to an additional one tenth and to the usufruct (the right without actual ownership to the advantages and profits of a given piece of property) of a one third portion of the estate.<sup>42</sup> To prevent circumvention of these provisions, gifts between husband and wife during marriage were forbidden.<sup>43</sup>

Rewards were offered for large families. Fathers advanced more rapidly than orbi through the senatorial cursus honorum (the career of political offices). There was a minimum age for most Roman magistracies; for example,

under Augustus the minimum age for the quaestorship was twenty-five, for the consulship, thirty-three.<sup>44</sup> For each son or daughter the Augustan legislation allowed candidates to stand for office one year earlier than normal.<sup>45</sup> In the competitive world of Roman politics, such an advantage was highly valued. The lex Iulia de maritandis ordinibus gave precedence in assuming the consular fascēs (the symbols of office of the consuls) to the consul who had more children either under his legal jurisdiction (in sua potestate) or lost in war.<sup>46</sup> The privilege may well have applied to the fascēs of other magistracies. Free-born women (ingenuae) were released from guardianship by the birth of three children, freedwomen (libertinae) by four.<sup>47</sup> They were then able to conduct legal transactions, make a will, and manage property without the supervision of a guardian or tutor.<sup>48</sup> Men were released from the obligation of serving as guardians by the birth of three children in Rome, four in Italy or five in the provinces.<sup>49</sup> Dio states that in A.D.9 in connection with the lex Papia Poppaea Augustus decreed that some women (τῶν τε γυναικῶν τισί) could inherit more than the 100,000 sestertii allowed by the lex Voconia;<sup>50</sup> these were probably women who had borne a certain number of children.<sup>51</sup> The daughter of a man with three children was exempt from serving as a Vestal Virgin.<sup>52</sup> The legislation also strengthened the inheritance rights of patronesses with children in the estates of their freedmen and freedwomen. A free-born patroness with at least two children and a freed-

woman patroness with at least three were guaranteed one half of the estates of their freedmen and freedwomen.<sup>53</sup> On the other hand, the inheritance rights of a patron in the estate of a freedman valued at more than 100,000 sestertii declined in proportion to the number of the freedman's children.<sup>54</sup> These measures encouraging freed persons, particularly wealthy freed persons, to raise families do not imply that Augustus was especially anxious to increase the number of foreigners - not all freed persons, perhaps not even the majority, were of foreign origin.<sup>55</sup>

The Marriage Ban : Racial and Moral Purposes. The lex Iulia de maritandis ordinibus<sup>56</sup> decreed that senators and their natural sons, grandsons, great grandsons, daughters, granddaughters and great granddaughters could not legally marry freed persons, actors or actresses,<sup>57</sup> without the express permission of the emperor.<sup>58</sup> The purpose of the ban on marriages of this type was to preserve the racial purity and moral integrity of the senatorial order<sup>59</sup> - many freed persons were of foreign as well as servile origin, and most actresses were also prostitutes.<sup>60</sup> The political and social preëminence of the senatorial order, necessary to the ordered functioning of the Roman state, depended, to some extent, on the appearance of ethnic and moral superiority.<sup>61</sup>

The Law on Adultery. This law, which severely punished adultery, stuprum (debauchery) and incest, and placed restrictions on the right of divorce, was designed to meet

several objectives. It was, as many scholars argue, intended to reform the sexual morality of the Roman people, which, at least according to Horace, was sorely in need of rehabilitation. The penalties for licentiousness, by curbing practices, particularly adultery, which might weaken conjugal relationships, and the measures to circumscribe divorce would also help to restore the stability of the family unit.<sup>62</sup> The law served another purpose : to reaffirm and propagate traditional Roman moral and social values, primarily as a means of offsetting the influence of the Hellenistic east, which for two centuries or more had been diluting and transforming Roman values, attitudes and beliefs. Augustus wrote of his legislation on marriage:

legibus novi[s] m[e auctore l]atis  
 m[ulta e]xempla maiorum exolescentia  
 ex nostro [saecul]o red[uxi].<sup>63</sup>

His goal of restoring the customs and values of an earlier age is reflected in the literature of the Augustan principate. Commissioned to write a hymn to celebrate the secular games of 17 B.C. Horace composed the Carmen Saeculare.<sup>64</sup> Sung by fifty-four boys and girls of the Roman nobility it prophesied the return of traditional moral principles:

iam Fides et Pax et Honor Pudorque  
 priscus et neglecta redire Virtus  
 audet.<sup>65</sup>

Elsewhere Horace extolled the old-fashioned virtues of rural Italy and the robust peasant soldier, rusticorum mascula militum proles.<sup>66</sup> From such parents, he claimed, not from adulterers and husbands acquiescing in their wives' immoralities,

sprang the youth which had defeated Pyrrhus, Antiochus and Hannibal. Livy too carried the banner of moral conservatism. He devoted two chapters in the first book of his history to the story of Lucretia, Tarquinius Collatinus' chaste wife, who, after being raped by Sextus, son of Tarquinius Superbus, the last king of Rome, committed suicide because she could not endure the shame.<sup>67</sup>

It can be inferred from Horace, Livy and Virgil that Augustus' cultivation of traditional values may have served another purpose. Horace associated the political turmoil of the late Republic with a decline in traditional moral standards:

fecunda culpa saecula nuptias  
 primum inquinavere et genus et domos;  
 hoc fonte derivata clades  
 in patrium populumque fluxit.<sup>68</sup>

Livy singled out moral degeneration as the root cause of the civil wars and saw reform as the key to ensuring lasting political and social order.<sup>69</sup> Virgil seems to have believed that the moral values, the pietas and virtus, of the hardy and upstanding Italian peasantry<sup>70</sup> were necessary to fulfilling Augustus' destiny of establishing a golden age (aurea saecula)<sup>71</sup> of peace and prosperity. Perhaps Augustus too felt that a return to the values which had fostered the past glories of the Roman people - res Italas Romanorumque triumphos<sup>-72</sup> and transformed Rome into an empire was needed to secure the pax Romana.

The works of Horace, Livy and Virgil, by shaping public opinion,<sup>73</sup> undoubtedly helped Augustus secure his various

objectives. The prescripts of the lex Iulia de adulteriis coercendis were a more direct and exacting medium.

The Regulations. A woman convicted of adultery lost one half of her dowry and a third of her property, was banished to an island,<sup>74</sup> and forfeited the right to testify in court or to make a deposition.<sup>75</sup> The adulterer lost one half of his property and was relegated to a different island. There are several historical examples : Julia the Elder, daughter of Augustus, banished in 2 B.C. to the island of Pandateria;<sup>76</sup> Sempronius Gracchus, one of her paramours, exiled to Cercina for fourteen years;<sup>77</sup> Julia the Younger, granddaughter of Augustus, sent to Trimerum in A.D.8 where she died twenty years later,<sup>78</sup> and Vistilia, the wife of Titidius Labeo, proconsular governor of Gallia Narbonensis, sentenced in A.D.19 and banished to Seriphos.<sup>79</sup>

The law punished as stuprum (debauchery) the seduction, without employment of force, of any virgin, widow or boy (puer)<sup>80</sup> living a virtuous life.<sup>81</sup> The penalty was confiscation of half of the man's property.<sup>82</sup> Any male who, of his own free will, submitted to debauchery or any vile and disgraceful act (flagitiumque impurum) lost one half of his property and could not legally make a will based on the remainder.<sup>83</sup> Incest was punished by the banishment of the man involved.<sup>84</sup>

Augustus regulated the procedure for divorce. Prior to the lex Iulia de adulteriis coercendis a man could divorce his wife simply by informing her that he did not

want their marriage to continue. After 18 B.C. divorce by means of an oral statement of intent was legally void without the presence of seven Roman citizens as witnesses.<sup>85</sup>

Through the lex Iulia de adulteriis coercendis Augustus shifted the responsibility for maintaining moral standards from the family to the state.<sup>86</sup> Perhaps, like Horace, he believed that some husbands could not be trusted to punish their wives' licentiousness.<sup>87</sup> The law removed a husband's right of deciding whether to prosecute or pardon an adulterous wife. Failure to prosecute brought a charge of lenocinium (pandering or complicity).<sup>88</sup> The right of a husband to kill his adulterous wife (ius occidendi) was abolished.<sup>89</sup> The adulterer could be killed with impunity only if he was caught in flagrante delicto in the husband's house, or if he was formerly a leno (pander), or if he made his living by singing or dancing on the stage, or if he had been convicted of a criminal offence and lost his civil rights, or if he was a freedman of the husband or wife or any of their immediate family, or if he was a slave.<sup>90</sup> In place of the jurisdiction of the family, Augustus established a standing public court (quaestio perpetua) to handle cases of adultery.<sup>91</sup>

The Financial Purpose? Discussing a motion in the senate in A.D.20 to moderate the lex Papia Poppaea, Tacitus remarks that Augustus had passed the law augendo aerario ("for the purpose of enriching the public treasury").<sup>92</sup> He implies that the inheritance disabilities imposed on caelibes and orbi, by which property bequeathed to them in

contravention of the laws could be confiscated by the state, were designed to augment imperial resources.<sup>93</sup> His views deserve more credence than most scholars accord them.

The inheritance disabilities operated as follows. Property willed to the unmarried and the childless which they could not legally accept became ownerless (bona caduca).<sup>94</sup> Caelibes were given one hundred days from the opening of the will to marry and become eligible for the bequest.<sup>95</sup> Bona caduca passed first to other heirs with children, then to legatees with children, and finally, if none were eligible, to the public treasury (aerarium).<sup>96</sup> Enforcement depended on delatores (informers) who ferreted out and prosecuted those caelibes and orbi who illegally accepted inheritances or legacies. If the accused were convicted, ownership of the goods in dispute passed to the state and the delator got his reward - a share of the confiscated property, almost certainly substantial. The exact portion to which the informers were entitled is not known; we do know that the emperor Nero (ruled A.D. 54 - 68) reduced it by three-quarters.<sup>97</sup>

The inheritance disabilities for caelibes and orbi will not have significantly enriched the public treasury. It is unlikely that the necessary combination of circumstances would have arisen frequently, i.e. that all heirs and legatees named in a will were childless; though many testators will have named few heirs in order that their property not be fragmented,<sup>98</sup> we may assume that most will have made sure

to include at least one beneficiary with children. Further, many, if not most, heirs and legatees would probably be blood relatives of the testator and therefore not subject to the regulations disinheriting caelibes and orbi. Nor does it seem to have been especially difficult to evade the sanctions. At least for a while, property could be left to the unmarried and the childless in the form of a trust (fideicommissum). It appears that even those testators who wished to bequeath all their property to a caelebs or orbis could prevent the forfeiture of their goods to the state by including in their wills long lists of substitute heirs. Thus, even if they were detected by the watchful eyes of the delatores and the principal heir was disqualified, their property would pass to other designated beneficiaries, not to the aerarium. The legal sources indicate that the substitution of heirs was eventually prohibited; unfortunately, they do not specify a date.<sup>99</sup> We might assume, however, that Augustus would not have waited long to close this loophole. There may have been yet other means of circumventing the penalties for celibacy and childlessness; in abolishing them the Codex Iustinianus remarks on the distinguished jurists who devised many ways (multas vias) through which property might not become ownerless (caducum ne fieret).<sup>100</sup>

Thus it seems likely that bona caduca will not have devolved upon the aerarium with regularity. However, that few testators lost their property to the treasury does not rule out the possibility that Augustus intended the laws to

be a method of generating revenue for the state; the consequences of the inheritance disabilities proves nothing about their rationale. Several scholars argue that Tacitus' imputation of a financial motivation for the legislation is consequent upon his failure to distinguish between its purpose and its means of enforcement. But if Augustus had no intention of augmenting state revenues through the laws, why did he order that bona caduca should pass to the treasury? Granted, goods which caelibes and orbi could not inherit had to go somewhere. But the range of persons who might receive them in turn he sharply limited to other heirs and legatees with children. Why was there such a narrow definition of the possible beneficiaries of bona caduca? Another provision of the laws suggests that they may have had a financial purpose - unmarried women between twenty and fifty years of age with property valued at more than 20,000 sestertii were required to pay a one per cent annual tax on their capital until they found husbands.<sup>101</sup> A direct tax on celibacy is less easily explained as simply another means of enforcing the laws. Further, it may be more than coincidence that Augustus was short of money, primarily to pay and supply the army, during the last years of his reign, i.e. around the time when the lex Papia Poppaea increased the rewards for delatores. To finance the military treasury established in A.D. 6<sup>102</sup> he instituted a five per cent tax on inheritances and bequests<sup>103</sup> and several years later proposed a land tax.<sup>104</sup>

The evidence for a financial motive to the legislation is far from conclusive. But it would be injudicious to dismiss the possibility that it was designed, at least in part, to help boost imperial revenues.

Selective Breeding? In an article published in the 1944-45 edition of the Classical Journal, J.A. Field Jr. argues that Augustus' measures to stimulate the birth-rate were directed exclusively at the upper classes. The laws, he suggests, were intended solely to restore the ranks of the senatorial and equestrian orders decimated by civil war and the proscriptions of Marcus Antonius, Marcus Lepidus and Octavianus.<sup>105</sup> There is little good evidence to support his thesis. Augustus wanted the lower classes, as well as the senatorial and equestrian orders, to multiply - they were vital to maintaining the ranks of the legions.

It is true that privileges in public life for fathers, such as more rapid advancement through the course of political offices, will have been of little concern to the lower social orders - those below equestrian rank had no real hope, if indeed they had the aspiration, of becoming quaestor or consul. Exemption from the lex Voconia benefitted only women who were likely to inherit more than 100,000 sestertii, i.e. those of the upper classes. But release from guardianship, for ingenuae by the birth of three children and for libertinae by the birth of four, undoubtedly held appeal for even the poorest of women. There were also measures to encourage freedmen, particularly wealthy freedmen, to

raise children. For example, if a freedman with an estate valued at more than 100,000 sestertii had no children or only one child, his patron was entitled to one half of the estate. But if he had two children, his patron took only one third, and, if he had three or more children, his patron was wholly excluded.<sup>106</sup> The birth of two children released all freedmen, regardless of their financial status, from the obligations of performing operae (services) for their patrons and of providing them with donations and gifts.<sup>107</sup> The poor will have been as anxious as senators and equestrians to avoid the inheritance disabilities for caelibes and orbi. Though they could expect to inherit little property there is no reason to assume that they were less concerned than the wealthy about what they might receive.

Augustus undertook other measures, not part of the marriage laws, to encourage procreation among the lower classes. Suetonius records that when he visited the various districts of Rome he gave one thousand sestertii per child to those of the plebs who could prove to him that they had sons or daughters.<sup>108</sup> He also assigned special seats at games to the married men of the lower social orders.<sup>109</sup> Pliny the Elder records the fecundity of C. Crispinus Hilarus, an otherwise undistinguished free man of Fiesole, who in 4 B.C. sacrificed on the Capitoline hill with his eight children, twenty seven grandchildren, eighteen great grandchildren, and eight granddaughters by marriage.<sup>110</sup> Pliny's source was probably the acta diurna, an official daily

gazette recording important social and political news. That the fertility of a man not of senatorial or equestrian rank was considered worthy of official recognition is another indication that Augustus was concerned about the birth-rate of the lower classes. From Aulus Gellius we know that Augustus set up an inscription on the Via Laurentina in honour of a slave girl who had given birth to quintuplets.<sup>111</sup>

### Conclusion

The marriage legislation was part of Augustus' program to restore the res publica shaken by more than a century of political and social disorder. For Augustus and for men like Livy, Horace and Virgil the solution to the problems which had befallen the Romans lay in the past, in the values and customs of an earlier age (exempla maiorum) - family life, the chastity of Lucretia, the moral probity of Cato the Elder, in a word, Romanitas. The political settlement imposed by the principate was not enough without propagation of the Italian stock and of its prisca virtus, which, unadulterated by the attitudes and beliefs of the opulent and decadent east, had won Rome an empire. Ironically, Augustus' method of implementing this archaizing social policy was itself a radical innovation - a pervasive intervention by the state in the private lives of Roman citizens.

## CHAPTER FOUR

### The Effects of the Marriage Legislation on the Rights, Independence and Status of Women

In the range of scholarship on the marriage laws there has not yet been a comprehensive treatment of their impact on the rights, independence and status (both legal and social) of women.<sup>1</sup> This study tries to bring together the pertinent evidence which is scattered through the legal and literary sources.<sup>2</sup> In doing so, it also reveals something of the nature of Roman society; law not only influences social relationships but also reflects the values of society.<sup>3</sup>

The laws undermined the right of women to choose their marital status and to decide whether or not to raise a family by heavily penalizing those who did not marry and bear children. Unmarried women could not accept inheritances and legacies from other than blood relatives within the seventh degree.<sup>4</sup> Those with property valued at more than 20,000 sestertii were compelled to pay annually a one per cent tax on their capital.<sup>5</sup> Married but childless women lost one half of most bequests.<sup>6</sup> Free-born women over fifty years of age who had fewer than three children and freedwomen over fifty who had fewer than four could not inherit.<sup>7</sup> If her husband died, a childless

woman could take only one tenth of his property.<sup>8</sup> For each child resulting from a previous marriage she could take an additional one tenth and the usufruct of a one third portion of his estate.<sup>9</sup> She was exempted from these regulations only if she was under twenty years of age or over fifty, or if she was related to her husband within the sixth degree, or if her husband had died while absent on business for the state, or if she had lost a son over fourteen years of age or a daughter over twelve or two children over three years of age or three children after they were named (the ninth day after birth), or if she had a child within nine months after her husband's death.<sup>10</sup>

Divorce or the death of a husband did not release women from the obligation to be married. By the lex Iulia de maritandis ordinibus they had to remarry within one year after the death of a husband and within six months after a divorce; the lex Papia Poppaea allowed them two years and eighteen months respectively.<sup>11</sup> After these periods expired they were subject to the full penalties of the laws; technically, they were caelibes until they remarried. Augustus' encouragement of remarriage was a striking break with tradition.<sup>12</sup> Although not uncommon before the marriage legislation, remarriage was often viewed with disapprobation; it was an offense to religious sensibilities and, in the social psychology of the day, was seen as unfaithfulness to

the former spouse, particularly in the case of remarriage after the death of a husband.<sup>13</sup> Evidently, Augustus was prepared to break with traditional social attitudes in the interest of more marriages.

Ironically, some of the measures which Augustus introduced to promote the remarriage of women indirectly enhanced their rights and independence. A woman could not be required to remain unmarried as a condition of accepting an inheritance or legacy,<sup>14</sup> and, conversely, any provision in a will which stipulated that a woman could not accept a bequest if she were to remarry was declared legally void.<sup>15</sup> Prior to the legislation a patron could prevent his former wife, if she was a freedwoman, from remarrying. Augustus abolished this right unless the freedwoman had deserted her patron<sup>16</sup> or had been manumitted for the purpose of the original marriage.<sup>17</sup> It appears also that the laws rendered null any oaths imposed by a patron on his freedwoman not to remarry.<sup>18</sup>

Alterations in the law of dowry, designed to enhance the attractiveness of young women as candidates for marriage and of divorced and widowed women as prospects for remarriage,<sup>19</sup> gave women more financial independence. By the lex Iulia de maritandis ordinibus a father was obliged to grant a dowry to his daughter.<sup>20</sup> If he failed to do so, the praetor<sup>21</sup> was responsible for the appointment of a guardian to constitute a dowry.<sup>22</sup> The laws guaranteed women at least a portion of their dowries on the death of a husband or divorce. Usually,

the entire dowry was restored to the wife.<sup>23</sup> If a man's relatives or testamentary beneficiaries laid claim to his wife's dowry, she could institute a legal action (actio rei uxoriae) to obtain ownership of the property.<sup>24</sup> To ensure that women would regain the full value of their dowries, the lex Iulia de adulteriis coercendis restricted a husband's right to make deductions from his wife's dowry. Even with her consent he could not alienate dotal Italic land<sup>25</sup> or manumit dotal slaves.<sup>26</sup>

The legislation affected the right of some groups of women to choose their marriage partners. To increase the number of marriages Augustus condoned or perhaps even legalized marriage between free born men (ingenui) who were not of senatorial rank and freedwomen, and between free born women (ingenuae) who were not of senatorial family and freedmen.<sup>27</sup> On the other hand, as part of his policy of preserving the ethnic purity and moral integrity of the senatorial order, he declared that freedwomen and actresses could not contract legal marriages with senators or their natural sons, grandsons and great grandsons, and that the daughters, granddaughters and great granddaughters of senators could not legally marry freedmen or actors.<sup>28</sup> The practical effects of the measures restricting the marriage rights of freedwomen, actresses, and the female offspring of senators are difficult to determine with certainty. P. Garnsey suggests that they will have been of little consequence; few senators or their offspring, he argues, will have wanted

to marry freed persons, actors or actresses (many of whom were prostitutes) - such marriages tended to blur distinctions of social status and undermine the social superiority of the senatorial order.<sup>29</sup> However the number of senators and their offspring who wished to marry freedmen or freedwomen may have been larger than he supposes - the wealth of some freed persons was a strong inducement.<sup>30</sup>

Prior to Augustus' laws on marriage the family was responsible for the moral conduct of women. Though the husband or father of an adulterous woman could, in most circumstances, kill her with impunity, it appears that this right was seldom exercised. The usual penalty for female adultery was banishment beyond two hundred miles from Rome.<sup>31</sup> By the lex Iulia de adulteriis coercendis the state in effect assumed most of the responsibility for maintaining a high moral standard among women. Adulterous women could no longer appeal to family ties or the affection of family members in the hope of clemency. The ius accusandi (right of accusation) was structured to ensure their public prosecution. A husband was compelled to repudiate and prosecute an adulterous wife within sixty days of the offence or face a charge of pandering (lenocinium).<sup>32</sup> In a trial for adultery, the woman was invariably prosecuted first; her guilt or innocence determined the fate of the accused adulterer.<sup>33</sup> A woman could only escape prosecution if she remarried before she was accused by her former husband.<sup>34</sup> But an accusation against a remarried woman was valid if

made before the second marriage.<sup>35</sup> It is true that the law abolished the right of a husband to kill his adulterous wife (ius occidendi).<sup>36</sup> But women will have benefitted little from the abolition of a right which was rarely exercised. Moreover, in place of the jurisdiction of family members who might show leniency, Augustus established a standing public court (quaestio) for adultery and fixed penalties for adulterous women : loss of half their dowries, a third of their property, the right to make a deposition or testify in court, and banishment to an island.<sup>37</sup>

Augustus bestowed a number of benefits upon women who complied with the laws by raising children. Some of these merely conferred upon them the rights of inheritance which even caelibes and orbae had enjoyed before the legislation : married women who bore at least one child did not lose inheritances and legacies; ingenuae and libertinae over fifty years of age with three and four children respectively had full rights of inheritance. Others were new legal privileges which women did not enjoy prior to the laws and which enhanced their rights and independence. It is unlikely though that many women will have obtained them - most required three or even four children, unrealistically high standards in light of the ubiquitousness of under-nourishment and the high rate of infant mortality.<sup>38</sup>

The inheritance rights of free born patronesses with two children and of freed patronesses with three were assimilated to those of a patronus.<sup>39</sup> By the lex Papia Poppaea

they could demand possession of half the estate of an ungrateful freedman against the provisions of his will, or, in the case of intestacy, against his wife, adopted son or daughter-in-law.<sup>40</sup>

Free-born women with three children and freedwomen with four were entitled to the ius trium liberorum (the right to the benefits accruing to the parents of three children).<sup>41</sup> Those who held it were released from guardianship<sup>42</sup> (unless they were under the age of twenty five).<sup>43</sup> The Roman law of guardianship (tutela) prescribed that all legal transactions of women be supervised and approved by a guardian or tutor.<sup>44</sup> The guardian was usually a male relative of the woman, otherwise someone appointed by the praetor to protect her interests. The tutela for women was lifelong.<sup>45</sup> Thus release from guardianship was a significant step toward allowing women to manage their own affairs, particularly in regard to the disposal of property, e.g. drawing up an independent will.<sup>46</sup> It can be inferred from a late piece of evidence that release from guardianship was highly valued. A papyrus of A.D.263 records an application for the ius trium liberorum sent to the prefect of Egypt by a woman named Aurelia Thaisous. On the basis of her several children she requested the privilege of managing her affairs and conducting business unhindered (ἀνεμποδύστως) by a guardian (κύριος).<sup>47</sup>

H. Last<sup>48</sup> and M. Hammond<sup>49</sup> argue that the ius trium liberorum entitled women to exemption from the lex Voconia

de mulierum hereditatibus of 169 B.C.<sup>50</sup> Dio records that in A.D.9 in connection with the lex Papia Poppaea Augustus allowed some women (τῶν τε γυναικῶν τισι) to inherit more than the 100,000 sestertii allowed by the lex Voconia (Οὐοκῶνελοῦ νόμοῦ).<sup>51</sup> He does not state what criterion was used to select the women who would receive the privilege. Last and Hammond assume that it was the ius trium liberorum. However that seems unlikely. Already in 9 B.C. the senate had granted Augustus' wife Livia the ius trium liberorum.<sup>52</sup> Yet Dio records that in his will read to the senate by his freedman Polybius in A.D.14 Augustus requested the senators to exempt Livia from the law which restricted her rights of inheritance in order that she might receive one third of his property.<sup>53</sup> Dio does not name the law but we can safely assume that he had in mind the lex Voconia - we know of no other law which placed restrictions on womens' rights of inheritance. If, as Last and Hammond suggest, the ius trium liberorum conferred upon its holders exemption from the lex Voconia, why was it necessary for Augustus to request in his will that Livia, who possessed the privilege, be exempted from the law?<sup>54</sup>

Women with the ius trium liberorum seem to have been entitled to the ius stolatae. Propertius, in a poem written no earlier than 17 or 16 B.C.,<sup>55</sup> alludes to the right of Cornelia, wife of Paullus Aemilius Lepidus, censor in 22,<sup>56</sup> to wear the stola instita (a long female upper garment) because of the number of her children. He has the deceased

Cornelia tell Aemilius Lepidus that she had fully deserved the noble honors of the garment (generosos vestis honores) because the home from which death had plucked her away was not childless.<sup>57</sup> Further, several inscriptions describe women with the ius trium liberorum as feminae stolatae.<sup>58</sup>

The Augustan legislation delineated the legal and social status of certain groups of women and helped entrench social prejudices.<sup>59</sup> Women who served liquor to men,<sup>60</sup> owned businesses or shops,<sup>61</sup> or were prostitutes<sup>62</sup> were not subject to the penalties of the lex Iulia de adulteriis coercendis; the immorality associated with their professions rendered them unworthy of its attention.<sup>63</sup> Similarly, fornication with slave women (ancillae)<sup>64</sup> or with women legally classified as concubines (concupinae)<sup>65</sup> was not considered stuprum (debauchery). The wives of slaves could not be accused of adultery.<sup>66</sup>

It is difficult to assess the practical effects of the laws on the condition of women; we lack the evidence necessary for familiarity with the social life of the early empire. In his study of the sociological implications of the legislation J.H. Fichter contends that it seriously undermined traditional masculine control of women and strongly promoted their independence.<sup>67</sup> A. Bouché-Leclercq argues that privileges such as increased rights of inheritance for some patronesses and release for some women from the burdens of guardianship were a small step toward civil equality of the sexes.<sup>68</sup> Both conclude that the laws

enhanced, if only in a small way, the welfare of women. The evidence does not warrant such a conclusion - they have overlooked the important point that only those women who complied with the laws by marrying and by raising several children will have benefitted from such privileges as release from guardianship. Though alterations in the law of dowry gave women more financial independence, those same women were compelled on pain of financial loss to marry and raise families. On balance, the legislation seems, if anything, to have made worse the condition of Roman women.

## APPENDIX

### The Cura Legum et Morum

Augustus was offered<sup>1</sup> the office of curator legum et morum summa potestate (curator of laws and morals with the highest power) in 19, 18 and 11 B.C.<sup>2</sup> He writes of the offers:

[consulibus M. Vinicio et Q. Lucretio] et postea P. Lentulo et Cn. L[entulo et tertium Paullo Fabio Maximo et Q. Tuberone senatu populoq]u[e Romano consentientibus] ut cu[rator legum et morum summa potestate solus crearer], nullum magistratum contra morem maiorum delatum recepi].<sup>3</sup>

Dio states that in 19 B.C. Augustus was elected curator of morals for five years:

ἐπιμελητῆς τε τῶν τρόπων ἐς πέντε ἔτη παρακληθεὶς δὴ ἐχειροτονήθη.<sup>4</sup>

He records that in 12 B.C. Augustus was again elected to the office:

ὁ Αὐγουστος ἐπιμελητῆς τε καὶ ἐπανορθωτῆς τῶν τρόπων ἐς ἕτερα ἔτη πέντε αἵρεθεὶς.<sup>5</sup>

Suetonius states that Augustus received a curatorship of morals and laws (morum legumque regimen) which, like his tribunician power, was lifelong (perpetuum).<sup>6</sup>

At first glance it appears either that Dio and Suetonius are incorrect or Augustus mendacious. Many scholars, following Res Gestae, 6.1, argue that Augustus declined the office

and ignore or reject the evidence of Dio and Suetonius;<sup>7</sup> others such as P.A. Brunt and J.M. Moore,<sup>8</sup> and A.H.M. Jones,<sup>9</sup> challenge the veracity of Augustus. But the three accounts of the cura are not in fact irreconcilable. Augustus did accept a curatorship of laws and morals but he does not lie in the Res Gestae - he simply tells less than the whole truth.<sup>10</sup>

The construction of Res Gestae, 6.1 is disingenuous - Augustus does not in fact deny accepting the cura; he says only that he received no office contrary to ancestral custom (nullum magistratum contra morem maiorum delatum recepi). Conceivably, he did not regard the position of curator legum et morum summa potestate as contrary to tradition.<sup>11</sup> After all, Julius Caesar had taken a curatorship of morals (praefectura morum) for life.<sup>12</sup> Or perhaps Augustus accepted the office without summa potestas.

It is not hard to find an explanation for his half-truths. He was sensitive to Roman antipathy toward any office that seemed monarchic; he remembered well the fate of Julius Caesar at the hands of regicides. He refused the dictatorship,<sup>13</sup> a consulship for life,<sup>14</sup> and the office of pontifex maximus<sup>15</sup> until the death of Marcus Lepidus in 13 B.C.<sup>16</sup> Not surprisingly, he did not want to advertise his acceptance of the cura legum et morum.

How long Augustus held the curatorship cannot be precisely determined. Dio records that he received it for

two five-year periods; Suetonius calls it perpetuum. Both are probably correct. Dio does not mention a second renewal of the curatorship. But it is not implausible that, like Augustus' tribunician power, it was regularly renewed until his death. Thus, in effect, it would have been perpetuum. Suetonius' discussion of Augustus' tribunicia potestas is instructive; he designates it perpetuum but also talks of terms (lustra) within the longer span.<sup>17</sup>

The date of Augustus' first election to the curatorship is not clear. Dio indicates 19 B.C. But Augustus states that it was offered to him in 18 B.C. as well as in 19. Would he have been offered an office in 18 B.C. which, according to Dio, he already held? Augustus would not have fabricated the offer of 18 B.C. The event was relatively fresh at the time the Res Gestae was written; facts could be checked. Moreover, why would he lie? It is equally unlikely that he simply misconstrued the facts; he, or someone designated the task, must have checked carefully the dating of the offers of the cura in preparing the Res Gestae. It is more likely that Dio made a simple chronological mistake; he placed Augustus' election to the cura one year too early in his narrative. It is not inconceivable that Augustus declined the office in 19 B.C. but accepted it in 18.<sup>18</sup>

A similar argument applies to the dating of the renewal of the cura. Dio gives 12 B.C.; Augustus records that he was offered the curatorship in 11. Again, Dio has probably

placed the event one year too early;<sup>19</sup> on a chronological point Augustus is a more reliable source. Dio's account of the renewal of the cura in 12 B.C. is not easily moved to 11. He ties it to the death of Marcus Agrippa in 12 B.C.:

οὕτω μὲν τὰ κατὰ Ἀγρίππαν ἐγένετο μετὰ δὲ  
 δὴ τοῦτο ὁ Αὐγούστος ἐπιμελητῆς τε καὶ  
 ἐπανορθωτῆς τῶν τρόπων ἐς ἕτερα ἔτη πέντε  
 αἵρεθεῖς.<sup>20</sup>

The death of Agrippa in 12 B.C. is attested in other sources.<sup>21</sup> Dio may be simply mistaken. But μετὰ . . . τοῦτο is sufficiently vague that the renewal of the cura can be separated from the death of Agrippa without serious injury to the text of Dio.

The role of the cura legum et morum in the Augustan principate is uncertain. It is perhaps not fortuitous that the grants of the curatorship coincide with lectiones ("purgings") of the senate in 18 and 11 B.C.<sup>22</sup> The cura may have provided constitutional validation of Augustus' right to conduct the senatorial lectiones; more likely, it simply strengthened his position.<sup>23</sup>

Suetonius suggests a connection between the cura and the censuses conducted by Augustus in 28 B.C., 8 B.C. and A.D.14. He records that:

recepit et morum legumque regimen aequae  
 perpetuum, quo iure, quamquam sine censurae  
 honore, censum tamen populi ter egit.<sup>24</sup>

He is probably mistaken. There is no other evidence that the census of 28 B.C. was conducted by virtue of the cura.<sup>25</sup> More importantly, we know that the censuses of 8 B.C. and

A.D.14 were carried out through consular imperium (authority).<sup>26</sup>

P. Csillag contends that Augustus enacted the marriage laws of 18 B.C. by virtue of the cura legum et morum.<sup>27</sup>

His argument is without foundation. No source records the use of the curatorship to enact the leges Iuliae. Augustus states that he carried the measures by virtue of his tribunician power.<sup>28</sup> There is no reason to dispute his claim.<sup>29</sup>

At most, the cura provided moral support for enacting the unpopular legislation of 18 B.C.

The combined evidence of Dio, Suetonius and Augustus provides us with a glimpse of the truth. Augustus declined the cura legum et morum summa potestate in 19 B.C. but accepted it, perhaps without summa potestas, for five-year periods in 18 and 11. The cura appears to have been a largely honorific office; it does not seem to have played a significant role in the constitutional underpinnings of the principate or in the marriage legislation.

NOTES

## INTRODUCTION

1. Tacitus, Annales, 3.28.
2. See Plutarch, Brutus, 10 and Suetonius, De Rhetoribus, 6.
3. Res Gestae Divi Augusti, 1.1.
4. Res Gestae Divi Augusti, 34.1.
5. Res Gestae Divi Augusti, 34.2; cf. Dio, Historia Romana, 53.16.7-8, and Suetonius, Augustus, 7.
6. See, among others, H.S. Jones, "The Princeps," in the Cambridge Ancient History, Vol. 10, ed. by S.A. Cook, F.E. Adcock and M.P. Charlesworth (Cambridge : University Press, 1934), 127-9, Syme, Roman Revolution, 313-16, and Brunt and Moore, Res Gestae, 9. On contemporary views of the settlement see F. Millar, "Triumvirate and Principate," JRS 63 (1973) 65-7.
7. See Horace, Odes, 3.6.1-4.
8. See Horace, Odes, 3.6.25-32 and Livy, Ab Urbe Condita, 26.22.15.
9. See especially Livy, Praefatio, 9.
10. R.M. Ogilvie, The Romans and their Gods in the Age of Augustus (New York : W.W. Norton, 1969), 113-23.
11. See Syme, Roman Revolution, 447.
12. Dio, Historia Romana, 54.6.6 (21 B.C.).
13. Res Gestae Divi Augusti, 20.4.
14. Suetonius, Augustus, 34. The exact date of its enactment is not known.
15. Dio, Historia Romana, 56.10.3. The Julian laws took their name from C. Iulius Caesar Octavianus (Augustus) - he was adopted into the family of the Iulii by the will of Julius Caesar. They were passed by virtue of his tribunician power; see Res Gestae Divi Augusti, 6.2.
16. Historia Romana, 54.16.1-2.
17. CIL, VI, 32323 : "who are bound by the lex de maritandis ordinibus".

18. Carmen Saeculare, 17-20.
19. Elegies, 4.11.45-7. Cornelia, wife of Paullus Aemilius Lepidus, censor in 22 B.C., speaks to him after her death : nec mea mutata est aetas, sine crimine tota est : viximus insignes inter utramque facem. mi natura dedit leges a sanguine ductas ("my life was not changed, it was wholly without reproach, distinguished we lived between each torch [those of the marriage ceremony and the funeral]. Nature gave to me laws sprung from my own blood").
20. Odes, 4.5.21-2 : nullis polluitur casta domus stupris, mos et lex maculosum edomuit nefas ("the home, pure, is polluted by no debauchery, custom and law have overcome the stain of sin").
21. In Book IV of the Elegies the latest datable reference is to the consulship of P. Cornelius Scipio in 16 B.C. (4.11.66); the latest datable event which Horace mentions in Book IV of the Odes is Augustus' return to Rome in 13 B.C. from Gaul, Germany and Spain (4.2.43).
22. For this view see Last, "Social Policy", 441-2 and Brunt, Italian Manpower, 558:
23. Historia Romana, 54.16.3.
24. Valerius Maximus, Facta et Dicta Memorabilia, 2.9.1; see also Cicero, De Oratore, 2.64.260.
25. Tacitus, Annales, 2.50; cf. Aulus Gellius, Noctes Atticae, 10.23.4-5.
26. Historiae, 1.2.
27. Satirae, 2.37 : "where now, lex Iulia, are you asleep?".
28. Annales, 3.25 : "marriage and the raising of children did not become more common, childlessness was exceedingly widespread".
29. Apologia, 4.
30. Gaius, Institutiones, 2.150 and 207, and Ulpianus, Regulae, 28.7.
31. Tacitus, Annales, 3.28.
32. Gaius, Institutiones, 2.254.
33. Justinian, Institutiones, 3.3 and Codex Iustinianus, 6.56.

34. Digesta, 23.2.16.
35. See, for example, Origen of Alexandria (A.D.184-253), Homilia in Lucam, 17.
36. Codex Theodosianus, 8.17.1.
37. Codex Iustinianus, 5.4.23.
38. Codex Iustinianus, 6.51.1.1.

## CHAPTER ONE

### The Relationship between the lex Iulia de maritandis ordinibus and the lex Papia Poppaea

1. See, for example, Csillag, Augustan Laws, 82 and 230-1 (he includes a list of scholars of the same opinion).
2. See A.H.M. Jones, Augustus (New York : W.W. Norton, 1970), 131, and Last "Social Policy", 453-4. Unfortunately, neither fully explains his reasoning.
3. Ehegesetze, 49-63.
4. Gaius, Institutiones, 2.46-53 (Seckel-Kuebler) and Ulpianus, Regulae, 11 (FIRA).
5. Paulus, Sententiae, 2.26 (FIRA).
6. Exceptions are Ulpianus, Regulae, 14 and Fragmenta Vaticana, 216 and 218 (Girard-Senn). However these passages shed little light on penalties for orbitas.
7. Institutiones, 1.145. Gaius was a second century A.D. jurist and commentator on civil law. His principal surviving work is the Institutiones in four books, probably completed shortly after A.D.161. By the Law of Citations of A.D.426 his writings were given authority equal to those of other prominent jurists such as Paulus and Ulpianus. Little is known about his origins or personality; cf. A.M. Honoré, Gaius (Oxford : Clarendon Press, 1962).
8. Fragmenta Vaticana, 214. Domitius Ulpianus was a jurist and commentator under the emperors Septimius Severus, (ruled A.D.193-211), Caracalla, (ruled A.D.211-17), Elagabalus, (ruled A.D.218-222), and Severus Alexander, (ruled A.D.222-235). He was praefectus annonae (prefect of the corn supply) and praefectus praetorio (praetorian prefect). His works include Ad Edictum libri lxxxii (a commentary on the Praetor's Edict), Ad Sabinum on private law in fifty-one books, and short textbooks, the Institutiones and the Regulae in seven books. His work was given prominence by Justinian; more than one third of the Digesta is drawn from his writings.

9. Codex Iustinianus, 6.40.2 (Krueger).
10. See the remarks of Jörs, Verhältnis, 58-9.
11. Digesta, 23.2.23 (Mommsen-Krueger): lege Papia cavetur omnibus ingenuis praeter senatores eorumque liberos libertinam uxorem habere licere ("by the lex Papia Poppaea all free born men except senators and their children are permitted to have a freedwoman as a wife"). Publius Iuventius Celsus was a jurist and legal commentator born in A.D.77. He was twice consul, the second time in A.D.129, and a member of the consilium (council) of the emperor Hadrian (ruled A.D.117-38). His works, the Epistulae, Commentarii, and Quaestiones, are used extensively in the Digesta.
12. See Ulpianus, Regulae, 13.2 and 16.2, and Dio, Historia Romana, 54.16 (Boissevain).
13. Augustan Laws, 231.
14. Institutiones, 2.286 : "unmarried persons are prevented by the lex Iulia from accepting inheritances and legacies". Caelibes were not in fact fully disinherited. We know from Fragmenta Vaticana, 216 that they could inherit property if they were blood relatives of the testator within the seventh degree. If they were relatives only by marriage they could not inherit.
15. Institutiones, 2.286 : "the married but childless, because they do not have children, by the lex Papia lose one half of inheritances and legacies". Cf. Institutiones, 2.111. Again, Gaius' remarks need qualification; orbi, like caelibes, were able to accept the whole inheritance or legacy if they were blood relatives (not relatives by marriage) of the testator within the seventh degree.
16. See, for example, Riccobono, ed., ADA, 166-7, and G. Rotondi, Leges Publicae Populi Romani (Hildesheim : G. Olms, 1962), 445.
17. The notable exception is Jörs.
18. Cornelius Tacitus (c. A.D.56-post A.D.112/13) was consul suffectus in A.D.97 and perhaps proconsular governor of Asia in A.D.112/13. His works include De vita Iulii Agricolae, De origine et situ Germanorum, the Historiae, and the Annales, which was probably written in eighteen books and covered the period from the end of the Augustan principate to A.D.68. Most of it has survived.

19. Cassius Dio (A.D. 163/4-post 229) was born at Nicaea in Bithynia in Asia Minor. He was twice consul, the second time in A.D.229. His history of Rome from its beginnings to A.D.229 in 80 books is only partially preserved. There are Byzantine excerpts from his work (the Excerpta Valesiana), and abbreviated versions of his history by the epitomators Zonaras and Xiphilinus are useful in filling gaps in the text.
20. Annales, 3.25 (Koestermann) : "then a motion was introduced regarding the moderation of the lex Papia Poppaea, which Augustus, when older, passed after the Julian laws in order to intensify the punishment of the unmarried and to augment the public treasury".
21. The Annals of Tacitus (London : William Heinemann, 1925).
22. Poena followed by a genitive of person (caelibum) regularly has this meaning; see Annales, 2.40, 11.35, and, especially, 12.53.
23. Annales, 3.25 : "the already large number of those imperilled kept growing since every home was being subverted by the arts of the informers".
24. Dio does not name the regulations which he discusses. But, in that he places them in his account of 18 B.C., he can be referring to nothing other than the lex Iulia de maritandis ordinibus.
25. Historia Romana, 54.16.1 : "while he made the penalties heavier for unmarried men and women, on the other hand he established rewards for marriage and the begetting of children".
26. See particularly the speech "de prole augenda" of Q. Caecilius Metellus Macedonicus, censor of 131 B.C., in Livy, Periocha, 59 and Aulus Gellius, Noctes Atticae, 1.6. See also Gellius, 4.3.2 and Suetonius, Julius, 52.3 for the oath imposed by the censors on men to marry liberorum quaerendorum causa.
27. The censorship was the apex of a political career (cursus honorum). Two censors, from among the most distinguished ex-consuls, were elected every fifth year. They conducted the census, revised the senatorial roll, let out state contracts, and supervised public morals and the leasing of public lands and buildings.

28. Valerius Maximus, Facta et Dicta Memorabilia, 2.9.1 (Kempf); see also Cicero, De Oratore, 2.64.260 (O.C.T.).
29. Historia Romana, 55.2.5 : "she was enrolled among the mothers of three children".
30. For one such reward see Aulus Gellius, Noctes Atticae, 2.15 (Marshall). He records that precedence in assuming the consular fascēs (the symbols of office of the consuls) for the begetting of children was introduced by the lex Iulia de maritandis ordinibus.
31. Ulpianus, Regulae, 29.5-6 and Gaius, Institutiones, 3.49 and 52.
32. BGU, 5.28 (P. Gnomon, 28). Digesta, 50.16.148-9 defines a man with children as one who has at least one child. Gaius, Institutiones, 2.111 and 2.286 define orbi as those who have no children. See also Juvenal, Satirae, 9.87-90 (Friedlander), where he remarks that a single child is sufficient to entitle one to take inheritances but that three are necessary for the rewards of the laws (see Chapter Two, page 30). BGU, 5.30 and 5.32 (P. Gnomon, 30 and 32) indicate that a woman over fifty years of age did not inherit unless she had three children. But this would not have affected Livia at the time - she was 49 in 9 B.C. It could be though that the grant was in anticipation of her fifty-first year.
33. Dio places them near the beginning of his account of the consulship of Quintus Sulpicius Camerinus and Gaius Poppaeus Sabinus (A.D.9).
34. In Dio the term οἱ ἑπτακῆς (the knights) regularly includes the sons and grandsons of senators who had not yet held senatorial office as well as the equester ordo proper. The equestrian order (equites) thus included young men of senatorial family. See Dio, Historia Romana, 54.2.5, 55.2.3 and 56.42.2; cf. C. Nicolet, "Le cens sénatorial sous la république et sous Auguste," JRS 66 (1976) 30-8.
35. Historia Romana, 56.1.2 : "...regarding the unmarried and the childless".
36. Gaius Suetonius Tranquillus (c A.D.69-140) was secretary ab epistulis to the emperor Hadrian (ruled A.D.117-38). He seems to have had access to official state documents and even the correspondence of several emperors; he quotes them verbatim. His major surviving work is De Vita Caesarum, imperial biographies from Julius Caesar to Domitian.

37. Augustus, 34 (Ihm) : "when the equestrians even then at a public show persistently demanded its abolition [the lex Iulia de maritandis ordinibus], he [Augustus] called for the children of Germanicus. Some of them he himself received, others he displayed in the lap of their father, indicating [to the equites] by his gestures and expression that they should not regard it a burden to imitate the example of the young man".
38. See Jörs, Ehegesetze, 52.
39. See A.V. van Stekelenburg, De Redevoeringen bij Cassius Dio (Delft : Delftsche Uitgevers Maatschappij N.V., 1971), 143.
40. Historia Romana, 56.10.1.
41. Gaius Plinius Secundus (A.D.23/4-79) pursued an equestrian military career and held a series of procuratorships. He was an adviser to the emperors Vespasian (ruled A.D.69-79) and Titus (ruled A.D.79-81), and was commander of the fleet stationed at Misenum when he was killed in A.D.79 by the eruption of Mount Vesuvius. The Naturalis Historia in 36 books is his only surviving work.
42. Naturalis Historia, 7.149 (Mayhoff) : "then many ills occurred at the same time : lack of funds for the army, a rebellion in Illyricum, a levy of slaves, scarcity of young men, pestilence in the city, famine in Italy".
43. On the rebellion and its effects on foreign policy see Syme, Roman Revolution, 457-8 and C.M. Wells, The German Policy of Augustus (Oxford : Clarendon Press, 1972), 237-8 and 249.
44. Velleius Paterculus, Historia Romana, 2.111.1 (Ellis).
45. On this dilectus see P.A. Brunt, "Conscription and Volunteering in the Roman Imperial Army," Scripta Classica Israelica 1 (1974) 96-7.
46. Dio, Historia Romana, 55.31.1.
47. Velleius Paterculus, Historia Romana, 2.111.1.
48. Velleius Paterculus, Historia Romana, 2.113.1.
49. Historia Romana, 55.27.1.
50. On the role of the vigiles see T. Wiedemann, "The Political Background to Ovid's Tristia 2," Classical Quarterly 25 (1975) 267.

51. Marcus Vipsanius Agrippa Postumus (12 B.C. - A.D.14), the third son of M. Agrippa and Julia, the daughter of Augustus, was adopted by the princeps in A.D.4. He was executed at Planasia shortly after Augustus' death.
52. See Syme, History in Ovid, 208-9 : "when public emphasis is put on moral transgressions, a political motive will be suspected". The poet Ovid may have been implicated.
53. Dio, Historia Romana, 56.1.2.
54. Syme, Roman Revolution, 355-7.
55. Dio, Historia Romana, 56.10.2.
56. The sestertius was a small silver coin. The financial qualification for the equestrian order was regularly 400,000 sestertii.
57. The lex Voconia was carried in 169 B.C. by the tribune Quintus Voconius Saxa. It limited inheritances for women to under 100,000 sestertii or less than the portion of other heir(s) in the will; cf. A. Pauly, G. Wissowa and W. Kroll, Real-Encyclopädie der classischen Altertumswissenschaft, Vol. 12(2) (Stuttgart : J.B. Metzler, 1925), 2418-30.
58. Ulpianus, Regulae, 14.
59. See Dio, Historia Romana, 56.10.1.
60. Ehegesetze, 49-63.
61. Augustus, 34 : "he [Augustus] reformed existing laws and enacted some new ones, for example, on extravagance, adultery and chastity, bribery, and the marriage of the orders. When he had reformed this law [de maritandis ordinibus] somewhat more harshly than the others, he could not get it passed because of a storm of protest, until at length he had abolished some of the penalties and mitigated others, granted a three-year respite from the operation of the law, and increased the rewards".
62. Historia Romana, 56.7.3 : "and I did not rush you into this but gave you first three whole years to prepare, and, second, two years".
63. L.F. Raditsa, "Augustus' Legislation Concerning Marriage, Procreation, Love Affairs and Adultery," Aufstieg und Niedergang der römischen Welt 2.13 (1980) 297.

64. Historia Romana, 53.21.3 : "he did not arbitrarily enact all laws but introduced some of them to the public beforehand, in order that, if he should ascertain that something was viewed with disfavour, he might amend it; for he urged everyone to advise him in case someone proposed improvements, and he granted them much freedom of speech and even altered some provisions". See also Dio, Historia Romana, 55.4.1 on Augustus posting proposed laws in the senate in 9 B.C.
65. See G.W. Botsford, The Roman Assemblies from their Origin to the End of the Republic (New York : Copper Square, 1968), 462.
66. Cicero, Ad Atticum, 1.19.4 and De Inventione Rhetorica, 2.45.130.
67. Cicero, Pro Sulla, 62.
68. An increase in rewards is more likely in 18 B.C. than in A.D.4 - we know from Dio and Gellius that at least some of them, e.g. the ius trium liberorum and precedence in assuming the fasces, were in operation before A.D.4. Which rewards Suetonius had in mind cannot be determined.
69. See Last, "Social Policy", 442 and 452-3, and Brunt, Italian Manpower, 560. The vacatio offered only partial exemption; at least one of the penalties was in force in 17 B.C. : the senatus consultum de ludis saecularibus of May 23 (CIL, 32323) temporarily freed those qui lege de marita[ndis ordinibus tenentur] ("who are bound by the lex de maritandis ordinibus") from a ban prohibiting their attendance at public shows.
70. On the speech see Gellius, Noctes Atticae, 1.6. He wrongly ascribes it to Metellus Numidicus, censor in 102 B.C.
71. Augustus, 89.
72. Titus Livius (59 B.C. - A.D.17) was born at Patavium in Cisalpine Gaul. He did not pursue political office. His history of Rome in 142 books, the Ab Urbe Condita, covered the period from the founding of the city to the death of Drusus in 9 B.C. Only thirty-five books are extant. Epitomes (the Periochae) of all except books 136-7 survive.

73. Periocha, 59 (Rossbach) : "when he was pleading his case [before the senate] on the marriage of the orders".
74. See F. Millar, A Study of Cassius Dio (Oxford : Clarendon Press, 1964), 40-1.
75. Lucius Annaeus Seneca was born between 4 B.C. and A.D.1 to a wealthy equestrian family at Corduba in Spain. He lived in exile on Corsica from A.D.41-49 (the charge was adultery with the sister of the emperor Gaius). He served as an adviser to the emperor Nero from A.D.54-62. Implicated in the conspiracy of Piso in A.D.65, he was forced to commit suicide. His major works include the Dialogi (ten treatises on ethics), De Clementia, De Beneficiis, the Naturales Quaestiones, the Epistulae Morales, and nine surviving tragedies.
76. De Clementia, 1.9 (Hosius).
77. Historia Romana, 55.14.2 - 21.4.
78. Dio does not mention it; however part of his account of that year is lost. More significant perhaps is the silence of Tacitus.

## CHAPTER TWO

### The Response to the Marriage Legislation

1. Ulpianus, Regulae, 16.1.
2. Codex Iustinianus, 9.9.22 and 29, and Paulus, Sententiae, 2.26.16; cf. Chapter Four, p. 58.
3. On this gap in scholarship on the laws see Raditsa, loc.cit. (p.74, n.63).
4. The matter is controversial. But recent scholarship has tended to favor the thesis that reform began before the Julian laws of 18 B.C.; see especially G. Williams, "Poetry in the Moral Climate of Augustan Rome," JRS 52 (1962) 28, P. Csillag, "Das Eherecht des augusteischen Zeitalters," Klio 50 (1968) 117-18, Brunt, Italian Manpower, 558, and Raditsa, op.cit. (p.74, n.63), 295-6.
5. G. Williams, loc.cit. (n.4), suggests that information regarding the law may have been suppressed because of its failure. But this assumes the intervention and censorship of Augustus. More likely, contemporary writers, with the notable exception of Propertius, considered it indiscreet to draw attention to the program in light of its abandonment - sensitivity without coercion.
6. Sextus Propertius was born between 54 and 47 B.C. and died sometime before 2 B.C. He rejected political office in favor of poetry. The four books of the Elegies, his only surviving work, were probably written between 33 and 16 B.C. Little is known about his personal life other than his love for Cynthia.
7. For the date see W.A. Camps, ed., Propertius : Elegies Book II (Cambridge : University Press, 1967), 1.
8. Her real name appears to have been Hostia (Apuleius, Apologia, 10). Nothing more is known about her.

9. Elegies, 2.7.1-3 (Barber) : "truly Cynthia rejoiced when the law was swept away, at the proclamation of which we both cried for long lest it should separate us".
10. See H.E. Butler and E.A. Barber, eds., The Elegies of Propertius (Oxford : Clarendon Press, 1933), 202.
11. Digesta, 23.2.44 and Ulpianus, Regulae, 13.1-2.
12. See Elegies, 4.1.121; cf. Butler and Barber, loc.cit. (n.10).
13. It appears from several references in Propertius that she was a prostitute or at least a woman of poor reputation. The question of her social status has generated considerable debate; see Jörs, Ehegesetze, 24-5, H.W. Goddard, "Propertius, Cynthia and Augustus," Classical Review 37 (1923) 153-5, and Camps, op.cit. (n.7), 4.
14. For the date see G. Williams, The Third Book of Horace's Odes (Oxford : Clarendon Press, 1969), 128.
15. Quintus Horatius Flaccus (65 B.C. - 8 B.C.) was born at Venusia in Apulia. His father's family was of servile origin; his father was an auctioneer. He held the minor post of scriba quaestorius (keeper of the records to the quaestors) before turning to poetry. His works include : Epodi, Satirae, Carmina (Odes), Epistulae, Ars Poetica and Carmen Saeculare.
16. Odes, 3.24.29 (Wickham-Garrod).
17. Odes, 3.6.25-32.
18. Paulus, Sententiae, 2.26 and Codex Iustinianus, 9.9.23 and 28.
19. The epitomator Florus, in Epitome bellorum omnium annorum, 2.34, records that after (hinc) the closing of the gate of Janus in 29 B.C. Augustus tried to restrain the luxuriousness and vices (mala) of the age by passing graves severaeque leges multae ("many strict and severe laws"). The leges could be the legislation of 28 B.C. but they could equally well be the Julian laws of 18 B.C. - the connective hinc is too vague for certainty. Raditsa, op.cit. (p.74, n.63), 296, following Jörs, argues that Dio, Historia Romana, 53.13.3 proves that there were rewards for marriage and childbearing in 27 B.C. In his account of that year Dio states that provincial governors were chosen by lot, πλὴν εἰ τῷ πολυπαιδίας ἢ γάμου προνομία προσεῖη ("except when there should be preference for a senator because of the large number of his children or

- because of his marriage"). However it is clear from the context of the passage - a discussion of the criteria for selecting provincial governors during the Augustan principate as a whole - that his statement does not apply specifically to the year 27; cf. Millar, op.cit. (p.76, n.74), 95. The assignment of provinces on the basis of marriage status or number of children belongs properly after the lex Iulia de maritandis ordinibus.
20. Annales, 3.28 : "he granted laws which we enjoy with peace and the principate".
  21. See H. Furneaux, The Annals of Tacitus, Vol. 1 (Oxford : Clarendon Press, 1904), 483-4.
  22. P. Jörs, in Ehegesetze, 25-6, argues that the law was enacted and then repealed. I am inclined to share the more cautious approach of Th. Mommsen (Strafrecht, 691), who contends that it was proposed and then withdrawn before it was enacted.
  23. See Williams, op.cit. (n.4), 28-9.
  24. Williams, op.cit. (n.14), 126-8.
  25. Odes, 3.24.26-30.
  26. Williams, op.cit. (n.14), 127.
  27. For the date see R. Syme, "Livy and Augustus," HSCPh 64 (1959) 37, and R.M. Ogilvie, A Commentary on Livy : Books 1-5 (Oxford : Clarendon Press, 1970), 28.
  28. Praefatio, 9 (O.C.T.) : "we can tolerate neither our vices nor their remedies".
  29. For scholars of this opinion see H. Peterson, "Livy and Augustus," TAPA 92 (1961) 440, Ogilvie, loc.cit. (n.27), and T.J. Luce, Livy : The Composition of his History (Princeton, New Jersey : Princeton University Press, 1977), 291.
  30. See especially Syme, op.cit. (n.27), 56 and 62, and P.G. Walsh, "Livy and Augustus," Proceedings of the African Classical Association 4 (1961) 29-30.
  31. Suetonius, Augustus, 34.
  32. For the details see Chapter One, p.14.
  33. Augustus, 23.

34. Augustus, 25.
35. Augustus, 99.
36. Caligula, 58.
37. Nero, 43.
38. Augustus, 19.
39. See also the anecdote in Dio, Historia Romana, 54.16.3-5. He records that shortly after the laws were passed a group of senators demanded that Augustus take measures to counteract female ungovernableness, presenting this as the reason for their reluctance to marry. Augustus replied that everything necessary had been done. When pressed, he admonished them to counsel and command their wives as he commanded his wife. In turn, they asked what advice he gave to Livia.
40. Periocha, 59 : "when he was pleading his case regarding the marriage of the orders".
41. It has this meaning particularly when used in connection with debate in the senate or before a court of law; see Ab Urbe Condita, 5.36, 8.7, 9.41, 39.15, and, especially, 9.46 where, used with dicere ("to speak") and lex ("law"), it means "to plead".
42. Aulus Gellius (c. A.D.130-180) wrote the Noctes Atticae in twenty books, most of which have survived. It deals with a variety of subjects, including law, history, grammar, philosophy and literary criticism. Little is known about his personal life; he may have been a judge.
43. Noctes Atticae, 1.6.1-2.
44. See Syme, Roman Revolution, 331-68.
45. Res Gestae Divi Augusti, 6.2 (Volkman) : "those things which the senate wished me to implement, I carried out by virtue of my tribunician power". For the view that quae includes the marriage laws see Jörs, Ehegesetze, 28-9, and Brunt and Moore, Res Gestae, 46-7.
46. Carmen Saeculare, 17-20 (Wickham-Garrod) : "O goddess [Diana, goddess of women, children and childbirth among other things], bring forth the progeny, and render fruitful the decrees of the fathers [i.e. senators] concerning the marriage of women and the marriage law prolific in new offspring". What Horace meant by patrumque . . . decreta is not clear; we know that the law was enacted by

virtue of Augustus' tribunician power (see note 45). It could refer to a number of senatus consulta (senatorial decrees) which might have derived from discussion of the proposed laws.

47. Historia Romana, 53.19.3.
48. For Maecenas' luxuriousness see Velleius Paterculus, Historia Romana, 2.88; for his relationship with the actor Bathyllus, see Dio, Historia Romana, 54.17.5 and Tacitus, Annales, 1.54; for an assessment of his character, see Syme, Roman Revolution, 341-2. For Vedius Pollio feeding his slaves to man-eating lampreys see Dio, 54.23.2; for his debauchery, see Tacitus, Annales, 1.10.
49. See Velleius Paterculus, Historia Romana, 2.93.2.
50. Dio, Historia Romana, 54.12.4.
51. Pliny, Naturalis Historia, 35.26 : vir rusticitati propior quam deliciis ("a man closer to rusticity than to refined pleasures").
52. See M. Reinhold, Marcus Agrippa (Roma : L'Erma di Bretschneider, 1965), 103.
53. On his censorship see Velleius Paterculus, Historia Romana, 2.95.3.
54. For the genealogical connections see Syme, Roman Revolution, 378.
55. Velleius Paterculus, Historia Romana, 2.92.
56. CIL, VI, 32323. On the games, see Syme, Roman Revolution, 444.
57. Josephus, Antiquitates Iudaicae, 16.11.3
58. For his ordering a centurion to be beaten to death for cowardice in battle, see Velleius Paterculus, Historia Romana, 2.78.3.
59. CIL, VI, 32328.
60. Crook, Law and Life, 26 and 88-9.
61. On his subservience see Tacitus, Annales, 3.75 and Suetonius, De Grammaticis, 22.

62. Zosimus, Historia Nova, 2.4.2. The games were held on order of the Sibylline books at the end of each saeculum, defined as the longest span of human life. In the Republic, a saeculum was considered to be one hundred years. So that the games could be held in 17 B.C., Capito and his colleagues, on the instance of Augustus, redefined saeculum as one hundred and ten years.
63. Velleius Paterculus, Historia Romana, 2.96.2; cf. Syme, Roman Revolution, 329.
64. ILS, 8965; cf. T.P. Wiseman, New Men in the Roman Senate 139 B.C. - A.D.14 (London : Oxford University Press, 1971), 172.
65. For the inscription see Ehrenberg and Jones, Documents, 160 (ILS, 8393). The identification of Vespillo as the anonymous author of the inscription is based on Valerius Maximus, Facta et Dicta Memorabilia, 6.7.2 and Dio, Historia Romana, 54.10.2. The author of the inscription records (2.11) that his wife Turia rescued him from exile during the triumviral proscriptions by interceding on his behalf with the triumvir Marcus Lepidus. Valerius relates the story of a certain Q. Lucretius who was saved during the proscriptions by his wife Turia. Dio states that Q. Lucretius Vespillo, the consul of 19 B.C., was proscribed by the triumvirs. For a rejection of the identification of Vespillo see M. Durry, Éloge funèbre d'une matrone romaine (Paris : Coll. Bude., 1950), liv ff. I do not find his argument convincing.
66. Laudatio Turiae (ILS, 8393), 2.41-3.
67. See Syme, Roman Revolution, 236.
68. Tacitus, Annales, 4.40.
69. He does not specify the Julian laws; he gives only τεταγμένων (regulations) and νενομοθετημένα (enactments). However the only unpopular measure of Augustus in Dio's narrative between the passage of the leges Iuliae and Augustus' departure for Gaul is an increase in fines for tardiness at senatorial sessions (54.18.3). It is hardly likely that in Dio's opinion this action alone caused such widespread annoyance that Augustus felt compelled to leave Rome.
70. Historia Romana, 54.19.2.
71. Suetonius, Augustus, 34 and Dio, Historia Romana, 56.1.2.

72. Publius Vergilius Maro (70 - 19 B.C.) was born near Mantua in Cisalpine Gaul. From an early age he devoted himself to poetry; he did not hold political office. His works include the Eclogues, Georgics, and Aeneid.
73. See especially Odes, 3.6.17-20; cf. E. Fraenkel, Horace (Oxford : Clarendon Press, 1957), 259-60.
74. Carmen Saeculare, 57-9 : "now old-fashioned faith and peace and honor and modesty and neglected virtue dare to return".
75. See Luce, op.cit. (n.29), 291-4.
76. See Williams, op.cit. (n.4), 44.
77. Elegies, 4.3.49 : "all love is great, but greater in an acknowledged husband".
78. Camps, op.cit. (n.7), 83. But see also his remarks (page 2) on the noticeably patriotic tone of most of Book IV.
79. Roman Revolution, 440.
80. See particularly Odes, 3.6.33-8 and the comments of Syme, Roman Revolution, 450-3.
81. Although some evidence survives which shows that the ordinary man may have favored moral legislation (see, e.g., Dio, Historia Romana, 54.2.1; cf. Res Gestae Divi Augusti, 6.1), ancient historians, on the whole, tend to write only of the upper classes - the men and women who exercised political and social influence.
82. Publius Ovidius Naso (43 B.C. - A.D.17?) was born at Sulmo of equestrian family. After holding several minor judicial posts he gave up public office in favor of poetry. His works include the Amores, Heroides, Ars Amatoria, Remedia Amoris, Fasti, Metamorphoses, Tristia and Epistulae ex Ponto.
83. See particularly W. Stroh, "Ovids Liebeskunst and die Ehegesetze des Augustus," Gymnasium 86 (1979) 349-51.
84. Ars Amatoria, 1.601-2 (Kenney) : "and bid well to the woman and to him whom she sleeps with, but silently in your heart pray that there be evil for her husband". See also Ars Amatoria, 1.579-80, 2.365-70 and 2.544-6.

85. Ars Amatoria, 1.33 : "we shall sing of licit love and furtive affairs within the law". He has in mind the Augustan penalties for adultery; cf. Stroh, op.cit. (n.83), 323-4.
86. Digesta, 49.14.15.
87. Annales, 3.28 : "from that time the restraints were harsher. Informers were set in place and lured on by the rewards of the lex Papia Poppaea, whereby, if anyone should yield the privileges of parents, the state, as universal parent, would take the ownerless property. But they penetrated deeper and laid hold of the city and Italy and citizens elsewhere and undermined the position of many. And terror threatened everyone".
88. Annales, 3.28.
89. Institutiones, 2.286 : "apparently, they [caelibes and orbi] were once able to accept trusts".
90. D. Daube, Roman Law : Linguistic, Social and Philosophical Aspects (Edinburgh : University Press, 1969), 96-102.
91. Daube, op.cit. (n.90), 96; cf. W.W. Buckland, A Textbook of Roman Law from Augustus to Justinian, 3rd ed. (Cambridge : University Press, 1963), 353.
92. Justinian, Institutiones, 2.25.pr.
93. Justinian, Institutiones, 2.23.1; cf. J.A.C. Thomas, Textbook of Roman Law (Amsterdam : North Holland Publishing Company, 1976), 511.
94. See Gaius, Institutiones, 2.254; cf. Buckland, op.cit. (n.91), 354-6.
95. Codex Iustinianus, 9.9.22.
96. Suetonius, Tiberius, 35 : "well-known women began to register as prostitutes in order that they might be released from the privilege and rank of matrons and thereby evade the penalties of the laws".
97. See Pliny, Naturalis Historia, 35.20, where he calls him Titedius Labeo.
98. Annales, 2.85 : "for Vistilia, born to a praetorian family, had declared her venality before the aediles, as was the procedure among our ancestors, who believed that it was a sufficient punishment for prostitutes if they professed their disgrace".

99. See Syme, History in Ovid, 204.
100. For lenocinium in the context of the Augustan legislation see Paulus, Sententiae, 2.26.8.
101. Ulpianus, Regulae, 16.2.
102. See M.K. Hopkins, "The Age of Roman Girls at Marriage," Population Studies 18 (1964-5), 313.
103. Dio, Historia Romana, 54.16.7. He records the measures in his account of 18 B.C.
104. Digesta, 31.1.51.1 : "he to whom a third part is left for when he will have children, certainly cannot obtain the third part by adopting them".
105. Decimus Iunius Iuvenalis (c. A.D.55 - after 127) was from Aquinum. He was poor and lived for a while in Rome as a dependent of the rich. He may have been exiled by the emperor Domitian (ruled A.D.81-96) for lampooning a court favorite. His sixteen hexameter Satirae delineate a variety of Roman vices.
106. Satirae, 9.87-90 (Friedlander) : "you have the rights of a father; because of me you are named an heir; you take every legacy and even sweet ownerless property [bona caduca]. Moreover, many rewards will be added to the ownerless properties if I fill the number three [children]".

## CHAPTER THREE

### The Purposes of the Marriage Legislation

1. Italian Manpower, 104, 114 and 558-66.
2. Sociological Implications, 1 and 92.
3. The Greatness and Decline of Rome, Vol. 5 (London : William Heinemann, 1909), 294-6. See also A. Bouché-Leclercq, "Les lois démographiques d'Auguste," Revue Historique, 57 (1895) 277.
4. "The Purpose of the lex Iulia et Papia Poppaea," CJ 40 (1944-5) 398-416.
5. See M.K. Hopkins, Conquerors and Slaves (Cambridge : University Press, 1978), 8-15.
6. R.H. Barrow, Slavery in the Roman Empire (London : Methuen, 1928), 173-4.
7. Dionysius of Halicarnassus, a rhetor and historian, lived and taught at Rome for many years from 30 B.C. (his exact dates are unknown). His Antiquitates Romanae in twenty books, of which the first ten survive, is a history of Rome to the outbreak of the first Punic war.
8. Antiquitates Romanae, 4.24.4-6 (Jacoby).
9. See Brunt, Italian Manpower, 100-104.
10. The census of 70 B.C. recorded 900,000 Roman citizens (Livy, Periocha, 48). Augustus' first census in 28 B.C. counted 4,063,000 citizens (Res Gestae Divi Augusti, 8.2). The more than four-fold increase is not due only to manumission and grants of citizenship - while the census in 70 counted only adult males, Augustus' census probably enumerated women and children as well; cf. Brunt and Moore, Res Gestae, 51. On these censuses see J.K. Beloch, Die Bevölkerung der griechisch-römischen Welt (originally published 1886; reprint ed., New York : Arno, 1979), 348-52 and 370-2.
11. Italian Manpower, 103-4.

12. See Livy, Ab Urbe Condita, 6.22.4-6; cf. Last, "Social Policy", 428.
13. Elegies, 4.1.37 : "a Roman native has nothing of the fatherland except the name".
14. See especially T. Frank, Aspects of Social Behavior in Ancient Rome (Cambridge, Mass. : Harvard University Press, 1932), 95-6.
15. See Livy, Praefatio, 9 and Horace, Odes, 3.6.
16. Ab Urbe Condita, 26.22.15.
17. On Clodia see Cicero, Pro Caelio, 35-6; on Fulvia, see Plutarch, Antonius, 28-30; on Sempronia, see Sallust, Bellum Catilinae, 25.
18. See L. Friedlander, Roman Life and Manners under the Early Empire, Vol. 1, tr. J.H. Freese and L.A. Magnus (originally published 1907; reprint ed., New York : Barnes and Noble, 1965), 241, and A.H.M. Jones, op.cit. (p.69,n.2), 131-3.
19. See J.W. Duff, "Ciceronian Society", in the Cambridge Ancient History, Vol. 9, ed. by S.A. Cook, F.E. Adcock and M.P. Charlesworth (Cambridge : University Press, 1932), 784.
20. See, for example, Plutarch, Pompeius, 9.
21. ILS, 8393, 1.26-8.
22. Carmen Saeculare, 17-20 : "O goddess [Diana, goddess of women, children and childbirth among other things], bring forth the progeny, and render fruitful the decrees of the fathers [i.e. senators] concerning the marriage of women and the marriage law prolific in new offspring".
23. See Fragmenta Vaticana, 191-2 and 247; cf. A.N. Sherwin-White, The Roman Citizenship, 2nd ed. (Oxford : Clarendon Press, 1973), 319-20, and Brunt, Italian Manpower, 561-2.
24. See M. Rostovtzeff, The Social and Economic History of the Roman Empire, Vol. 1, 2nd ed. (Oxford : Clarendon Press, 1957), 40.
25. Gaius, Institutiones, 1.40-7 and 2.239; cf. Suetonius, Augustus, 40.
26. See Last, "Social Policy", 440.
27. Annales, 2.37.1. The money was well spent - Hortensius eventually had four children; see Suetonius, Tiberius, 47.

28. Augustus, Res Gestae Divi Augusti, 12.2.
29. See E. Nash, Pictorial Dictionary of Ancient Rome, Vol. 1 (London : A. Zwemmer, 1961), 63-73. For the Ara Pacis as symbolic of Augustus' program see Last, "Social Policy", 464; on the Ara Pacis generally see J.M.C. Toynbee, "The Ara Pacis Reconsidered," Proceedings of the British Academy 39 (1953) 67-95, and "The Ara Pacis Augustae," JRS 51 (1961) 153-6, and S. Weinstock, "Pax and the Ara Pacis," JRS 50 (1960) 44-58.
30. Ulpianus, Regulae, 16.2. There was also an annual tax on spinsters; see p.46.
31. Gaius, Institutiones, 2.286.
32. Fragmenta Vaticana, 216-19.
33. CIL, VI, 32323.
34. Digesta, 23.2.19; cf. Buckland, op.cit. (p.84, n.91), 113, and Thomas, op.cit. (p.84, n.93), 421.
35. Digesta, 35.1.64 and Paulus, Sententiae, 3.4b.2.
36. Ulpianus, Regulae, 14.1.
37. Gaius, Institutiones, 2.286.
38. Fragmenta Vaticana, 216-19.
39. BGU, 5.28 (P. Gnomon, 28). No source explains why the standard was higher for freedwomen (libertinae). Perhaps Augustus was particularly concerned about the birth-rate among freed persons. We do know that during the late Republic freedmen tended to have small families; see S. Treggiari, Roman Freedmen During the Late Republic (Oxford : Clarendon Press, 1969), 213-14.
40. CIL, VI, 32323.
41. Ulpianus, Regulae, 16.1. For more details see Chapter Four, p.51.
42. Ulpianus, Regulae, 15.1.
43. Paulus, Sententiae, 2.23 and Digesta, 24.1.1-3. It is not entirely clear whether the law prohibited gifts between husband and wife only in childless marriages or in all marriages. I am inclined to agree with Thomas, op.cit. (p.84, n.93), 192, that this provision applied only to childless marriages.

44. See Syme, Roman Revolution, 369.
45. Digesta, 4.4.2 and Tacitus, Annales, 15.19.
46. Gellius, Noctes Atticae, 2.15.7-8.
47. Gaius, Institutiones, 1.145 and 3.44, and Ulpianus, Regulae, 29.3. On the distinction between ingenuae and libertinae see note 38.
48. For an application for release from guardianship see P0xy, 1467; see also Chapter Four, p.56.
49. Justinian, Institutiones, 1.25.pr. and Codex Iustinianus, 5.66.1. Presumably, a large family was less likely in Rome than in Italy or, especially, in the provinces. Crowded and unsanitary living conditions may well have led to a high rate of infant mortality in Rome; see Brunt, Italian Manpower, 134 and 385-8. The impact of slave labor on the Italian birth-rate (see p.33) may account for the distinction between Italy and the provinces.
50. Historia Romana, 56.10.2.
51. Last, "Social Policy", 454-5; see also the discussion in Chapter Four, p.57.
52. Gellius, Noctes Atticae, 1.12.9.
53. Gaius, Institutiones, 2.49 and 52; see also Chapter Four, p.56.
54. Gaius, Institutiones, 3.42; for more provisions regarding freedmen see p.48.
55. Brunt, Italian Manpower, 109 and 125. Many of these Italian freedmen and freedwomen had previously sold themselves into slavery because they knew that slaves were at least assured a supply of food - an owner would not let his slave starve.
56. Digesta, 23.2.44 assigns the prohibition to the lex Iulia de maritandis ordinibus. Dio remarks (Historia Romana, 54.16.2) that in 18 B.C. Augustus allowed all except senators to marry freedwomen. The jurist Celsus (Digesta, 23.2.23) attributes the prohibition to the lex Papia Poppaea; see p.70, n.11. I share the opinion of Jörs (Verhältnis, 9-10) that Celsus was mistaken.
57. Digesta, 23.2.44.
58. Digesta, 23.2.31.

59. See Jones, op.cit. (p.69,n.2), 136, and O. Kiefer, Sexual Life in Ancient Rome (London : George Routledge, 1934), 36. The issue of the racial purity of the senatorial order resurfaced in A.D.48. Tacitus (Annales, 11.24) records that several senators opposed the admission of Gauls into the senate. After a speech by the emperor Claudius, the senate granted the Aedui the right to become Roman senators.
60. Codex Iustinianus, 5.4.28 and Ulpianus, Regulae, 13.1-2; see also Crook, Law and Life, 99.
61. See the remarks of Garnsey, Social Status, 238-9.
62. See L.C. Tulga, The Imperial Regulation of Morals and Conduct in the Early Principate, Ph.D. dissertation, Ohio State University, 1967, 5-6.
63. Res Gestae Divi Augusti, 8.5 : "by new laws passed on my initiative, I restored many customs of our ancestors disappearing from our age". For the view that legibus includes the marriage laws, see Brunt and Moore, Res Gestae, 52 and Brunt, Italian Manpower, 559.
64. ILS, 5050.
65. Carmen Saeculare, 57-9 : "now old-fashioned faith and peace and honor and modesty and neglected virtue dare to return". Cf. Odes, 4.5.21-3.
66. Odes, 3.6.37-8 : "the masculine offspring of rustic soldiers".
67. Ab Urbe Condita, 1.57.6-58.12. According to tradition this event led to the overthrow of the monarchy and the establishment of the Republic in 509 B.C.
68. Odes, 3.6.17-20 : "generations fertile in sin first polluted marriage and the family and the home; streaming from this spring disaster flowed over the country and people".
69. Praefatio (especially 9).
70. See, for example, Georgics, 2.173-4; cf. Aeneid, 12.827.
71. Aeneid, 6.791-3.
72. Virgil, Aeneid, 8.626 (Mynors) : "Italian annals and Roman triumphs".
73. See Syme, Roman Revolution, 440-70.
74. Paulus, Sententiae, 2.26.14.
75. Digesta, 28.1.20.6.

76. Tacitus, Annales, 3.24; cf. Velleius Paterculus, Historia Romana, 2.100.
77. Tacitus, Annales, 1.53.
78. Tacitus, Annales, 4.71; see also Syme, History in Ovid, 208-11.
79. Tacitus, Annales, 2.85.
80. Digesta, 48.5.34.
81. Justinian, Institutiones, 4.18.4.
82. Digesta, 48.5.34 and 50.16.101; see also Mommsen, Strafrecht, 694.
83. Collatio, 5.2.2; cf. ADA, 125.
84. Paulus, Sententiae, 2.26.15.
85. Digesta, 24.1.35, 24.2.9, and 38.11.1.1; cf. Suetonius, Augustus, 34 : divortii modum imposuit ("he [Augustus] set a limit to divorces").
86. For elaboration of this theme see Esmein, "Délit d'adultère", 73 and 156, and J.A.C. Thomas, "Lex Julia de adulteriis coercendis," in Études offertes à Jean Macqueron (Aix-en-Provence : Faculté de Droit et des Sciences Économiques d'Aix-en-Provence, 1970), 638.
87. See Odes, 3.6.25-32.
88. Codex Iustinianus, 9.9.2 and Paulus, Sententiae, 2.26.8.
89. Paulus, Sententiae, 2.26.4.
90. Digesta, 48.5.24.
91. For the quaestio in operation see Dio, Historia Romana, 54.30.4. On the quaestio in general see Esmein, "Délit d'adultère", 71-2, 93-4, and 118. Public trials for adultery would also serve to underscore the perils of immorality; see Thomas, op.cit. (n.86), 640 and 642.
92. Annales, 3.25.
93. Annales, 3.28.
94. Gaius, Institutiones, 2.286.
95. Ulpianus, Regulae, 17.1. For details see Jörs, Verhältnis, 48-9.

96. Gaius, Institutiones, 2.150 and 207, and Ulpianus, Regulae, 28.7.
97. Suetonius, Nero, 10; see also Fichter, Sociological Implications, 216-19.
98. See Crook, Law and Life, 104.
99. Digesta, 28.5.73 and 28.6.5-6; see also Buckland, op.cit. (p.84,n.91), 300.
100. Codex Iustinianus, 6.51.1.1.
101. BGU, 5.29 (P. Gnomon, 29); see also Csillag, Augustan Laws, 156.
102. Augustus, Res Gestae Divi Augusti, 17.2.
103. Dio, Historia Romana, 55.25.5-6.
104. Dio, Historia Romana, 56.28.4-6 (A.D.13).
105. The proscriptions did not deplete the ranks of the senatorial and equestrian orders to the degree which Field hypothesizes. Though perhaps as many as 300 senators and 2000 equites were proscribed (Appian, Bella Civilia, 4.5.20), the large majority seem to have escaped execution; see Syme, Roman Revolution, 192.
106. Gaius, Institutiones, 3.42.
107. Digesta, 38.1.37. Freedmen who adopted the profession of buffoon or hired themselves out to fight with wild beasts could not obtain this privilege.
108. Augustus, 46.
109. Suetonius, Augustus, 44.
110. Naturalis Historia, 7.60.
111. Noctes Atticae, 10.2.2.

## CHAPTER FOUR

### The Effects of the Marriage Legislation on the Rights, Independence and Status of Women

1. The subject is treated briefly in the following works: Fichter, Sociological Implications, 4-5; S.B. Pomeroy, "The Relationship of the Married Woman to her Blood Relatives in Rome," Ancient Society 7 (1976) 219 and 225, and A. Richlin, "Approaches to the Sources on Adultery at Rome," Women's Studies 8 (1981) 227-8.
2. The principal legal texts are Gaius, Institutiones, 2.46-52, Paulus, Sententiae, 2.26, Ulpianus, Regulae, 15.1-3, 16.1-2, and 29.5-6, Codex Iustinianus, 9.9 and Digesta, 23.2 and 48.5.
3. See particularly the introduction to Crook, Law and Life.
4. Gaius, Institutiones, 2.286 and Fragmenta Vaticana, 216-19. None of the legal sources specify that the inheritance disabilities applied to women as well as men. But this is nothing more than the perspective of the jurists and legal commentators and the tradition of Latin literature; both sexes are often lumped together in the masculine gender.
5. BGU, 5.29 (P. Gnomon, 29).
6. Gaius, Institutiones, 2.286; see also note 4.
7. BGU, 5.28 (P. Gnomon, 28); see also p.88, note 39.
8. Ulpianus, Regulae, 16.1. The laws also seem to have declared that childless women could not accept gifts from their husbands; see Paulus, Sententiae, 2.23, Digesta, 24.1.1-3, and p.88, note 43.
9. Ulpianus, Regulae, 15.1-3.
10. Ulpianus, Regulae, 16.1a.
11. Ulpianus, Regulae, 14.1 : feminis lex Iulia a morte viri anni tribuit vacationem, a divortio sex mensum, lex autem Papia a morte viri biennii, a repudio anni et sex mensum ("the lex Iulia gave women a respite [from the operation

- of the law] of one year after the death of a husband and of six months after a divorce; the lex Papia [granted them a reprieve] of two years after the death of a husband and of one year and six months after a divorce").
12. See J.A. Crook, Review of M. Humbert, Le remariage à Rome (Milan, 1972), in JRS 64 (1974) 234.
  13. Horace speaks for the traditional view of remarriage in Odes, 3.24.21-4; holding up Scythian women as the ideal, he writes : dos est magna parentium virtus et metuens alterius viri certo foedere castitas: et peccare nefas aut pretium est mori ("virtue is the great dowry of their parents and chastity which with certain bond shuns a second husband, and to sin against this is forbidden or the penalty is death"). See also Dido's lament in Virgil, Aeneid, 4.550-2.
  14. Digesta, 35.1.63-4.
  15. Paulus, Sententiae, 3.4b.2.
  16. Digesta, 38.11.1.1 and 24.2.11; see also A.M. Duff, Freedmen in the Early Roman Empire (Oxford : Clarendon Press, 1928), 47.
  17. Digesta, 23.2.45-6. Patrons could not legally marry slave women (Ulpianus, Regulae, 5.5). Consequently, some patrons manumitted their female slaves in order that they might marry them as freedwomen; see Digesta, 40.2.19 and Duff, op.cit. (n.16), 20.
  18. Digesta, 37.14.6.4 and 40.9.32.pr.; see also Jörs, Verhältnis, 27.
  19. See Codex Iustinianus, 6.40.2-3 and Williams, op.cit. (p.77,n.4), 44.
  20. Digesta, 23.2.19.
  21. In 366 B.C. the first praetor urbanus was elected and made responsible for the administration of justice in Rome. In 242 a praetor peregrinus was appointed to deal with law suits involving foreigners. From 227 the number of praetors was steadily increased; under Augustus they eventually numbered twelve (Tacitus, Annales, 1.14) and were involved largely in judicial matters.
  22. Ulpianus, Regulae, 11.20.

23. Digesta, 23.4.17 and, particularly, 24.3.64; see also Csillag, Augustan Laws, 138-43.
24. For details of the actio rei uxoriae see Thomas, op.cit. (p.84,n.93), 429.
25. See Gaius, Institutiones, 2.63, Paulus, Sententiae, 2.21b.2, Justinian, Institutiones, 2.8.pr., Codex Iustinianus, 5.13.15 and 5.2.3.1, and Digesta, 23.5.1-4 and 31.1.77.5.
26. Digesta, 24.3.64.
27. The question of whether Augustus legalized or simply permitted such marriages has generated considerable debate. The principal texts are Digesta, 23.2.23 and 44, Ulpianus, Regulae, 13.1, and Dio, Historia Romana, 54.16.2 and 56.7.2. The argument for legalization is presented most cogently by Mommsen, in Staatsrecht, Vol. 3, 429-30, and by Duff, op.cit. (n.16), 61. I share the opinion of those who believe that Augustus only condoned marriages of this type; see P.E. Corbett, The Roman Law of Marriage (Oxford : Clarendon Press, 1933), 30-9, Last, "Social Policy", 449, Treggiari, op.cit. (p.88,n.39), 82-6, Brunt, Italian Manpower, 145 and Csillag, Augustan Laws, 63.
28. Digesta, 23.2.44. It appears from Ulpianus, Regulae, 16.2 that the designation "actors" included men who fought in gladiatorial contests.
29. Social Status, 236-7. But see Josephus, Antiquitates Iudaicae, 19.32-6 on the relationship between a senator named Pompedius and an actress named Quintilia during the reign of Gaius (ruled A.D.37-42).
30. Wiseman, op.cit. (p.82,n.64), 73-4. No doubt personal affection might also play a role.
31. Tacitus, Annales, 2.50; cf. Gellius, Noctes Atticae, 10.23.4-5. See also Garnsey, Social Status, 37.
32. Codex Iustinianus, 9.9.1-2 and Paulus, Sententiae, 2.26.8; see also D. Daube, "The lex Iulia concerning adultery," Irish Jurist N.S. 7 (1972) 373-80.
33. See the remarks of Thomas, op.cit. (p.91,n.86), 642.
34. Codex Iustinianus, 9.9.14.
35. Digesta, 48.5.5.

36. Paulus, Sententiae, 2.26.4; cf. Fichter, Sociological Implications, 49.
37. Paulus, Sententiae, 2.26.14 and Digesta, 28.1.20.6; cf. Tacitus, Annales, 2.85.
38. See Brunt, Italian Manpower, 154 and 563.
39. Ulpianus, Regulae, 29.6.
40. Gaius, Institutiones, 2.49 and 52.
41. Livia, the wife of Augustus, received the ius trium liberorum in 9 B.C. (Dio, Historia Romana, 55.2.5); it was granted to the Vestal Virgins in A.D.9 (Dio, 56.10.2). A number of male recipients are also recorded : the emperor Gaius in A.D.39 (Dio, 59.15.1); soldiers (who could not legally marry) in A.D.44 (Dio, 60.24.3); the poet Martial during the reign of Domitian (Martial, Epigrammaton, 3.95.5), and Pliny the Younger, Voconius Romanus (an orator and friend of Pliny), and Suetonius during the reign of Trajan (Pliny the Younger, Epistulae, 1.81, 2.13, 7.16, 10.2 and 94-5). Several inscriptions also refer to the ius trium liberorum; see, for example, CIL, V, 1768 and VIII, 4573.
42. Gaius, Institutiones, 1.145 and 3.44, and Ulpianus, Regulae, 29.3.
43. Digesta, 4.4.2.
44. Guardianship was also required for impuberes (boys and girls under the age of puberty; boys under fourteen and girls under twelve), minores (puberes under twenty five), lunatics (furiosi) and spendthrifts (prodigi).
45. See Csillag, Augustan Laws, 166-8.
46. See M. Hammond, The Antonine Monarchy (Rome : American Academy in Rome, 1959), 135.
47. P0xy, 1467.
48. "Social Policy", 454-5.
49. Loc.cit. (n.46).
50. On the lex Voconia see Pauly-Wissowa-Kroll, loc.cit. (p.74,n.57).
51. Historia Romana, 56.10.2.
52. Dio, Historia Romana, 55.2.5.

53. Historia Romana, 56.32.1.
54. Though women who held the ius trium liberorum do not seem to have been exempted from the lex Voconia, nevertheless, that exemption from the law was connected with the lex Papia Poppaea does suggest that marriage or number of children may have been a determining factor in obtaining the privilege.
55. There is a reference in the poem (Elegiae, 4.11.66) to the consulship of P. Cornelius Scipio. He was elected consul in late 17 B.C. and took office at the beginning of 16; see the fasti in Ehrenberg and Jones, Documents, 37.
56. On Aemilius Lepidus see PIR<sup>2</sup>, 1, p. 63, no. 373; on his censorship see Velleius Paterculus, Historia Romana, 2.95.3.
57. Elegies, 4.11.61-2.
58. See Csillag, Augustan Laws, 262.
59. See the comments of Tulga, op.cit. (p.90,n.62), 6-7, and Raditsa, op.cit. (p.74,n.63), 312-14.
60. Codex Iustinianus, 9.9.29.
61. Paulus, Sententiae, 2.26.16.
62. Codex Iustinianus, 9.9.22; see also Mommsen, Strafrecht, 691-2.
63. Codex Iustinianus, 9.9.29.
64. Paulus, Sententiae, 2.26.16.
65. Digesta, 48.5.34, 25.7.1-2, and 25.7.3 : concubinitus . . . extra legis poenam est ("concubinage is beyond the penalty of the law"); for the view that legis refers to the lex Iulia de adulteriis coercendis see Jörs, Verhältnis, 17, and Csillag, Augustan Laws, 144 and 252. Concubinitus was cohabitation without legal marriage in which the man was usually of a higher social status.
66. Codex Iustinianus, 9.9.23 : servi ob violatum contubernium adulterii accusare non possunt ("slaves cannot accuse [their wives] of adultery for violation of a slave marriage").
67. Sociological Implications, 3-5.
68. Op.cit. (p.86,n.3), 274.

## APPENDIX

### The Cura Legum et Morum

1. We do not know in what manner or by whom the offers were made. Augustus states (Res Gestae Divi Augusti, 6.1) that the senate and people of Rome agreed (consentientibus) that he be appointed supervisor (curator). Dio (Historia Romana, 54.10.5) does not mention the role of the senate; he says only that Augustus was παρακληθεὶς ("exhorted"). We know from Dio, 54.2.1 that in 22 B.C. the Roman populace urged Augustus to accept the office of censor for life. His account of the offer of the cura in 19 suggests similar circumstances.
2. The offers can be dated by the consulships of Marcus Vinicius and Quintus Lucretius Vespillo (19 B.C.), Publius Cornelius Lentulus and Gnaeus Cornelius Lentulus (18 B.C.), and Paullus Fabius Maximus and Quintus Aelius Tubero (11 B.C.); see the fasti in Ehrenberg and Jones, Documents, 36-7.
3. Res Gestae Divi Augusti, 6.1 : "when Marcus Vinicius and Quintus Lucretius were consuls, and afterwards when Publius Lentulus and Gnaeus Lentulus were consuls, and a third time when Paullus Fabius Maximus and Quintus Tubero were consuls, and the senate and people of Rome agreed that I be appointed curator of laws and morals without a colleague and with the highest power, I accepted no magistracy contrary to the custom of our ancestors". The text is from Ehrenberg and Jones, Documents, 6, based on the critical edition of H. Volkmann. Lacunae in the Latin text have been filled chiefly from the evidence of surviving Greek texts. The Latin text is presented because Augustus composed the document in Latin.
4. Historia Romana, 54.10.5 : "urged to accept, he [Augustus] was elected supervisor of morals for five years". Dio did not confuse the cura with the censorial authority which Augustus assumed in 19 B.C.; after reporting Augustus' election to the curatorship, he states (54.10.5) : τὴν ἐξουσίαν τὴν μὲν τῶν τμητῶν ἐς τὸν αὐτὸν χρόνον . . . ἔλαβεν ("he took the authority of the censorship for the same period of time [five years]"). Dio may in fact have used Res Gestae, 6.1

or some other official source for his account of the curatorship - there are correspondances between his text and the Greek text of the Res Gestae. Augustus describes the office as ἐπιμελητῆς . . . τῶν τρόπων, Dio uses ἐπιμελητῆς . . . τῶν τρόπων. For the method of appointment to the curatorship Augustus uses χειροτονηθῆναι, Dio gives ἐχειροτονήθη.

5. Historia Romana, 54.30.1 : "Augustus, having been chosen supervisor and corrector of morals for another five years . . .".
6. Augustus, 27.
7. See, for example, Bouché-Leclercq, op.cit. (p.86,n.3), 244, H.S. Jones, op.cit. (p.66,n.6), 147, Hammond, op.cit., (p.96,n.46), 133, and W. Kunkel, An Introduction to Roman Legal and Constitutional History, 2nd ed., tr. J.M. Kelly (Oxford : Clarendon Press, 1973), 125.
8. Res Gestae, 45-6.
9. Studies, 24-5.
10. Augustus not infrequently disguises the truth in the Res Gestae; see Brunt and Moore, Res Gestae, 3-5.
11. See Jones, Studies, 25.
12. Dio, Historia Romana, 43.14.4 and Suetonius, Julius, 76. The powers and obligations of Caesar's praefectura morum are nowhere made clear. He probably received it in 46 B.C.
13. Res Gestae Divi Augusti, 5.1; cf. Dio, Historia Romana, 54.1.3-4 (22 B.C.).
14. Res Gestae Divi Augusti, 5.3; cf. Dio, Historia Romana, 54.2.1.
15. The pontifex maximus was the chief priest of the Roman state religion. The position carried little real political power but considerable prestige.
16. Res Gestae Divi Augusti, 10.2; cf. Dio, Historia Romana, 54.27.2.
17. Augustus, 27.
18. The first grant of the cura lasted then from 18 to 13 B.C., not from 19 to 14 as Jones suggests (Studies, 24).
19. Thus the second grant of the cura lasted from 11 to 6 B.C., not, as Jones argues (Studies, 24), from 12 to 8.

20. Historia Romana, 54.30.1 : "things were done in this manner concerning Agrippa; after this, Augustus, having been chosen supervisor and corrector of morals for another five years . . .".
21. See, for example, Livy, Periocha, 138; see also Reinhold, op.cit. (p.81,n.52), 126.
22. Jones (Studies, 25) suggests that Augustus assumed the cura in 19 B.C. for the lectio of 18 and again in 12 for the lectio of 11. More likely, he took the curatorship in 18 for the lectio of 18 and again in 11 for the lectio of the same year. On the lectiones see Dio, Historia Romana, 54.13 (18) and 54.35.1 (11).
23. Jones, Studies, 25.
24. Augustus, 27 : "[like the tribunician power] he [Augustus] received the supervision of morals and laws for life, by right of which, although without the office of censor, he nevertheless conducted the census of the people three times".
25. Dio reports (Historia Romana, 53.1.3) that Augustus took the census in 28 B.C. in connection with the title πρόκρυτος τῆς γερουσίας ("first man of the senate"). Augustus, in Res Gestae Divi Augusti, 8.2, says only that : in consulatu sexto censum populi conlega M. Agrippa egi ("in my sixth consulship [28 B.C.], with my colleague Marcus Agrippa, I conducted a census of the people").
26. Res Gestae Divi Augusti, 8.3 (8 B.C.) and 8.4 (A.D.14).
27. Augustan Laws, 55.
28. Res Gestae Divi Augusti, 6.2 : "those things which the senate wished me to implement, I carried out by virtue of my tribunician power". For the view that quae includes the marriage laws see p.80, note 45.
29. See P. Sattler, Augustus und der Senat : Untersuchungen zur römischen Innenpolitik zwischen 30 und 17 v. Christus (Göttingen : Vandenhoeck und Ruprecht, 1960), 92.

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