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UNROMAN ROMANS

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unRoman Families and Relationship

42. Adultery

PERCEPTIONS OF ADULTRY

In ancient Rome, adherence to a strict moral code was often socially critical yet widespread deviation from such was common. With the power of the *pater familias*^[1] (father of the household) and his *patria potestas* (power of a father)^[2], as well as the honour codes of *pudicitia* (“modesty / sexual virtue” – code of conduct based on social shaming) for women, the issue of paternity of a child caused an intersection of many of the core moral values of ancient Rome. During the time of Augustus, around 18 BCE, the first Roman Emperor decided that

Roman morals at the time were in a state of decay, and that the conduct of women especially needed to be reined in. The ‘*Lex Julia de Adulteriis*’, or the Julian Laws On Adultery, were instituted along with closely related Augustan marriage legislation in an attempt to revive the (supposedly) strong social morals and customs from an earlier period. These laws harkened back to a supposed ‘golden age’ of Roman morality^[3]. Emperor Augustus wanted to encourage proper marriages between elite Romans with the main goal of producing more elite Roman children. When there is widespread adultery and divorce in the upper class, marriages often do not produce enough legitimate children to sustain an elite class^[4]. Before the Julian Laws, adultery of a woman was considered to be a private matter to be dealt with by the *pater familias* within the home. The *Lex Julia* brought these cases to court, and even though very intense powers were given to the father, such as the legal right to kill his daughter and her lover in specific situations, it is difficult to say how often these extreme cases occurred as few records exist. However, it is likely that the larger goal was not for these powers to be used, but to shame people into not straying from their marriages knowing that their scandal would become a public matter and the family’s honour and the woman’s *pudicitia*^[5] would be damaged.

CONTENT WARNING

The following section contains references to domestic violence and violence against women. A lot of the sources on the topic of adultery topic are appalling. The Romans were not known for being wonderfully tolerant people. In Classics, it is common to see horrifying subject matter discussed as ‘satire’ or just how things were, but just because it was in abundance does not make the extreme violence and bigotry of the Romans acceptable – in our age or theirs.

THE LEX JULIA AND HONOUR KILLINGS

With the institution of the *Lex Julia*, the *pater familias*'s *patria potestas* was reduced (although it may not appear so) and transferred to the courts. However, under the new laws, the father was allowed to kill his daughter and her lover under very specific circumstances, whereas the court punished adulterers primarily by relegation to various remote island combined with some loss of property^[6]. The complete *Lex Julia* no longer remains, but sections as well as case law reference the *Lex* were recorded in the *Justinian Digest*, a very large 6th century compilation of different parts of Roman law. These are excerpts of the digest that refer specifically to a section of the *Lex Julia* that primarily focuses on who her family can kill the female adulterer and under what circumstances. The husband was not permitted to kill his wife because it was feared that husbands would murder their wives, claim adultery, and try to take her dowry. It was thought that a father would make a sounder decision, because he would be influenced by his love for his daughter, and would therefore only kill her if it was absolutely necessary.

CONCERNING ADULTERY.

- (1) In the second chapter of the *Lex Julia* concerning adultery, either an adoptive or a natural father is permitted to kill an adulterer caught in the act with his daughter in his own house or in that of his son-in-law, no matter what his rank may be^[7].
- (2) If a son under paternal control, who is the father,^[8] should surprise his daughter in the act of adultery, while it is inferred from the terms of the law that he cannot kill her, still, he ought to be permitted to do so.
- (3) Again, it is provided in the fifth chapter of the *Lex Julia* that it is permitted to detain witnesses for twenty hours, in order to convict an adulterer taken in the act.
- (4) A husband cannot kill anyone taken in adultery except persons who are infamous (*infamia*)^[9], and those who sell their bodies for gain^[10], as

well as slaves, and the freedmen^[11] of his wife, and those of his parents and children; his wife, however, is excepted, and he is forbidden to kill her.

(5) It has been decided that a husband who kills his wife when caught with an adulterer, should be punished more leniently, for the reason that he committed the act through impatience caused by just suffering.^[12]

(6) After having killed the adulterer, the husband should at once divorce his wife, and publicly declare within the next three days with what adulterer, and in what place, he found his wife.

(7) An angry husband who surprises his wife in adultery can only kill the adulterer, when he finds him in his (the husband's) own house.

(8) It has been decided that a husband who does not at once divorce his wife whom he has taken in adultery, can be prosecuted as a pimp^[13].

Justinian Digest Title XXVI. 1-8

Cont. Excerpts of Roman Case Law from the Justinian Digest Referring to the Julian Laws

The Justinian Digest was a collection of legal material compiled at a much later date (around 530 CE). There are excerpts from the original Lex, such as the passages above, but also passages that refer to official rulings that provide clarification to the existing laws. These were usually given on a case by case basis that would then have been made public to provide guidance to others with similar cases. This was the Romans' version of case law.

What the Lex says – 'shall have caught the adulterer in his daughter' – does not appear to be useless; for the intention was that this power should be available to the father if he should catch his daughter actually engaged in the crime of adultery. Labeo also approves this interpretation. and Pomponius^[14] has written that a person caught in the actual

act of love is killed. This is also what Solon and Dracon^[15] say: ‘in the act’.

Digest, 48.5.24(23)

The reason why the father and not the husband is allowed to kill the woman and any adulterer is that, for the most part, the fatherly pious commitment gives consideration to the children. Thus, the rage and attack of a husband readily jumping to a decision should be restrained.

Digest, 48.5.23(22).4

This is a piece of legal advice from Emperor Severus Alexander (r. 222-235 CE) clarifying sentencing in such a ‘crime of passion’ where a husband killed his wife’s partner who was not of a lower status than he, which is technically illegal in the Lex. The Emperor is of the opinion that because the husband was the injured party in the crime of adultery, he should not be sentenced to the full extent of a homicide charge. One could be sentenced to the death penalty, fined, or exiled for homicide, and sentencing varied greatly based on status of the offender.

If Gracchus, whom Numerius killed when he caught him in adultery at night, was of such a status under the Lex Julia he could be killed with impunity, what was done lawfully merits no punishment. But if he killed outside the limits of the Lex, he is guilty of homicide. Yet because night and just feeling mitigate his act, he can be given a lighter sentence.

Severus Alexander, CJ 9.9.4

Despite the Romans allowing the father and not the husband of the woman to legally kill her and her partner, they did not go so far as to make it legally acceptable for the father to kill the lover and not his daughter — to be within the law, he had to kill both of them, at the same time, and without much delay.

It makes no difference whether the father kills his daughter surprised in

adultery first, or not, provided he kills both guilty parties; for if he kills only one of them, “he will be liable under the Cornelian Law”. If, however, one of them should be killed, and the other wounded, he is not released under the terms of the law; but the Divine Marcus and Commodus stated in a Rescript^[16] that he ought to be granted impunity, for the reason that, although the adulterer was killed, and the woman survived, after having received serious wounds inflicted upon her by her father, she was saved rather by accident, than intentionally; because the law requires the same indignation and the same severity to be displayed toward all those who are taken in adultery.

Digest, 48.5.32 Concerning The Julian Laws for Punishment of Adultery

In the following passage, it is deemed acceptable for her to be killed soon after instead of immediately if she fled and was recaptured, as her flight would have been due to fate, and not the father’s own decision.

Where the law says, “He may kill his daughter at once;” this must be understood to mean that having to-day killed the adulterer he can not reserve his daughter to be killed subsequently; for he should kill both of them with one blow and one attack and be inflamed by the same resentment against both. But if, without any connivance on his part, his daughter should take to flight, while he is killing the adulterer, and she should be caught and put to death some hours afterwards by her father, who pursued her, he will be considered to have killed her immediately.

Digest, 48.5.23

It is worth noting that only men were allowed to bring forth accusations of adultery, a further example of how deeply the patriarchal structure infiltrated Ancient Rome. This would not have been a contentious issue at the time.

The Emperors Severus and Antoninus to Cassia.

The Lex Julia declares that wives have no right to bring criminal accusa-

tions for adultery against their husbands, even though they may desire to complain of the violation of the marriage vow, for while the law grants this privilege to men it does not concede it to women.

Digest, Title IX Concerning the Julian Laws on Adultery

LEGITIMATE AND ILLEGITIMATE CHILDREN

Using the *Lex Julia* as a demonstration of how the law viewed paternity rights and adultery in ancient Rome as well as the severity of the treatment of adultery, we can gain insight into how serious the problem of an illegitimate child might have been. An illegitimate child in the elite class would counter all of the core Roman social values such as *pudicitia*, the *pater familias* and *pater potestas*, as well as the sanctity of marriage and honour of the family. Because there were few accurate ways to prove or disprove the paternity of a child at this time, and because adultery was fairly common, at least according to our sources, some women tried to pass off illegitimate children as legitimate and raise them as if they were their husband's. Scandalous stories such as these would have been seen as very 'Unroman' and dishonourable for the woman and the family as a whole.

Juvenal, who is known for being incredibly bigoted towards essentially all groups of people, writes of a fictional (though, according to him, representative) wealthy wife who had an affair with a gladiator. Gladiators were considered sex symbols in Rome, and often did sex work on the side, and wealthy women could (and often did) pay for sex just as wealthy men could. In this anecdote, she later became pregnant and later tried to pass off the child as the legitimate son of her husband, despite some unconvincing resemblances. It is important to note that figures who are known for their hateful writing like Juvenal, along with Cicero and Martial, were incredibly influential public figures, but it is impossible to know if Roman society as a whole would have shared their opinions.

If you marry a wife, it will be that the lyrist Echion or Glaphyrus, or the flute player Ambrosius^[17], may become a father. Then up with a long dais in the narrow street! Adorn your doors and doorposts with wreaths of laurel, that your highborn son, O Lentulus^[18], may exhibit, in his tortoiseshell cradle, the distinctive features of Euryalus or of a Murrillo^[19].

Juvenal, Satires 6, The Ways of Women/Against Women

The *Historia Augusta* is a collection of biographies primarily centered around the Roman Emperors and their heirs in the period of 117-284 CE. It is important to note that the authorship and reliability of the *Historia Augusta* is widely disputed,^[20] and this is one of the only sources we have that entertains the possibility of Commodus not being Marcus Aurelius' legitimate son.

One of the reasons why this theory might have been created is that Commodus, most famously known as being the only Emperor to fight as a gladiator in the arena — was considered to be 'mad' at the time because of this. Many of the Emperors were known for pushing the envelope of what was considered acceptable behaviour in Roman society, such as Nero and Elagabalus, but for a sitting Emperor to participate in a profession worthy of *Infamia* status in an incredibly public and undisputed way was almost unheard of. Commodus' father, Marcus Aurelius, had a generally solid and reputable reign. Thus, Commodus's near obsessive devotion to fighting in the arena and all things gladiatorial stood in stark contrast. In terms of governing style, he certainly did not appear to be his father's son, so even with Romans flinging around (mostly) unfounded accusations of adultery and sexual deviancy about anyone, especially those in power, this theory detailed in *Historia Augusta* would not have seemed completely unrealistic.

Some say, and it seems plausible, that Commodus Antoninus, his son and successor, was not his child, but the product of an affair; they embroider this assertion, moreover, with a story current among the people. On a certain occasion, it was said, Faustina, the daughter of Pius

and wife of Marcus [Aurelius], saw some gladiators pass by and burned with love for one of them. Later, when she had been sick for a long time, she confessed the passion to her husband. And when Marcus reported this to the Chaldeans,^[21] it was their advice that Faustina should bathe in his blood and thus sleep with her husband. When this was done, the passion was ended, but their son Commodus was born a gladiator, not really a prince; for afterwards as emperor he fought almost a thousand gladiatorial bouts before the people, as shall be related in his life. This story is considered plausible, as a matter of fact, because the son of so virtuous an emperor had habits worse than any lanista^[22], any actor, any arena roadie, anything brought into existence from the dregs of all dishonour and crime. Many writers, however, state that Commodus was really the child of adultery, since it is generally known that Faustina, while at Caieta, used to choose out lovers from among the sailors and gladiators. When Marcus Aurelius was told about this so he might divorce, if not kill her, he is reported to have said “If we send our wife away, we must also return her dowry”. And what was her dowry? The Empire, which, after he had been adopted at the wish of Hadrian, he had inherited from his father-in law Pius.^[23]

Historia Augusta, Life of Marcus Aurelius 19.1-9

Juvenal's Satire 9 is written in the style of a conversation between Juvenal, and a bisexual sex worker named Naevolus . Naevolus, who has served one patron for a long time, having intercourse with his *pathicus*^[24](passive homosexual) patron as well as his patron's wife, has fathered children for his patron when he could not do that himself, which supposedly saved his patron's marriage and reputation. Naevolus is bitter and feels his patron has not adequately rewarded him for his services. Because Roman law discriminated against men and women who did not have children and do their social duty of producing new Roman citizens, it was of utmost importance for men and women to produce multiple children not only to make sure they had a surviving heir (as the childhood death rate was around 50%) but also to avoid nasty gossip that could damage their reputation as well as legal penalties that came along with being childless.

“And though you ignore and pass by my other services, what price do you put on this, that were I not your true and devoted client, your wife would still be a maid? You know how often, and in what ways, you have asked that service of me, and what promises you made to me. . . . There’s many a household in which a union that was unstable, ready to break up, and all but dissolved, has been saved by the intervention of a lover^[25]. Which way can you turn? Which service do you put first, which last? Is it to be no merit, you thankless and deceitful man, none at all, that I have presented you with a little son or daughter? For you rear the children, and love to spread abroad in the newspaper the proofs of your virility. Hang up garlands over your door! You are now a father; I have given you something to contradict the gossip. You have now parental right; through me you can be entered as an heir^[26], and receive a legacy entire, with a nice little extra into the bargain; to all which perquisites many more will be added if I make up your family to the full number of three.^[27]”

Juvenal 9, The Sorrows of Reprobate

Finally, here is a convoluted poem from Cicero’s *De Natura Deorum* (Nature of the Gods) about an elite woman attempting to pass off her illegitimate child as legitimate in a grab for power. He quotes the intensely dramatic Greek story *Atreus of Atticus* where Atreus, the king of Mycenae, is trying to figure out how to take revenge on his brother, Thyestes, for sleeping with his wife Aerope, and thereby challenging his rule and ousting Atreus from Mycenae. The story of these brothers is full of court intrigue and attempts to seize the throne, impregnation of the wrong people to produce sons to use in elaborate plots of vengeance, and a whole lot of murder.

Medea was criminal, but also she was perfectly rational. Again, does not the hero plotting the direful banquet for his brother turn the design this way and that in his thoughts?

More must I moil and bigger bale must brew,

Whereby to quell and crush his cruel heart.
Nor must we pass over Thyestes himself, who
Was not content to tempt my wife to sin —
an offence of which Atreus speaks correctly and with perfect truth —
the which I deem the height of peril
In matters of high state, if royal mothers
Shall be debauched, the royal blood corrupted,
The lineage mixed.

But how craftily this very crime is plotted by his brother, employing
adultery as a means to gain the throne:

Thereto withal (says Atreus) the heavenly sire did send me
A warning sign, to confirm my reign —
A lamb, conspicuous among the flock
With fleece of gold, Thyestes once did dare
To steal from out my palace, and in this deed
My consort did suborn as his accomplice.

Cicero, De Natura Deorum III, 68

CASE STUDY: CLODIA AND HOW NOT TO BEHAVE AS A MATRONA

In the following speech by Cicero from 56 BCE, Cicero is defending Caelius in court. This famous defense speech includes references to Clodia, a widowed matrona (high class lady), carrying out a relationship with Caelius. Caelius was 32 or 33 at the height of this affair, and Clodia was possibly in her early 40s.

The accusers talk to us about lusts, and loves, and adulteries, and Baiae, and doings on the sea-shore, and banquets, and revels, and songs, and music parties, and water parties; and intimate also that they do not mention all these things without your consent.... You saw a young man become your neighbour; his fair complexion, his height and his appearance and eyes made an impression on you, you wished to see him oftener; you were sometimes seen in the same gardens with him; being a woman of high rank you are unable with all your riches to detain him, the son of a thrifty and parsimonious father: he kicks, he rejects you, he does not think your presents worth so much as you require of him. Try some one else. You have gardens on the Tiber, and you carefully made them in that particular spot to which all the youth of the city comes to bathe. From that spot you may every day pick out people to suit you. Why do you annoy this one man who scorns you?"

Cicero, *In Defense of Marcus Caelius Rufus*

"Woman [*mulier*], what have you to do with Caelius? What have you to do with a very young man [*homine adulescentulo*]? What have you to do with one who does not belong to you? Why have you been so intimate with him as to lend him gold, or so much an enemy of his as to fear his poison? Had you never seen that your father, had you never heard that your uncle, your grand-father, your great-grandfather, your great-great-grandfather, were all consuls?"

Cicero, *In Defense of Marcus Caelius Rufus*, 55 BCE

A great range of sources from the legal to the poetic and the rather obscure at the end. Good introduction and very clear about the legal set up and how it

evolved to involve the state more and more. Good use of footnotes to help students through this material

I would like to be credited specifically for this section under the name Sophie Roth.

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Images:

Roman married couple

<https://wellcomecollection.org/works/tbn4py5f>

Commodus

https://en.wikipedia.org/wiki/Commodus#/media/File:Commodus_Musei_Capitolini_MC1120.jpg

roman couple sarcophagus top

<https://www.metmuseum.org/art/collection/search/256163>

1. Oldest male head of a Roman household that all other members, male or female, were subordinate to. ↵
2. Literally “power of a father”. Included, even if only in theory, the legal right to kill his children in serious situations, usually honor based. The son/daughter was not freed from this when they became adults. ↵
3. One can argue that this never really existed, as the Romans were always breaking their own codes of conduct – but everything looks better in hindsight, especially after the chaos of the late republic. ↵
4. Life expectancy was also very low in ancient Rome, and infant mortality rate was often around 50%. ↵
5. A daughter’s pudicitia was very important to the family and her pater familias specifically because reputable daughters (i.e.: virgins, if it was a first marriage) were integral in elite families being able to make alliances with other elite families through marriage. ↵
6. However, freedmen or slaves, who did not own property, would get harsher treatment. ↵
7. Whereas a husband of the woman found committing adultery could only kill the adulterer if he was of a lower status. ↵
8. This is referring a grown man who has his own daughter (the woman who has been found committing adultery) but is not yet the pater familias, or free of his own father’s patria potestas. This is arguing that although legally he cannot kill her because he does not have the powers of patria potestas of his family, the author believes he should be able to. It is unclear if this situation ever appeared in the courts – life expectancy in Rome was not very high, so it would have been rare for a man to have his own adult children as well as a living father to subordinate him. ↵
9. A lowered legal standing that revokes rights of Roman citizenship that was usually caused by engaging in disreputable professions, committing a crime,

or becoming an adulterer. ↵

10. Referring to prostitutes or potentially other careers worthy of infamia status such as charioteers, actors, or gladiators. ↵
11. Former slaves who have been freed or bought their freedom. ↵
12. It is important to note that laws like this still exist – especially in similar cases where anger or ‘personal injury’ (such as an adulterous spouse) is termed ‘provocation; and can be seen as a mitigating factor for murder/violence. ↵
13. If a husband does not divorce his wife immediately after she is found being adulterous it was assumed that he was pimping her out. The Lex Julia did not take into consideration cases of polyamory or a husband simply not caring that his wife had other partners; this was thought to be the only explanation. ↵
14. References to famous Roman legal commentators. ↵
15. Two of the first prolific Athenian lawmakers that held a somewhat mythical status – akin to how we would think of a figure like King Arthur. ↵
16. Referring to an official announcement that Emperors Marcus Aurelius and his son and successor Commodus made in relation to this case. ↵
17. Echion, Glaphyrus, and Ambrosius are generally presumed to be famous musical figures at the time, would be similar to someone today saying, ‘he is such an Elton John’. ↵
18. Would have been a typical elite name, presumably not targeting one Lentulus in particular. ↵
19. Euryalus and Murmillos are both well known types of gladiators. ↵
20. Some consider it more ‘historical fiction’ with around 2/3 of it being fictional. <http://www.oxfordbibliographies.com/view/document/obo-9780195389661/obo-9780195389661-0046.xml> ↵
21. Chaldea was a territory in Mesopotamia at the time. The Romans believed that the ‘East’ was where a lot of magic came from, and its possible that Marcus consulted the Chaldeans for magical advice that could help the problems in his marriage. ↵
22. Someone who purchased, managed, and trained gladiators. ↵
23. Faustina and Marcus Aurelius were biologically cousins. However, Marcus Aurelius had been formally adopted by Faustina’s father Pius, who was Em-

peror before Marcus Aurelius. Pius adopted Marcus Aurelius as his own biological sons had died young, and he needed an heir. ↵

24. The Romans were pretty tolerant when it came to what they considered the 'active' partner in a homosexual situation, however the 'passive' partner would not have enjoyed the same tolerance. ↵
25. Having children was integral to being a good Roman citizen, so a marriage that did not produce children would often be greatly strained by this tension and would often lead to divorce. A way to avoid gossip and speculation from others was to have a slave or prostitute step in, especially if the problem was with the man's fertility, and father the child for them. ↵
26. Now that that the man has his 'own' children, he can be named in other people's will and given inheritance. ↵
27. In an attempt to increase the population of upper-class Roman Citizens, fathers with 3 children (who survived to adulthood and had their own children) gained extra privileges such as exemption from mandatory public service. ↵

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