

**Women in Criminal Trials in the Julio-Claudian Era**

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## **Abstract**

This study focuses on the intersection of three general areas: elite Roman women, criminal law, and Julio-Claudian politics. Chapter one provides background material on the literary and legal source material used in this study and considers the cases of Augustus' daughter and granddaughter as a backdrop to the legal and political thinking that follows. The remainder of the dissertation is divided according to women's roles in criminal trials. Chapter two, encompassing the largest body of evidence, addresses the role of women as defendants, and this chapter is split into three thematic parts that concentrate on charges of adultery, treason, and other crimes. A recurring question is whether the defendants were indicted for reasons specific to them or the indictments were meant to injure their male family members politically. Analysis of these cases reveals that most of the accused women suffered harm without the damage being shared by their male family members. Chapter three considers that a handful of powerful women also filled the role of prosecutor, a role technically denied to them under the law. Resourceful and powerful imperial women like Messalina and Agrippina found ways to use criminal accusations to remove political enemies. Chapter four investigates women in the role of witnesses in criminal trials. The final part of the thesis is a prosopographical survey, presenting a case by case analysis of all the trials considered in this study.

The conclusion emphasizes that the changing role of women in Roman politics is striking. The emergence of the senate as the court that heard trials like these is an important development. Women are now seen entering the senate and speaking at trials as witnesses and defendants, participating (intermittently, to be sure) in senatorial proceedings, from which they had been completely banned in the Republic. Women were perceived as more than capable of being agents in political intrigue, a perception confirmed and reinforced by the high-profile legal and political manoeuvres of the younger Agrippina. This was a new level of public attention, and at a high cost for those who were convicted, whether they were actually guilty of a criminal offense or merely political targets.

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## List of Abbreviations:

Abbreviations of classics journals follow the standards laid out in *L'Année Philologique*; abbreviations of classical authors and their works follow the standards laid out in the *Oxford Classical Dictionary*.

- CIL            *Corpus Inscriptionum Latinarum*
- Dig.           *Digest of Justinian* (1985) 4 vols., Latin text of Th. Mommsen and P. Krueger, trans. A. Watson, University of Pennsylvania Press, Philadelphia.
- EJ             *Documents Illustrating the Reigns of Augustus and Tiberius* (1955) V. Ehrenberg and A.H.M. Jones (eds), Clarendon Press, Oxford.
- FIRA          *Fontes Iuris Romani Antejustiniani* (1941-) 3 vols., S. Riccobono, J. Baviera, C. Ferrini, J. Furlani, V. Arangio-Ruiz, S.A.G. Barbera (eds), Florence.
- IGRR         *Inscriptiones Graecae ad Res Romanas Pertinentes* (1909-1927) vols 1, 3, 4, ed. R. Cagnat, Paris.
- ILS           *Inscriptiones Latinae Selectae*, vols 1-4 (1892-1916), Weidman's, Berlin.
- Inst.*         *Justinian's Institutes* (1987) Latin text of P. Krueger, trans. P. Birks and G. McLeod, Cornell University Press, Ithaca, N.Y.
- ORF<sup>3</sup>         *Oratorum Romanorum Fragmenta*, 3<sup>rd</sup> ed. (1953) ed. H. Malcovati, G.B. Paravia, Torino.
- PIR<sup>1</sup>         *Prosopographia Imperii Romani* (1897-1898) H. Dessau et al. (eds), Berlin.
- PIR<sup>2</sup>         *Prosopographia Imperii Romani* (1933-), second edition, F. Groag, A. Stein, L. Petersen (eds), Berlin.
- RC            Raepsaet-Charlier, M.-Th. (1987) *Prosopographie des femmes de l'ordre sénatorial (I<sup>er</sup> – II<sup>e</sup> siècles)*, 2 vols, Peeters.
- RE            *Pauly's Realencyclopädie der classischen Altertumswissenschaft, neue Bearbeitung*, begonnen v.G. Wissowa, (1893-) Stuttgart.
- SEG          *Supplementum Epigraphicum Graecum*
- Smallwood   *Documents Illustrating the Principates of Gaius, Claudius, and Nero* (1967) ed. M. Smallwood, Clarendon Press, Oxford.

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*For my children:*

*Kieran*

*Kaylee*

*Kendra*

## CHAPTER 1

### Introduction to Women in Criminal Trials

Even a quick perusal of Tacitus' *Annales* and Suetonius' *Vitae Caesarum* gives the reader the sense of a huge number of trials involving various members of the elite orders of Roman society (both senatorial and equestrian).<sup>1</sup> A significant number of these cases involved women as defendants, co-defendants, and even as prosecutors. This study focuses on the intersection of three general areas: elite Roman women, criminal law, and Julio-Claudian politics. Many historians have studied Tacitus, Suetonius, and other early imperial historians, and there are many scholarly publications on those topics. Similarly, many historians have studied Roman women, and others have studied Roman law. There are very few, however, who have paid close attention to the intersection of these three areas; in fact, no full length treatment of this subject has been published. A.J. Marshall's 1990 article "Women on Trial in the Roman Senate" did indeed compile and briefly analyze information about trials held in the senate, but the subject warrants a more thorough treatment. The parameters of this dissertation fall into three categories. Temporally, it limits itself to the Julio-Claudian era (31 BC to AD 68). Socially, the focus is on elite women in Rome; the vast multitude of non-elite women who must have appeared in court have left virtually no trace in extant records. In the legal sphere, this study focuses on criminal trials only, and explores the historical, political, and legal contexts and consequences of these trials.

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<sup>1</sup> Note that the term 'trial' refers to criminal proceedings rather than civil litigation. There are many examples of elite women's involvement in private law, all of which are outside the scope of the present study.

The Julio-Claudian period provides an opportune window in which to study women in a political and legal context because of the relatively plentiful narrative sources. We should not assume, however, that the political and legal activities of women disappeared at other times merely because the window was obscured. In Dio's later books and in imperial rescripts preserved in Justinian's Digest, ample evidence is available about politically and legally powerful women. They were full-contact players in the political game and were not scorned in the law either. We must recognize, however, that the Julio-Claudian era is unique because it marks the beginning of the Empire and therefore new definitions had to be created and clarified, particularly in the context of treason. It is no surprise to find a generation filled with treason trials as the boundaries of treason under the new order were explored and defined. The Julio-Claudian era is, therefore, unique and worthy of study, as are the politically-inclined women of the time.

The Roman definition of crime is distinct from our own. Many actions that modern citizens might call crimes – theft, fraud and so on – were civil actions under the Roman legal code. Only actions that harmed the collective or the state were considered crimes by Roman definition; no crime, therefore, fails to be political. The frequency of women's involvement in criminal trials during the Julio-Claudian period is thus a reflection of the heightened political involvement of women. This peak in frequency is distinct from the preceding late republican or the subsequent Flavian or Antonine periods. Under the Julio-Claudians, the criminal law began to be used as a means of implementing political reprisals both against women and by women. Women appear as targets of politicized criminal charges in their own right, that is to say, they were more than co-defendants of their husbands or male family

members. They had something (high birth, relation to the imperial family) that politicians wanted, or that they needed to get out of the way for their own political gain.

A criminal indictment attacked not only the defendant's conduct, but also her honour. According to Lendon, "In the Roman world, one's moral reputation was an integral part of one's rank in society."<sup>2</sup> Every criminal indictment carried with it the risk of conviction, and thereafter, dishonour. Although honour was a personal quality, its aura extended over household and connections by blood and marriage.<sup>3</sup> Yet we shall see that the marks against honour caused by a criminal conviction did not definitively preclude political success for a woman's family members. After Aemilia Lepida's conviction in 20, her second ex-husband Scaurus held a suffect consulship in 21, less than a year after the conclusion of the trial. Lepida's conviction did not slow his political career even slightly, even though he had spoken in favour of leniency during her sentencing, an opinion certainly opposite to her accuser's and plausibly opposite to Tiberius'. Her brother Lepidus, who defended her at trial, was similarly unaffected and was offered a proconsulship in Africa in 21 (which he declined due to ill-health) and another in Asia in 26/27.<sup>4</sup> Even less of a stain was left on members of the imperial family. The younger Agrippina and her sister Livilla were exiled for adultery and conspiracy by their brother Caligula, but were recalled and pardoned two years later by their uncle, the new emperor Claudius. Agrippina eventually went on to marry Claudius, and her son Nero became emperor in turn. The injury to Agrippina's honour from her conviction in 39 was not insurmountable, either for herself or for her son. The blood of *divus* Augustus was in itself a powerful source of honour. The absence of any permanent

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<sup>2</sup> Lendon (1997) 41.

<sup>3</sup> Sen. *Ben.* 5.19.5; Pliny *Ep.* 5.11; Plut. *Cato min.* 39.4; Dig. 47.10.1.3 (Ulpian); Lendon (1997) 45; Saller (1994) 93–94.

<sup>4</sup> Tac. *Ann.* 3.35; 4.56.

stain or disqualification is surely a reflection of the common acceptance that these trials were often intensely political and often contrived.

The changing role of women in Roman politics is striking. There were about twenty women (and approximately seventy-five men) accused of treason that we know of during the reign of Tiberius alone. Women were perceived as more than capable of being agents in political intrigue, a perception confirmed and reinforced by the high-profile legal and political manoeuvres of the younger Agrippina. The emergence of the senate as the court that heard trials like these is an important development. Women are now seen entering the senate and speaking at trials as witnesses and defendants – or we may picture Agrippina sitting concealed behind the prosecutor’s bench with a self-satisfied smirk. These women were participating (intermittently, to be sure) in senatorial proceedings, from which they had been completely banned in the Republic. This was a new level of public attention, and at a high cost for those who were convicted, whether they were actually guilty of any offense or were merely political targets.

The dissertation is organized as follows: this chapter provides background material on literary and legal source material, standard court procedures, the role of the emperor, and the difficult cases of Augustus’ daughter and granddaughter that formed precedents for the legal and political thinking that followed. The remainder of the dissertation is divided according to women’s roles in criminal trials. Chapter Two, *Women as Defendants*, encompasses the largest body of evidence and is split into three thematic parts that concentrate on charges of adultery, treason, and other crimes. A recurring question is whether the defendants were being targeted in order to hurt them personally, or to injure their male family members politically. Analysis of these cases reveals that most of the accused

women suffered harm without the damage being shared by their male family members. Chapter Three, *Women pro accusatoribus*, considers that a handful of powerful women also filled the role of prosecutor, a role technically denied to them under the law. Resourceful and powerful imperial women like Messalina (wife of the emperor Claudius) and Agrippina (mother of the emperor Nero) found ways to use criminal accusations to remove political enemies. Chapter Four, *Women as Witnesses*, investigates women in the role of witnesses in criminal trials. The final part of this study, *Prosopographical Survey of Women in Criminal Trials in the Julio-Claudian Era*, is a case-by-case presentation of the fifty-eight women who were involved in criminal proceedings, with analysis and bibliography for each.

### **Sources for Women on Trial**

The most important sources for the topic under investigation are the main historical authors for the Julio-Claudian era: Tacitus, Suetonius, and Cassius Dio. It is necessary, therefore, to examine some of the biases and weaknesses inherent in the works of these authors. Although the most crucial source for this topic is Tacitus, from whom a great deal of our knowledge is derived, this discussion begins with the authors less central to the study, then turns to Tacitus and his writings, biases, and historiography. A final section will outline some problems inherent in the juristic sources that provide legal background to our study.

Cassius Dio was born in about AD 163/4 and wrote between 207 and 219.<sup>5</sup> Thus a gap of 150 to 220 years separates him from the cases that interest us. None of our cases is known from Dio alone; his history serves to furnish some additional detail to the information provided by Tacitus and Suetonius. It is interesting to note that Dio wrote under the Severan emperors under whom imperial women achieved a power and influence unmatched since the

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<sup>5</sup> Millar (1963) 192–193.

Julio-Claudians. Dio's general acceptance of a monarchical system of government (he concluded that it was all but inevitable)<sup>6</sup> is quite distinct from Tacitus' attitude that the rise of imperial government meant the end of freedom and the corruption of the true Roman way. Dio's work thus has a different tone and is not critical of innovative imperial practices in the early Empire. Dio says virtually nothing about the proliferation of treason trials and *delatores* in the Julio-Claudian era.

One of the intrinsic problems of Dio's *Histories* is its incomplete state. Relevant to our study are books 55 through 62, all of which are fragmentary to a greater or lesser degree. The surviving fragments of the text have been gleaned from several different epitomes, the most useful and voluminous of which were compiled by Xiphilinus, an eleventh-century monk, and Zonaras, a twelfth-century writer.<sup>7</sup> Much scholarly effort has shown that these excerpts tend to reflect the meaning of Dio's original text faithfully; however, these portions of the text are still subject to some challenge. Despite these inherent difficulties, however, the information provided by Dio (and his epitomators) can still be useful to our discussion.

Suetonius was most likely born between AD 67 and 72, though scholars have proposed dates as widely separated as 61 and 77.<sup>8</sup> Because he dedicated his biographies of the Caesars to the praetorian prefect of 119–122, many scholars believe that Suetonius likely wrote and published this work at about the time he was dismissed from his position as *ab epistolis* in Hadrian's court in 122.<sup>9</sup> Suetonius was, therefore, no more than a young child in

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<sup>6</sup> Dio 44.2.1–4; 47.39; 53.19.1; 56.43.4; compare Millar (1963) 75.

<sup>7</sup> Millar (1963) 2–3; see also Boissevain, *Cassii Dionis Cocceiani Historiarum Romanarum Quae Supersunt*, vols. 1–5, (1–3 are text), Berlin (1898–1931).

<sup>8</sup> Jones (1968) 129; Baldwin (1983) 27 suggests AD 61/2; he notes (p. 3) that Mommsen's (1869) 43 “notion of 77 seems (rightly) to have lapsed.” Syme (1958) 778 suggests *c.* AD 72. Macé (1900) calculated a natal year of AD 69 or 70; editors of both the Loeb and Budé series have accepted this date.

<sup>9</sup> Wardle (1994) 13–14. Townend (1959) 285–293, suggests that the *Lives* of Caesar and Augustus were published before Suetonius' dismissal from Hadrian's court and the subsequent *Lives* were published later, the

the aftermath of Nero's reign and the latest trials under discussion. The earliest trials occurred more than half a century before his birth. Very few cases are reported in Suetonius alone, but his accounts provide important corroboration and correction to Tacitus' narrative and help fill in events from AD 37 to 47, for which period Tacitus' *Annales* are lost.

A biographer rather than a historian, Suetonius generally maintained his focus on the main character of the *Life* and did not write in any depth about the lives of other men or women except as they were related to that main character. Furthermore, he seems to have no particular interest in the law and thus did not record court-related anecdotes. Suetonius' choice of anecdote is based on rather less than obvious methodology; his attention was caught by something interesting to him or merely powerful in popular gossip. Where we can compare Tacitus' and Suetonius' account of the same incident, (such as the trial of Aemelia Lepida in AD 20) Tacitus' version is rather more expansive and therefore more useful.<sup>10</sup> On the other hand, Suetonius is sometimes more accurate on questions of chronology (for example on Caligula's birth, or on the trials of the elder Agrippina).<sup>11</sup>

Velleius Paterculus is the only historian who can claim the status of eye-witness to Tiberius' reign. Unfortunately for this study, his focus is generally martial and he makes few references to women or to political trials. A notable exception is his description of Augustus' daughter Julia's adultery in 2 BC and the emperor's reaction to it. Likely, these events got his attention because they directly affected Tiberius, whom he idolized. Velleius makes no mention of the treason trials during the reign of Tiberius; he may have believed that

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author's banishment from the archives thus explaining the reduced quality of research demonstrated in the later *Lives*. Baldwin (1983) 51, on the other hand, suggests publication by 117.

<sup>10</sup> Tac. *Ann.* 3.22–24; Suet. *Tib.* 49.

<sup>11</sup> See Agrippina, no. 6. Tacitus' handling of the birth of Caligula (*Ann.* 1.41.3) is confused and inferior to that of Suetonius (*Cal.* 8.1), whose account is confirmed by the *Fasti Vallenses* and *Fasti Pighiani*; Barrett (1989) 6–7 and 255 n. 9.

mentioning these highly unpopular measures would have been perceived as critical of Tiberius. Notably, Velleius does not even defend the necessity of treason trials.

Tacitus was born in southern Gaul or northern Italy in the late 50's AD.<sup>12</sup> Because the time period of this study is expressly limited to the Julio-Claudian era, only the *Annales* is relevant. He wrote this work around AD 112–115 and the cases which this study examines occur between 2 BC and AD 65. The largest possible gap between the events and Tacitus' recording of them is over a hundred years; the minimum is a fifty-year gap between Tacitus' earliest composition in the *Annales* and the latest events in our study. Tacitus would have been at most a young boy in 65, almost certainly precluding any eye-witness testimony from the author himself, although he does note that he has spoken to eye-witnesses.<sup>13</sup> We must agree that there was at least one level of narrative or interpretation interposed between Tacitus and the events he describes; in the composition of his narrative, he used other writings: historians, biographies, autobiographies, letters, public records.<sup>14</sup> However, Tacitus was a senator and an insider in the political world, so he had access to the people and insider information that would most usefully (and accurately?) inform his narrative. Certainly Tacitus understood the political world about which he wrote; he had spoken in court, he had held high political office, he had dealt with the imperial family.

### *Tacitus' bias and narrative purpose*

Despite his famous disclaimer that he would write *sine ira et studio* (*Ann.* 1.1), Tacitus can be charged with bias on a number of counts. He reveals his poor opinion of the

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<sup>12</sup> Woodman (2004) xi, suggests a date of AD 56; cf. Birley (2000) 230–247, who suggests a birth date of AD 58 in Trier; Syme (1958) 63, suggests AD 56 or 57.

<sup>13</sup> Tacitus refers directly to his sources at *Ann.* 3.16.1, 11.27, 15.41.1; he refers indirectly to his sources by saying, “there was a report,” at *Ann.* 11.34.1, 15.65.1; and “some transmit,” at *Ann.* 1.29.4, 2.40.2.

<sup>14</sup> Devillers (2003) especially chapter 1; Woodman (2004) xiv; Martin (1981) 199–213; Syme (1958) 271–303.

emperors and the imperial system in many subtle ways, particularly displaying a bias against Tiberius that seems unwarranted; he portrays him in a bad light at every opportunity and repeatedly emphasizes the shortcomings of his character.<sup>15</sup> Therefore Tacitus' emphasis on treason trials and the bad influence of the *delatores* during Tiberius' reign furthers the expression of his negative opinion about Tiberius. On Caligula and the early years of Claudius' reign, Tacitus has been muted by misfortune: books seven through ten of his *Annales*, covering the entire four years of Caligula's reign and the first six years of Claudius', have been lost. The central thesis of Tacitus' treatment of Claudius was that ignorance of his wives' and freedmen's machinations led him to despotism.<sup>16</sup> Nero was an untried youth vaulted to the throne by his mother's schemes and, at first, controlled by her and guided by his tutors. After murdering his mother, he spent the remainder of his reign making a mockery of all that was dignified by dedicating himself to various lovers, chariot-racing, musical contests, and stage performances.

Tacitus also displays a general bias against women, and he is particularly hostile in his treatment of women who have transgressed the bounds of socially acceptable behaviour; ambitious women of the imperial family earn his particular enmity and he rarely mentions them without a negative or prejudicial note.<sup>17</sup> At the same time, one must acknowledge that Tacitus did not write in a cultural vacuum and that there were pervasive stereotypes about women in Roman literature. One particularly relevant stereotype is that a woman was always

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<sup>15</sup> For example, Tac. *Ann.* 1.11.2, 24, 52, 76.4. Note the well-known comparison of Tacitus' treatment of Tiberius and Germanicus in which the latter was portrayed in glowing terms even when his actions were patently incompetent when resolving the Rhine mutiny in AD 14. His personal charm and popularity stood in stark contrast to Tiberius' dour and difficult character.

<sup>16</sup> Vessey (1971) 399; Levick (1990) 193. On the other hand, as Barrett (1996) 73 states, "the emperor's wives should be seen more properly as his accomplices and allies rather than as hostile agents undermining a benign and generous regime, and Claudius should be seen as happy to use them to help secure his own ends."

<sup>17</sup> Syme (1958) 534, argues that Tacitus did not despise women, but that he described women as equally arrogant and licentious as men of the time; Barrett (2002) 239.

ready to commit adultery, and once she had sold her virtue, she was capable of any other atrocities.<sup>18</sup> The ancient sources are notoriously unreliable about women's sexual misconduct and political invective regularly deploys adultery as a weapon against women.<sup>19</sup> The presence of specific women at a Roman trial (on the side of defendant or prosecutor) may be taken as historical fact, but the rhetoric surrounding her presence and her character is attributable to the historian and to the culture surrounding the events.<sup>20</sup> Historians generally felt that the affairs of women were not appropriate for inclusion in their writings. Suetonius, for example, typically discusses women as family only. Nonetheless, the absence of women from a piece of writing is different than the presence of women who are portrayed negatively. Therefore we must pay attention when Tacitus mentions a particular woman in a particular way.

Tacitus uses rhetorical descriptors to colour the women in his narrative. He describes Livia with almost unrelenting hostility and has no hesitation in using colourful descriptors.<sup>21</sup> Livia was a devoted wife, but Tacitus describes her repeatedly as “stepmotherly” and “malevolent”.<sup>22</sup> On the other hand, he uses equal colour in praising Agrippina the Elder; she was a fertile wife, devoted to her husband and children.<sup>23</sup> Foreign (Germanic) women are portrayed as noble, as having the desirable courage and strength that Roman women (and men) have lost in their soft, over-civilized modern lives. These endorsements stand in sharp

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<sup>18</sup> Cato *ap. Quint.* 5.2.39. Kiefer (2000) 43 points out that, in the early days, there was no punishment for adultery so the crime was attacked obliquely under the charge of poisoning. The first legal penalties for adultery came with Augustus' marriage laws.

<sup>19</sup> Pagán (2004) 15; cf. Richlin (1981).

<sup>20</sup> Pagán (2004) 15.

<sup>21</sup> Barrett (2002) 239–246.

<sup>22</sup> For example, see Tac. *Ann.* 1.3.3, 6.3, 10.5, 33.3; Barrett (2002) 240–243.

<sup>23</sup> For example, Tac. *Ann.* 1.40–41; 2.43.6; 2.75; 3.1; but even praise for her mighty spirit (*ingens animi*) at 1.69 was immediately sabotaged by Tiberius' alleged concerns that Agrippina was a threat because she was more powerful among the troops than the legates or generals (*potiorem iam apud exercitus Agrippinam quam legatos, quam duces*).

relief compared to the vast majority of Tacitus' dour or cynical references to women. Notably, when Tacitus comes to relate the accusations against and the trials of women in this study, the descriptors evaporate. Perhaps these women are not prominent enough to merit further description. At any rate, Tacitus' motives lay elsewhere. The stories of the trials (and the women involved) were merely a means of establishing his point that foolish things were going on in Rome, that law and justice and Roman civilization were being subverted to the twisted will of Tiberius, Claudius or Nero.

Women on trial caught Tacitus' attention repeatedly, especially during the reign of Tiberius during which more than half the trials in this study occurred (see Appendix 1). Tacitus' goal was to highlight the scandal or to reiterate Tiberius' failings, not to explain the legal basis or procedure in any of the cases. We may infer from Tacitus' detailed description of the trial of Libo Drusus (AD 16) that Tacitus had access to detailed information about trials that took place at this time. Therefore his choice to exclude a similar level of detail for other trials must have been deliberate – certainly his narrative flow would have been impeded dramatically by an interminable list of detailed court cases. At the same time, Tacitus was constrained by the limits of his sources, and in the case of the elder Agrippina, his muddled sources led him to errors in his own account. As a result, we can at best come to tentative conclusions about the charges, upon which statutes they were based, the trial procedures, court venue, conviction, and punishment. The tentative nature of the conclusions does not invalidate the effort to reach them.

In many cases, all that survives in the historical record is a brief notice that a specific woman was in court. The charges, verdict, and penalty may be unrecorded. In these instances, rhetoric is relevant only insofar as there is none – namely that these cases did not

merit much interest or attention from either the author or his intended audience. However, the accumulation of such cases provided a mass of material that does have a rhetorical force. A bland notice of ‘another woman on trial for adultery’ promulgates a stereotype that is so ingrained that it does not require elaboration. This bland statement taps into a cultural awareness and shared belief about women. Obliquely reiterating this belief a number of times testifies to the depth and breadth of the stereotype more emphatically than a blazoned treatment would. The presence of a specific woman at a trial may be taken as historical fact, and sometimes that is as far as the evidence takes us.

### *Legal sources*

Fifth- and sixth-century Roman legal compilations (*codices Theodosianus et Justinianus*) seem, at first glance, to give a comprehensive overview of every law in practice in Rome. Upon closer inspection, it becomes evident that it is not clear when particular laws were in force and to what degree the text of the law was modified for inclusion in the large *codex*.<sup>24</sup> When used with due caution, however, such juristic sources provide valuable information for the study of Julio-Claudian times. These *codices* were compiled by assembling praetorian edicts, rulings from jurists, imperial edicts, rescripts, *senatus consulta*, and comitial statutes. Contradictions were eliminated, with the most recent decision settling the point.<sup>25</sup> Therefore, from what survives in the *codex*, it is crucial to determine when a particular law began to be in force (there is, obviously, no record of old laws that were superseded). Because we know the names and dates of several important jurists from the second century AD, it is possible to argue with some confidence that some of the laws which

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<sup>24</sup> The *Codex Theodosianus* was published in 438, the *Codex Justinianus* in 534.

<sup>25</sup> At least this was the policy. In fact, contradictions remain, likely because of the huge volume of material and because there were several people working on the project at the same time.

they record were in force during the Julio-Claudian period. There is also much evidence to be gleaned from the orations of Cicero and the letters of the younger Pliny, whose writings are securely datable. Legal references in the accounts of historians can be very useful, although they frequently lack detail.

The five most important jurists lived and wrote in the second and third centuries AD.<sup>26</sup> Each had the *ius respondendi* (the right of responding) backed by imperial recognition of their status. Gaius flourished in the Antonine period and was probably a teacher.<sup>27</sup> He published one of the most important legal treatises to have survived to our time: the *Institutes*, an introductory overview of Roman law for students. Papinian, Paul and Ulpian belong to the Severan period, and each held important civil service posts including that of Praetorian Prefect.<sup>28</sup> Paul's *Sententiae* are a collection of juristic responses to hypothetical cases, useful perhaps to an advanced student of the law.<sup>29</sup> Modestinus, a pupil of Ulpian, was the last great jurist. Through all this period, the jurists wrote as men having authority in themselves, apart from the posts they held or the imperial favour they enjoyed.

The vast majority of the material known for Roman law pertains to civil law; only one book of fifty in Justinian's *Digest* is specifically devoted to criminal law.<sup>30</sup> Because this study is devoted to criminal trials, only a very small part of the corpus of Roman law will be relevant to our discussion. The laws that pertain to each case will be discussed as they arise.

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<sup>26</sup> Robinson (1997) 20.

<sup>27</sup> Robinson (1997) 45.

<sup>28</sup> Robinson (1997) 45.

<sup>29</sup> Robinson (1997) 46.

<sup>30</sup> Dig. 48.

## Standard Procedure of a Criminal Trial

It is necessary to consider the standard procedure for a criminal trial so that we may more readily distinguish the atypical or missing features in the cases discussed. The procedure described is that of the *quaestiones perpetuae*, the jury courts presided over by a praetor and established to hear charges of a particular type (adultery, for example); the *quaestiones* operated under the formulary system (described below), which procedure was copied wholesale in trials held in the senate and the emperor's personal court.<sup>31</sup> The system of *cognitio extraordinaria*, also called *cognitio extra ordinem*, began to be used from the beginning of the empire, which process could be applied to trials held in the senate, the emperor's private court, or courts held by the emperor's delegates (urban prefect, praetorian prefect, provincial governors).<sup>32</sup> These new courts could diverge from the regulations governing the *quaestiones* in two ways: (1) they could add to the categories of wrongful acts that could be charged under a specific criminal law; (2) they could exercise discretion on punishment.<sup>33</sup> Since these seem to be the only divergences from the procedures used in the *quaestiones*, and legal traditionalism was (as always) a very strong force, we may reasonably conclude that the procedure for initiating and enacting a prosecution changed minimally from the *quaestiones* to the *extra ordinem* procedures in the senatorial or private imperial courts.

The citizen prosecutor would first go to the magistrate who presided over the appropriate court and seek permission to bring the charge (*postulare*).<sup>34</sup> At this point, the magistrate would determine if the prosecutor was able to bring an accusation (that he was a

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<sup>31</sup> Compare descriptions in Talbert (1984) 480–487; Greenidge (1901) 456–504; Alexander (2002) 7–8. Robinson (1997) 85, notes that the formulary system was dominant from c. 150 BC to c. AD 150 and was officially banned in AD 342. See also Gaius, *Institutes* 4, for procedure under the formulary system.

<sup>32</sup> Bauman (1996) 24.

<sup>33</sup> Bauman (1996) 25.

<sup>34</sup> Alexander (2002) 8.

citizen and not under penalty of *infamia*) and he would accept or deny the charge. The prosecutor had to swear an oath that the prosecution was undertaken *bona fide*.<sup>35</sup> Only one accuser was allowed for a single offence, though one accuser could bring multiple charges; if there were multiple accusers and multiple offences, a preliminary hearing (*divinatio*) would sort out who was to be responsible for which charges. Up to this point, all proceedings would take place without requiring the presence of the accused.

The formal institution of the charge (*nominis* or *criminis delatio*) had to take place before the magistrate (consul or praetor) in the presence of the defendant.<sup>36</sup> The magistrate conducted an *interrogatio* to determine the *prima facie* case; if he was satisfied that the case should go forward, he drew up an *inscriptio* with a statement of the charge, signed by the prosecutor.<sup>37</sup> The charge was then formally received by the magistrate (*nominis receptio*) and the person accused now became technically *reus*. The magistrate then fixed a space of time for investigation (*inquisitio*), no less than ten days, and a date for trial.<sup>38</sup> During this interval, the accused was usually left free – especially if he were of high status – and if he chose voluntary exile or suicide at this time, the case would be closed unless the defendant faced charges of *maiestas*, in which case the trial would continue posthumously.

On the specified date, the trial proper would begin; jurors were chosen and sworn in.<sup>39</sup> The prosecutor spoke first, then the defendant's advocate, then written and testimonial evidence was adduced.<sup>40</sup> A brief question and answer session (*altercatio*) followed between

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<sup>35</sup> Greenidge (1901) 459.

<sup>36</sup> Alexander (2002) 8; Greenidge (1901) 461.

<sup>37</sup> Greenidge (1901) 465; Dig. 48.2.3.

<sup>38</sup> Greenidge (1901) 466. Some criminal laws had fixed the interval at thirty days; in trials of *repetundae*, where information had to be gathered from a province, the interval could be much longer.

<sup>39</sup> Typically there would be about 50 jurors; Bauman (1996) 27.

<sup>40</sup> Alexander (2002) 8.

the prosecutor and the defendant's advocate.<sup>41</sup> The jurors at last prepared to cast their ballots on the verdict; a simple majority decided the verdict.<sup>42</sup> The presiding magistrate pronounced the judgement. Any penalties assessed could be enforced by the *coercitio* of the presiding magistrate.

### Emperors in Court

An important point should be noted here about the role of the emperor in politically sensitive trials. Since the magistrate (the emperor, consul, or praetor) who initially heard the charges had the right to nullify them on the spot, we can infer that a woman had some political support on her side when charges actually went forward at her behest.<sup>43</sup> This is particularly noteworthy when the emperor himself allowed politically sensitive charges to stand as contemporaries or subsequent generations might conclude that he gave positive support to the charges. At the same time, the consul or praetor may have approved charges without the knowledge of the emperor, thus suggesting other political support for the woman, or at least her goal of the moment.

The emperors Augustus and Tiberius were known as conscientious judges, and Claudius may be similarly described.<sup>44</sup> They sat in court often and participated in the *consilia* of the praetor's courts. Augustus was active in enforcing existing laws as well as creating new laws, procedures, and courts.<sup>45</sup> Tiberius was more conservative and did not propose new laws; his determination that existing statute be enforced led to his famous

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<sup>41</sup> Greenidge (1901) 479.

<sup>42</sup> Greenidge (1901) 497.

<sup>43</sup> Talbert (1984) 481.

<sup>44</sup> Suet. *Claud.* 14, also 12, 15, 23; Dio 60.16.3.

<sup>45</sup> Bauman (1996) 24; Berger (1953) attributes 17 new or revised laws to Augustus.

comment *exercendas leges esse* which resulted in an explosion of trials during his reign.<sup>46</sup> However, Tacitus also acknowledged that Tiberius' presence in the courts prevented corruption.<sup>47</sup> Claudius' reputation was more ambiguous; his forensic peculiarities were widely known.<sup>48</sup> When presiding over trials, he did not always follow the letter of the law, but used his own judgement by increasing or decreasing penalties according to the circumstances of the individual case.<sup>49</sup> This extensive involvement in the law courts clearly reveals that Augustus, Tiberius, and Claudius were well-informed in the law, both statute and procedure.

Caligula and Nero, on the other hand, earned less favourable reputations in the courts. Caligula's presence there resulted in a number of macabre innovations in punishments.<sup>50</sup> A more serious criticism is that Caligula did not observe the basic ethics of personal *cognitio* when he failed to judge cases in public or to confine himself to cases in which he had no personal interest.<sup>51</sup> However, to his credit, Caligula suspended the *maiestas* laws for the first two years of his reign.<sup>52</sup> Nero was known to have delegated much of his work-load onto others, but there were always some matters that required the personal participation of the emperor.<sup>53</sup> Under the influence of Seneca, Nero learned about *clementia*, and maintained Claudius' ban on the *lex maiestatis* for the first eight years of his reign.<sup>54</sup> Despite these early influences, however, he was also sometimes unpredictable and cruel; anyone who was ordered to commit suicide, for example, was given no more than an hour before 'doctors' or

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<sup>46</sup> Tac. *Ann.* 1.72.3.

<sup>47</sup> Tac. *Ann.* 1.75.1.

<sup>48</sup> Bauman (1996) 75, with reference to Claudius' trial in the *Apocolocyntosis*; Suet. *Claud.* 15 notes that he was sometimes wise and prudent in his judicial decisions, other times thoughtless and hasty.

<sup>49</sup> Suet. *Claud.* 14.

<sup>50</sup> Suet. *Cal.* 27.

<sup>51</sup> Bauman (1996) 65.

<sup>52</sup> Bauman (1974) 204–210.

<sup>53</sup> Holland (2000) 83.

<sup>54</sup> Bauman (1996) 77, 78, 83; Suet. *Nero* 15.

soldiers were sent to complete the job.<sup>55</sup> Although less well-reputed, both Caligula and Nero were well-informed in the law.

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<sup>55</sup> Suet. *Nero* 37.2; Tac. *Ann.* 14.64.

## Chapter 1, part 2

### Precedents Without Trials: the Two Julias

*Iulias, filiam et neptem, omnibus probris contaminatas relegavit;...aliquanto autem patientius mortem quam dedecora suorum tulit.*

He relegated the Julias, his daughter and granddaughter, polluted by every kind of shame; ... He bore the death of his dear ones rather more patiently than their disgrace.<sup>56</sup>

This study is devoted to women in criminal trials, and the political and legal context of their trials, but in the minds of both accusers and defendants were precedents too important to ignore: the fates of the two Julias. Although neither faced formal criminal charges, trials, or convictions, their fates are important to the investigation of women's trials in subsequent decades. There is a significant body of modern scholarship devoted to these two women, yet proper understanding is inhibited by the dearth of actual evidence in the ancient sources. This discussion does not seek to treat the lives or actions of these two women exhaustively, but rather to focus on their ends and the procedures by which they were judged and exiled. Lack of information presents a major challenge to any discussion about the fall of either Julia, and in this one more than most because the legal background to their exiles was not the focus of any ancient historian.

The autumn of 2 BC saw the discovery of Julia's many alleged adulteries and her subsequent banishment. The facts known about the events are relatively few. Augustus discovered Julia's adulteries and reacted with fury, even refusing to see visitors for some time.<sup>57</sup> He notified the senate about her by a letter that was read out by a quaestor. When

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<sup>56</sup> Suet. *Aug.* 65.2. All translations presented in this thesis are my own except those from Justinian's *Digest*, which are, with occasional minor emendations, taken from Watson's (1985) translation.

<sup>57</sup> Suet. *Aug.* 65.2.

Julia's freedwoman Phoebe hanged herself, he is reported to have expressed that he would rather have been Phoebe's father.<sup>58</sup> He sent a notice of divorce to Tiberius at Rhodes, who in turn petitioned his father-in-law to relent toward his daughter and allow her to keep gifts given to her – presumably a reference to her dowry.<sup>59</sup> Augustus allowed his relegated daughter to consume no wine at all, nor any other delicacy, and severely restricted her visitors. After five years and a number of public demonstrations on her behalf, she was moved from the island of Pandateria to a slightly more lenient imprisonment at Regium on the mainland where she stayed until her death in 14.<sup>60</sup>

The names of five adulterers were recorded by Velleius, the only contemporary source: Iullus Antonius, Quinctius Crispinus, Appius Claudius, Sempronius Gracchus, and Scipio, in addition to other less prominent men of both orders.<sup>61</sup> He reports that they “paid the penalty that men would pay for violating any man's wife, although they had violated Caesar's daughter and Tiberius Nero's wife;” *quas cuiuslibet uxore violata poenas pependissent, pependere, cum Caesaris filiam et Neronis violassent coniugem.*<sup>62</sup> Iullus Antonius was the son of M. Antonius and Fulvia and was married to Augustus' niece, Marcella; he held the consulship in 10 BC and was proconsular governor of Asia.<sup>63</sup> We are meant to think that he was a political threat, as Seneca quips: *iterum timenda cum Antonio mulier*; “once again [there was] the threat of a woman allied with an Antonius.”<sup>64</sup> No trial is described or even mentioned, but Iullus died as a result of the events of 2 BC, either by

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<sup>58</sup> Suet. *Aug.* 65.2; Dio 55.10.16.

<sup>59</sup> Suet. *Tib.* 11.4.

<sup>60</sup> Suet. *Aug.* 65.3; *Tib.* 50; Tac. *Ann.* 1.53.1.

<sup>61</sup> Vell. Pat. 2.100; although he was not usually interested in political events, Velleius recorded a brief account of Julia's fall – perhaps because the episode was important to understanding Tiberius' life. Macrobius *Sat.* 1.11.7 records that a certain Demosthenes, about whom nothing else is known, was another of Julia's adulterers.

<sup>62</sup> Vell. Pat. 2.100; see also Syme (1978) 56.

<sup>63</sup> Vell. Pat. 2.100; PIR<sup>2</sup> A 800.

<sup>64</sup> Sen. *Vit.* 4.6, which is clearly a reference to the threat of Cleopatra when she was allied with Iullus' father M. Antonius during the triumviral period.

suicide (according to Velleius) or execution (according to Tacitus and Dio).<sup>65</sup> Sempronius Gracchus was a *pervicax adulter*, “persistent adulterer,” also known as a writer of tragedies and of a contumacious letter to Tiberius co-signed by Julia; he is not known to have held high magisterial office.<sup>66</sup> He was banished to the island Cercina where he lived for fourteen years until his death.<sup>67</sup> Quinctius Crispinus had been consul in 9 BC; Velleius provides the colourful description of him that he hid his extraordinary depravity behind a stern brow (*singularem nequitiam supercilio truci protegens*).<sup>68</sup> Of the remaining adulterers, Appius Claudius and Scipio, nothing is known other than their banishment.

While the sources are clear that adultery brought about Julia’s disgrace and downfall, none reveal any details about the legal means of her banishment. Augustus is known to have sent a letter to the senate, then Julia is described as imprisoned at Pandateria and the men named as her lovers were similarly punished. What happened in between? Although there was a *quaestio de adulteriis* – set up by Augustus himself – it seems clear that she was not prosecuted by a formal trial, either in the *quaestio* or in the senate.<sup>69</sup> First, an argument *ex silentio*: there is no record in the sources of a trial. Surely a sensational trial that would have generated the ancient equivalent of a media circus could not have been overlooked and unrecorded by every writer of the time, including Velleius whose eye-witness record survives. Secondly, the sources more than once slip into simple third-person-singular verbs

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<sup>65</sup> Vell. Pat. 2.100.4; Tac. *Ann.* 4.44.3: *Iullo Antonio ... punito morte*; Dio 55.10.15.

<sup>66</sup> Tac. *Ann.* 1.53.3–6; PIR<sup>1</sup> S 265; Gracchus’ adultery with Julia began when she was still married to Agrippa, who had died a decade earlier. He was a descendant of the famous tribunes Gracchi (133 and 123 BC), Syme (1986) 91.

<sup>67</sup> Tac. *Ann.* 1.53.4; after fourteen years of exile, soldiers came to kill him – sent either by Tiberius or L. Asprenas, proconsul of Africa.

<sup>68</sup> Vell. Pat. 2.100.5; EJ p. 37.

<sup>69</sup> Fantham (2006) 86. Scholarly consensus has not been attained on the subject of whether there were actually trials or not. The underlying problem is how to define a trial – was an *extra ordinem* procedure still a trial? Was a domestic tribunal still a trial? If we deny all legal proceedings, then we are forced to conclude that the banishment of Julia and her lovers and the death of Antonius took place completely outside the law. This conclusion is implausible in the highest degree. Bauman (1992) 108 and Syme (1974) 928 both conclude that there were trials, but do not engage the question of venue or procedure.

suggesting that Augustus had been directly in charge of the punishments assessed; Seneca is most blunt: *divus Augustus filiam ... relegavit*; “The deified Augustus relegated his daughter.”<sup>70</sup> Third, a full senatorial trial would have dramatically heightened the public exposure and attention paid to Julia, and by extension, to her father. Augustus’ desire to minimize the attention drawn by his daughter’s disgrace is revealed by his later comment that he regretted that he had not suppressed the scandal and concealed the events in silence.<sup>71</sup> In the absence of a formal senatorial trial, there must have been another means by which Julia and her adulterers were condemned. Two possibilities remain: first, that Julia was judged by a *cognitio extra ordinem* procedure in a court presided over by Augustus as the emperor; or second, that Julia was judged by a domestic tribunal presided over by Augustus as *pater familias*.<sup>72</sup> Trials by *cognitio extra ordinem* or by domestic tribunal are almost equally plausible and the fragmentary evidence gives no substantive reason to prefer one over the other.<sup>73</sup>

Given Julia’s politically sensitive position and the high rank of her accused lovers, the possibility of conspiracy must be considered. The assessed penalties of exile would have been appropriate to either adultery or *maiestas* charges; only the possible execution of Iullus Antonius would supercede the statutory penalty for adultery. Seneca writes that Julia and her senatorial lovers were *adulterio velut sacramento adacti*; “bound by adultery as if by an oath.”<sup>74</sup> The word *sacramentum* was cleverly chosen; it is also used to describe a soldier’s

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<sup>70</sup> Sen. *Ben.* 6.32; see also Suet. *Aug.* 64: *Iulias ... relegavit*; Tac. *Ann.* 4.71 (on the younger Julia): *Augustus convictam adulterii damnavit*.

<sup>71</sup> Sen. *Ben.* 6.32.

<sup>72</sup> For more on domestic tribunals, see Pomponia Graecina, no. 48.

<sup>73</sup> Bauman (1967) 198–245 discusses in detail the legal mechanisms that underlie this situation; see esp. 203–204: some authorities believe that Julia and her lovers were punished in Augustus’ domestic tribunal (Hausgericht); 231–233: Bauman argues that they were prosecuted in a criminal court over which the emperor himself presided (Kaisergericht).

<sup>74</sup> Sen. *Vit.* 4.6.

oath to his commander. Pliny goes even farther, writing of *consilia parricidae palam facta*; “open plans made for parricide.”<sup>75</sup> No other historian until Dio resurrects these ideas, but he limits the blame to Iullus Antonius, saying: ὡς καὶ ἐπὶ τῇ μοναρχίᾳ τοῦτο πράξας, ἀπέθανε, “he was put to death on the grounds that he had done this [i.e. adultery with Julia] to obtain the monarchy.”<sup>76</sup> Pliny’s report of open plans for parricide “might be dismissed as a scandalous and trivial notion.”<sup>77</sup> Against the hypothesis of a conspiracy stands the silence of Tacitus and Suetonius; especially revealing is the fact that the names of Iullus Antonius or any other member of this group were not recorded in Suetonius’ list of those who conspired against Augustus.<sup>78</sup> There is no evidence of the customary *senatusconsultum* decreeing a thanksgiving when a conspiracy had been suppressed.<sup>79</sup> Furthermore, it is highly implausible that Tiberius, languishing in his Rhodian exile, would have written letters to Augustus in support of leniency for a treasonous wife. Not only would it have been illogical to promote the safety of Julia if she was guilty of conspiracy, but it would also demonstrate disloyalty on Tiberius’ part. Perhaps most insurmountable: why would Julia enter into a conspiracy to seize power at the expense of her own sons?<sup>80</sup> An oblique comment of Tacitus’ may illuminate.

*nam culpam inter viros ac feminas vulgatam gravi nomine laesarum religionum ac violatae maiestatis appellando clementiam maiorum suasque ipse leges egrediebatur.*

By calling a sin common among men and women by the solemn name of injured religious principle and violated *maiestas*, he superceded the clemency of our ancestors and his own laws.<sup>81</sup>

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<sup>75</sup> Pliny *HN* 7.149.

<sup>76</sup> Dio 55.10.15.

<sup>77</sup> Syme (1986) 91; similarly Fantham (2006) 87.

<sup>78</sup> Suet. *Aug.* 65.2; 19.1.

<sup>79</sup> Bauman (1967) 201.

<sup>80</sup> Fantham (2006) 87.

<sup>81</sup> Tac. *Ann.* 3.24.2.

The common crime of adultery was now being called *impietas et maiestas* and Augustus exceeded the scope of his own adultery laws by introducing allegations of *maiestas*.<sup>82</sup> Since the idea of a treasonous conspiracy has been considered and dismissed, the concept of *maiestas* relevant in this instance must be of somewhat different definition; this was the newly developing *maiestas* of the emperor himself.<sup>83</sup> The much-heralded grant of the title *Pater Patriae* to Augustus in 2 BC gave full official recognition to the personal *maiestas* that Augustus had been assiduously building for more than thirty years. In light of this new title, he could not ignore Julia's scandalous conduct, and since her paramours had failed to uphold their sworn duty of respect towards a member of the imperial house, they had injured the *sacrosanctitas* of Augustus and now also his position as the universal *pater*.<sup>84</sup>

Julia died in exile at Regium in 14, within a few months of her former husband's ascent to the imperial throne. Tiberius had even intensified the conditions of her imprisonment in those last months, forbidding her to leave her house or enjoy human contact. He discontinued the allowance and annual revenue that Augustus had provided for her, using the civil law as a pretext, because there was no provision for it in his will.<sup>85</sup> Tiberius allegedly calculated that her death would pass unnoticed because she had been in exile for so long.<sup>86</sup> Nor was there a resting place in Augustus' mausoleum for her; by the terms of her father's will, she was denied burial there.<sup>87</sup>

The political futures of Julia's two elder sons Gaius and Lucius were not dimmed because of their mother's disgrace. At the time of her banishment, they were just entering

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<sup>82</sup> Bauman (1967) 202; see also Syme (1974) 928.

<sup>83</sup> Bauman (1967) 239.

<sup>84</sup> Bauman (1967) 240–241, noting the empire-wide oaths of loyalty to Augustus that was sworn by all citizens – including Julia's paramours.

<sup>85</sup> Suet. *Tib.* 50.

<sup>86</sup> Tac. *Ann.* 1.53.2.

<sup>87</sup> Suet. *Aug.* 101.

adulthood, having been groomed for imperial succession since Augustus adopted them fifteen years previously. Augustus himself, as Julia's outraged father and accuser (and possibly her judge), would have had no desire to harm Julia's sons, who were his own adopted sons and chosen successors. Indeed, within two years Gaius was consul and then given proconsular authority and assigned to lead an expedition to the eastern provinces; his brother Lucius was consul-designate for the year 3.<sup>88</sup>

Aside from Julia herself, the parties who suffered the most harm were her lovers. Of the six names known, five were sent into exile and the sixth, Iullus Antonius, met his death, either by his own hand or another's. Each member of the group was a politician in some degree, and exile is frequently a death sentence to a political career. None of these men are known to have resumed their political careers after their exile in 2 BC.

The younger Julia's demise came about in much the same way as her mother's and was inevitably linked in historical accounts, though the sources are even more fragmentary and cursory in her case. She, too, was accused of adultery and was banished to Trimerus, where she lived until her death in 29, apparently supported all the while by her step-grandmother Livia.<sup>89</sup> Julia's husband L. Aemilius Paullus was condemned at the same time as his wife, apparently on charges of conspiracy. He is included in Suetonius' list of conspirators against Augustus in conjunction with Plautius Rufus.<sup>90</sup> Nothing more is known about their conspiracy. Julia bore a child while in exile and Augustus refused permission for

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<sup>88</sup> EJ p. 38; Suet. *Aug.* 26.2; Dio 55.10.18; 55.10a.9

<sup>89</sup> Tac. *Ann.* 4.71.4. Although the scholiast on Juvenal 6.158 alleges that Julia was relegated, then allowed to return, and finally sentenced to perpetual exile, this conflicts with the information given by the more reliable Suet. *Claud.* 26.1: Claudius, *admodum adulescens*, had to forfeit his betrothed Aemilia Lepida because her parents (Julia and Aemilius Paullus) had offended Augustus; he reached the age of seventeen on 1 August 8.

<sup>90</sup> Suet. *Aug.* 19.1: *exin Plauti Rufi Lucique Pauli progeneri sui*, "then [the conspiracy] of Plautius Rufus and Lucius Paullus, his own granddaughter's husband."

the child to be acknowledged or raised.<sup>91</sup> There is no way to know if the child had been fathered by a lover or by her husband, a factor that may have contributed to its rejection.

Only one lover is named, D. Junius Silanus; he felt the sting of Augustus' *renuntiatio amicitiae*, interpreted it prudently, and withdrew into voluntary exile.<sup>92</sup> There was clearly, then, no trial for him. His powerful brother Marcus Silanus waited until Augustus was dead before requesting clemency for his brother. After the senate gave its approval for Silanus' return from exile, Tiberius replied carefully that his return was permissible because he had not been banished by a law or a decree of the senate but that he had not received the emperor's forgiveness.<sup>93</sup> Silanus then disappears from the historical record.

The poet Ovid seems to have been somehow involved and was also relegated in the same year, but was allowed to keep all his property.<sup>94</sup> The reasons are obscure, and Ovid's own hints provide only minimal help. He speaks of *duo crimina, carmen et error*, "two crimes, a poem and a mistake."<sup>95</sup> The problematic poem is generally agreed to be the *Ars Amatoria*, but the eight-year gap between its publication and its author's punishment remains inexplicable. Ovid is at pains to avoid specificity in referring to the *error* because discussion will reopen the initial wound inflicted on Augustus, but he insists that it had nothing to do with external treason or conspiracy, nor verbal injury, nor indeed with the contravention of any law.<sup>96</sup> He was punished without trial: *nec mea decreto damnasti facta senatus, nec mea selecto iudice iussa fuga est*, "my actions have not been condemned by a decree of the senate, nor is my exile by the order of a selected judge."<sup>97</sup> Whatever his *error*, it was too far

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<sup>91</sup> Suet. *Aug.* 65.4.

<sup>92</sup> Tac. *Ann.* 3.24.5; PIR<sup>2</sup> I 826.

<sup>93</sup> Tac. *Ann.* 3.24.5.

<sup>94</sup> Ovid *Trist.* 2.137–138.

<sup>95</sup> Ovid *Trist.* 2.207.

<sup>96</sup> Ovid *Trist.* 2.51–52; 2.208–210; 3.5.44–48; *Pont.* 2.9.71.

<sup>97</sup> Ovid *Trist.* 2.131–132.

removed to be tried as *maiestas*, even the newly-conceived personal *maiestas* of Augustus, so it was dealt with extra-judicially.

After Julia died in 29, her remains were refused burial in Augustus' mausoleum in accordance with the terms of his will.<sup>98</sup> Her only surviving progeny was a daughter, Aemilia Lepida, who eventually married M. Junius Silanus Torquatus, with whom she had several children: M. Silanus, D. Silanus Torquatus, L. Silanus, Junia Lepida, and Junia Calvina.<sup>99</sup> This family suffered greatly from the prosecutorial activities of the younger Agrippina.<sup>100</sup>

The lives and fates of these two women must have been present in the background of elite Roman thinking whenever the topic of troublesome Imperial women came up – and maybe even whenever the topic of women and adultery arose. Augustus had made every effort to raise his daughter and grandchildren according to the old-fashioned values reflected in his own moral legislation. His own family, however, “far from the model of the new morality, was a hotbed of all the intrigue, ambition, corruption, and sexuality that the new age was supposed to stamp out.”<sup>101</sup> The Julias' spectacular failure to maintain the moral standards set out by Augustus must have sent a powerful message to contemporaries as well as to subsequent generations. They must also be in the background of our thinking as we proceed forward to examine the other women who were involved in criminal trials in Julio-Claudian times.

If the ‘trials’ of the two Julias elude the understanding of modern investigators, there is no reason to believe that the contemporary Romans fared much better. The accounts written by Suetonius and Tacitus leave major gaps between the discovery of the Julias'

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<sup>98</sup> Suet. *Aug.* 101.

<sup>99</sup> Silanus (husband): PIR<sup>2</sup> I 839; Marcus (son): PIR<sup>2</sup> I 833; Decimus (son): PIR<sup>2</sup> I 837; Lucius (son) PIR<sup>2</sup> I 829; Lepida (daughter), no. 31; Calvina (daughter), no. 30.

<sup>100</sup> See chapter 3, Women *pro accusatoribus*.

<sup>101</sup> Wallace-Hadrill (1993) 75.

disgrace and their penalties. On the topic of the elder Julia's disgrace, Syme uncharacteristically throws up his hands, writing that, "for the historian, the fragmentary nature of the record is an insuperable bar."<sup>102</sup> Even the contemporary Velleius did not present a full narrative of the elder Julia's demise, and the most deliberately obfuscatory bit of writing in all antiquity – Ovid's *carmen et error* – cannot have been much less opaque to an ancient audience. Nonetheless, the very mystery of the situation would have guaranteed curiosity and interest – and gossip – for years afterward. During the Julio-Claudian years, many other women would face indictments for adultery, *maiestas*, or other crimes, and knew that serious punishment was a real possibility. After all, if it could happen to the emperor's daughter, it could happen to anyone.

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<sup>102</sup> Syme (1974) 930.

## CHAPTER 2

### Women as Defendants

Between the reigns of Augustus and Nero there is evidence of more than forty women (elite and non-elite) appearing in Rome as defendants on criminal charges.<sup>103</sup> This chapter will address the cases in which charges were brought against women in three broad categories: adultery charges, treason charges, and others. The first category of charges to be considered is adultery; our evidence is comprised of sixteen cases in total. Interestingly, none of the cases reported in our sources actually took place in the *quaestio de adulteriis*, the standing court with jurisdiction over adultery trials: they were all held in the senate or in apparent *cognitio extraordinem* procedures.<sup>104</sup> The second category of charges is treason, comprised of twenty-four cases. Women were seen as independently capable of being threats to the imperial order – a side effect of the position and power of the *domus Augusta*. Naturally then, women related to the emperor were the greatest threats, and the evidence shows that they were repeatedly suspected, charged, and convicted. The first two categories of crimes are particularly important in the context of the Julio-Claudian era because Augustus introduced or redefined important criminal laws on adultery and treason. In the third category are seventeen cases in which other charges against women run the gamut of the legal system from fraud to poisoning to magic.<sup>105</sup> These kinds of crimes have no special

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<sup>103</sup> There were many more women who appeared in court on civil matters, but those women will receive no attention here as the present study is confined to criminal cases only. For more information on women in civil court matters, see especially Marshall (1989); also Frier and McGinn (2004), Treggiari (1991), and Gardner (1986).

<sup>104</sup> Dio 54.30.4 and possibly Tac. *Ann.* 3.38 refer to cases that were tried in a *quaestio*, but the information about the cases is extremely slender.

<sup>105</sup> In five of the cases in this category, however, the charges are unknown.

significance when placed in the early imperial period but merely show a certain level of criminal activity in the female population. In several instances, female defendants were charged with multiple crimes, as in the case against Aemelia Lepida, who was charged with adultery, poisoning, fraud, and treason. For those few cases where a woman was accused of more than one type of crime, her case will be discussed thoroughly at its first appearance, then revisited where relevant in subsequent categories. Some modest repetition is unavoidable.

Although this study begins in the Augustan age, no recorded cases involving female defendants took place during the reign of Augustus himself, even though he was conspicuously active in the law courts.<sup>106</sup> No significance should be attributed to this: the lack of evidence is a product of our sources, since we know of female defendants prior to the time of Augustus and afterwards.<sup>107</sup> The majority of information about women on trial in the Julio-Claudian era is found in Tacitus, whose *Annales* began a detailed account with the reign of Tiberius. It is worth reiterating that with the onset of imperial rule, the focus of the historical sources shifted toward the *domus Augusta* and its elite social circle. Tacitus reports a useful amount of information about imperial and elite women, even if only the scandalous and sensational morsels.

One final legal facet requires comment: women's tutors are not mentioned in any of the literary and even legal sources when women appear as defendants. The *tutor mulieris* had no power over the person or property of a woman; she only needed his *auctoritas* for

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<sup>106</sup> For example, Suet. *Aug.* 45, 55–56. Furthermore, Augustus was in no way hesitant to enforce these newly-defined laws.

<sup>107</sup> See Livy 39.14.6–10, 17.1, 18–19 on the Bacchanalian affair and the poisoning trials; also Val. Max. 8.3; later female defendants are seen, for example, in Pliny *Ep.* 3.11, 3.16, 4.11, 4.17, 6.31, 7.19.

certain legal acts which involved her property such as selling land or making a will.<sup>108</sup> Their absence indicates that, in practice, tutors were not expected to act to protect their wards, merely to guard their property from unlawful sale or disposal – even in cases where a woman’s property is at stake or is confiscated, we hear nothing of her tutor’s involvement. Tutors were not required to administer their ward’s property, but one would expect at least the agnatic tutors under Augustus and Tiberius to take some active interest in the disposition of the ward’s wealth. If she were convicted, a substantial portion of her wealth could be lost.<sup>109</sup>

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<sup>108</sup> Crook (1967) 113–115; Shultz (1951) 188; for a more general discussion of *tutela*, see Dixon (1984) 343–371.

<sup>109</sup> Dixon (2001) 75, 81.

## Chapter 2, part 1

### Women as defendants on charges of adultery

This section will focus around a few key questions generally asked of the sixteen cases of women charged with adultery in the Julio-Claudian era. What do we know about individual cases? Why were women charged with adultery? Were any charges politically motivated, and can we tell who was the intended target of harm? Before we turn to engage those questions directly, a brief review of the images presented by the poets and orators will give us a better context in which to examine the images presented by the historians and legal sources.

#### *Survey of literary sources on adultery*

Raditsa and Richlin remind us that the topic of adultery is diverse and difficult to understand fully since the different types of sources present distinct aspects of the subject.<sup>110</sup> The ancient literary sources pervasively suggest that sexual freedom among Rome's elite was common and at least somewhat acceptable. Raditsa points out that the attempts to legislate morality undermine the ability of people to trust in their own moral inclinations – obviously if laws are needed, people have been unable to self-determine appropriate morality.<sup>111</sup> Different literary genres such as moral tales (*exempla*), rhetorical exercises, and poetry provide different aspects of Roman thinking on the topic of adultery.

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<sup>110</sup> Richlin (1981) 379–404; Raditsa (1980) 278–339.

<sup>111</sup> Raditsa (1980) 281; Galinski (1996) 129 notes that true Golden Age moral conduct happened of its own accord and needed no legislative remedy: Sen. *Ep.* 90; Posidonius frag. 60; Hor. *Carm.* 3.24.35–36.

Moral tales (*exempla*) reflect idealized behaviour – the truth as the authors would like it to be – like that of Lucretia and Verginia going to great lengths to defend the honour of their chastity.<sup>112</sup> Rhetorical exercises, though not real events, reflect the results of adulterous activities as debated in mock trials. These sometimes contained unique or difficult circumstances in order to make the cases more challenging for the debaters.<sup>113</sup> The rhetorical exercises of the elder Seneca, Quintilian, and Calpurnius Flaccus all address the topic of adultery and sex crimes.<sup>114</sup> These examples do not document actual cases, but they offer a reflection of the awareness and attitude of their authors and their times. Adultery was a constant concern and it could cause significant disruption in the lives of those people involved.

Poetic sources like Juvenal and Ovid address the topic of adultery rather differently than do the historians or the moralists. Of course, they are not intending to record actual events for the edification of posterity, but the antics they describe – and their attitudes toward them – are revealing. For Ovid, despite his stern warning that men should focus their attentions on ‘proper targets,’ the whole topic of sex is a lark and the whole female sex is fair game; the more a man could accomplish without getting caught, the better.<sup>115</sup> Juvenal’s poetry also suggests that adultery was common, but sometimes it even provides a solution to domestic woes. Satire 9.75–100 reports that the adulterer Naevolus saved the marriage of the homosexual husband Virro by satisfying his young wife in bed, and by siring two children,

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<sup>112</sup> Val. Max. 6.1.1–2; Livy 1.58; 3.44; Richlin (1981) 389. For a fuller discussion of the context, see Dixon (2001) ch. 4.

<sup>113</sup> Richlin (1981) 390.

<sup>114</sup> Seneca, *Contr.* dealing with adultery: 1.3, 4, 7; 2.1, 7; 4.7; 6.6, 8; 7.5; 8.3; 9.1; dealing with rape: 1.5; 2.3; 3.5; 4.3; 7.6, 8; 8.6; Quintilian, *Decl.* 244, 249, 273, 275, 277, 279, 284, 286, 291, 310, 335, 347, 357, 379; Calpurnius Flaccus: 2, 11, 17, 23, 31, 40, 48, 49.

<sup>115</sup> Ovid, *Ars Am.* 1.33; his comment about ‘proper targets’ and moral propriety largely reflects his concern about offending Augustus.

thus freeing the husband from the penalties of the *lex Pappia Poppaea*.<sup>116</sup> Juvenal's biting satire reveals an awareness and concern about the terms of the laws; people were actually worried about meeting the requirements of the *lex*. In Juvenal's satire, then, the punishments of the laws seemed so harsh that he imagined that people went so far as to commit adultery in order to appear to have complied, even when they had not.

These various types of sources suggest that adultery was a common concern and possibly a common practice. When looking at the known cases of women charged with adultery, therefore, one must bear in mind that they must represent a tiny fraction of the actual instances of adultery. The relative infrequency of cases reported in historical sources, particularly in Tacitus' *Annals*, therefore, must indicate one of two things. First, the majority of adulterous relationships did not result in criminal trials. Garnsey suggests that probably only those offenders who caught the eye were punished: those whose immorality was conspicuous because of their distinguished birth and ancestry or those who openly advertised their dissolute lives.<sup>117</sup> This theory works well enough when applied to the most elite segment of Roman society, but we have limited information about the caseload of the *quaestio de adulteriis* which must have dealt with the majority of adultery cases.<sup>118</sup> Secondly, the majority of cases were not interesting enough for Tacitus to include in his history. A certain level of sensationalism and moral outrage is inherent in his writing, as is his focus on the Roman elite. Tacitus' attention was particularly caught by adultery, which he presents as a sign of the moral degeneracy of the times.

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<sup>116</sup> The *lex Pappia Poppaea* included a series of penalties for childlessness including restrictions on the ability to make and accept testamentary bequests; rewards for a prolific mother included freedom from *tutela*; Csillag (1976) 146–174.

<sup>117</sup> Garnsey (1970) 24; see, for example, Tac. *Ann.* 2.85; Suet. *Tib.* 35.

<sup>118</sup> Bauman (1968); Garnsey (1967).

## Adultery legislation – old and new law

Let us now turn our attention to juristic sources and works of historians on the topic of adultery and relevant laws. Considerable information is extant on the topic of adultery legislation and has been analyzed at length by numerous scholars.<sup>119</sup> This section is meant to provide a brief overview of the legislation and legal realities.

The oldest legal remedies for adultery involve a woman being judged by a family *consilium*. Dionysius of Halicarnassus records that, in a ‘law’ handed down by Romulus, an adulterous woman should be judged by her relations together with her husband.<sup>120</sup> Livy reveals that women could be judged by family *consilium* on other charges as well.<sup>121</sup> Suetonius notes that Tiberius revived the ancient custom that matrons of ill-repute be punished according to a decision of a family council, so long as a public prosecutor had not intervened.<sup>122</sup> Adultery was regarded as a moral transgression and was punished within the family. Their decision would be binding; no evidence suggests that a family *consilium* was overturned in another court.

The implementation in 18 BC of the *lex Julia de adulteriis* making adultery illegal and punishable in open court was highly significant. This law applied only to free citizens who had committed adultery or *stuprum* with another free citizen.<sup>123</sup> This law had several components. The husband of an adulterous wife was legally bound to divorce her even if he did not wish to prosecute her or he could be charged with *lenocinium*. After the sixty days

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<sup>119</sup> Some recent works are: Rizzelli (1997); des Bouvrie (1984); Galinsky (1981); Raditsa (1980); Csillag (1976); Daube (1972); Garnsey (1970).

<sup>120</sup> Dion. Hal. 2.25.6; cf. Plut. *Rom.* 22.3; see also Treggiari (1991) 264–270.

<sup>121</sup> Livy 39.18.6, in his long presentation of the Bacchanalian scandal of 186 BC that allegedly included drunken orgies, says that women were judged by the consuls but turned over to their families for punishment; 48 (epitome), women accused of murdering their husbands were put to death by a decree of their own kinsmen (c. 150 BC).

<sup>122</sup> Suet. *Tib.* 35.1; there is no indication as to how many cases would have been settled by this means.

<sup>123</sup> Dig. 48.5.6 (Papinian): *Inter liberas tantum personas adulterium stuprumve passas lex Iulia locum habet.* “The *lex Julia* applies only between free persons who have suffered adultery or *stuprum*.”

granted to the husband or father for bringing the accusation, the field was open to any third party who wished to file the charges (*accusator extraneus*). The successful third-party prosecutor was the happy new owner of a substantial portion of the convicted person's property, thus making such prosecutions attractive to *delatores*; the remainder went to the imperial treasury.<sup>124</sup> The *lex Julia* established a compulsory form of *repudium*, either oral or written, with seven witnesses required in order to provide objective proof that divorce had taken place.<sup>125</sup> Adultery is notoriously difficult to prove at any time and was particularly so in Roman law since it required evidence of the exact date and place of commission: *domo illius, mense illo*, "in that house, in that month."<sup>126</sup> In order to have enough evidence to prosecute adulterers effectively, Augustus allowed slaves' testimony to be used against their master or mistress in cases of adultery.<sup>127</sup> Slaves were everywhere, and a woman's slaves knew things her husband never could.

Augustus set up a *quaestio de adulteriis* in order to deal with the anticipated volume of cases generated by the new adultery laws and imposed a five-year statute of limitations for bringing charges. There is remarkably little evidence about the activities, caseload, and reputation of this *quaestio*.<sup>128</sup> There are indications that it survived down to the Severan age,

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<sup>124</sup> Rutledge (2001) 60–65.

<sup>125</sup> Dig. 24.2.9 (Paul); and 38.11.1.1 (Ulpian), which attributes a regularized procedure for divorce to the *lex Julia*; Gardner (1986) 84–87 comments that the set procedure would only apply in circumstances when it might be necessary to prove divorce had occurred, as in cases of adultery. See also Dig. 24.1.35 (Ulpian) and 48.5.44 (Gaius); Treggiari (1991a) 37; Corbett (1930) 239.

<sup>126</sup> Dig. 48.2.3 (Paul).

<sup>127</sup> Dig. 48.18.5 (Marcian) and 48.18.6 (Papinian). At least two further edicts are attributed explicitly to the deified Augustus and so can be assumed in operation during the entire time period of this study: Dig. 48.18.1 (Ulpian) and 48.18.8 (Paul). Slaves' testimony was also allowed against their master/mistress in cases of treason; more on that in the next chapter. See also ch. 5 on witnesses.

<sup>128</sup> Dio notes that there was a 3000 case backlog of adultery cases in the year of his consulship (76.16.4). The date of Dio's first consulship is disputed: Bauman (1968) 91 suggests AD 211; Liebenam (1909) 64 suggests before 211; Degraffi (1952) 56 suggests 200 or later; Schwartz, *RE* 3.1684, suggests before the death of Severus. See Bauman (1968) 88–91 on the workload and survival of the *quaestio*.

but other information is scarce.<sup>129</sup> Bauman argues that the caseload was so heavy already in the time of Augustus that multiple sessions were operating at the same time.<sup>130</sup> The general pattern is that trials involving more plebian sorts were held in the *quaestio*. Trials involving elite defendants were held in the senate; these are the trials central to the present study.<sup>131</sup>

Under the new adultery laws, punishment for a convicted woman was confiscation of half her property and one third of her dowry, and *relegatio* (exile to an island); a convicted man lost half of his property and was exiled to a different island than his paramour.<sup>132</sup> In actual practice, the penalties for adultery vary somewhat from banishment beyond the 200<sup>th</sup> milestone (Appuleia Varilla) to *exilium*, a harsher sentence that involved greater loss of property and had an impact on citizenship status (Aquila and Vistilia).<sup>133</sup> In addition to the principal penalties, adultery entailed several other consequences; in essence a form of *infamia* was incurred: a woman convicted of adultery was subject to restrictions on subsequent marriage;<sup>134</sup> those guilty of adultery could not give evidence as witnesses.<sup>135</sup>

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<sup>129</sup> Garnsey (1967) 24; Bauman (1968) 68–93.

<sup>130</sup> Bauman (1968) 78–85 considers the use of the *Forum Augusti* and the creation of the fourth *decuria* in the time of Augustus as means of handling the increased caseload.

<sup>131</sup> Garnsey (1970) 21–24; Talbert (1984) ch. 16, esp. 467–470. The only references to adultery trials in the *quaestio de adulteriis* are Dio 54.30.4 and possibly Tac. *Ann.* 3.38.

<sup>132</sup> Paul *Sent.* 2.26.14. Csillag (1976) 195–199; Bauman (1996) 32–34; see Bauman (1992) 244 n.17 for full references. By the second century AD, the punishment of *relegatio* and partial confiscation probably applied only to elite offenders (*honestiores*) and people of humbler station (*humiliores*) were punished corporally; Garnsey (1970) 103–152, especially at 103 n. 2, 111 n. 3, 136, and 152. It is possible that *relegatio* was not part of the original *lex*, but was applied on a case-by-case basis, Kunkel, *RE* 24.720 ff. ‘*Quaestio*’ 770; some support for this view is found in Tac. *Ann.* 3.24.3 and Suet. *Aug.* 34.1. Equally strong, however is the argument that the statutory penalty of *relegatio* was mitigated in those cases by the emperor’s authority. Sherwin-White (1966) 394 suggests that *relegatio* was a temporary rather than permanent punishment.

<sup>133</sup> McGinn (1992) 286; Grasmück (1978) 127–135.

<sup>134</sup> Dig. 23.2.43.10 (Ulpian); 34.9.13 (Papinian); 23.2.26 (Modestinus): women accused of adultery cannot marry during the lifetime of their husbands, even before conviction; 23.2.47 (Paul): a senator’s daughter who has been convicted of a criminal offense can safely marry a freedman, because a woman who has behaved so disgracefully has no honour left.

<sup>135</sup> Dig. 22.5.18; 22.5.13–14 (Papinian).

Information about the laws themselves can be found in the collected works of the jurists and in the Digest. There survives no official court document listing trials and verdicts, so all evidence must be gleaned from historical narratives.

### **Other forms of sexual misconduct under the *lex Julia***

Illicit sex that was not adultery was liable to punishment under the *lex Julia*. The definition of *stuprum* can vary from “immorality” to “illicit sex or fornication” to “rape.”<sup>136</sup> In his study of Latin sexual vocabulary, Adams presents a definition of *stuprum* that encompasses sexual disgrace or an illicit sexual act.<sup>137</sup> Papinian wrote:

*Lex [Julia] stuprum et adulterium promiscue et καταχρηστικώτερον appellat. Sed proprie adulterium in nupta committitur... stuprum vero in virginem viduamve committitur.*

The [Julian] law refers to *stuprum* and adultery indiscriminately and with rather a misuse of terms. But properly speaking, adultery is committed with a married woman... *stuprum* is committed against a virgin or a widow.<sup>138</sup>

Appuleia Varilla, Claudia Pulchra, and possibly Julia Livilla were all unmarried at the times of their trials, confirming that the distinction between adultery and *stuprum* was indeed quite fluid. The family status of these women – very close to the imperial family – left them open to spurious charges that may have had political implications. There is a certain outrageous nature to this: why is it forbidden for respectable widows to conduct a discreet sexual liaison without being punished under the adultery laws? The immediate answer is that the women who were charged were not discreet. The other possibility is that if adultery was indeed being used as a political weapon, then any sexual activity could be used against a woman.

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<sup>136</sup> *Oxford Latin Dictionary*, s.v. *stuprum*; see also Gardner (1986) 121–125; for discussion of the law pertaining to rape as a form of *stuprum*, see Botta (2004); on wine-drinking and revelry leading to *stuprum*, see Bettini (1995).

<sup>137</sup> Adams (1982) 200–201.

<sup>138</sup> Dig. 48.5.6.1 (Papinian); this opinion is reiterated at 48.5.35.1 (Modestinus).

This strongly suggests that enemies were watching for sexual mis-steps and waiting to pounce with a ‘politically-based’ accusation of adultery.

Considered along with the adultery indictments are three cases where women were charged with incest, another form of sexual misconduct.<sup>139</sup> Incest was contrary to divine law and thus fell under the *ius gentium*, the body of principles common to all mankind.<sup>140</sup>

Severan jurists suggest, moreover, that incest be construed as a dual crime:

*in insulam deportandus est... quia duplex crimen est et incestum, quia cognatam violavit contra fas, et adulterium vel stuprum adiungit.*

He should be deported to an island ... because there is a double crime, both incest because he violated a female relative contrary to what is lawful, and he has added adultery or *stuprum*.<sup>141</sup>

A charge of incest could, therefore, be punished under the Julian adultery laws.<sup>142</sup> The punishment of *deportatio* was more severe than the standard *relegatio* imposed by the Julian adultery law, a reasonable adjustment in light of the compound crime.<sup>143</sup> Junia Calvina (AD 49) and the daughter of Sextus Marius (AD 33), known tentatively as Maria, were both convicted of the sole charge of incest. Junia Lepida (AD 65) was accused of incest and black magic.<sup>144</sup>

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<sup>139</sup> Gardner (1986) 125–127.

<sup>140</sup> Dig. 48.5.39.2 (Papinian).

<sup>141</sup> Dig. 48.18.5 (Marcian); cf. 48.5.39.1 (Papinian): “*hic duplex admissum est*,” (this double crime is admitted). On the other hand, 48.18.4 (Ulpian referring to Papinian): in a case of incest the torturing of slaves is not applicable, since the *lex Julia* on adultery also does not apply.

<sup>142</sup> Dig. 48.5.39.1 (Papinian); Bauman (1992) 60; Garnsey (1970) 23.

<sup>143</sup> On the gradations of exile-type punishments, see Garnsey (1970) 111–122; Grasmück (1978) ch. 3; Levick (1979).

<sup>144</sup> Although the word *incestus* can refer simply to sexual impurity or unchastity (OLD s.v. *incestum et incestus*) in these three cases the charges clearly refer to inappropriate sexual contact with a close family member; see also Cornell (1981).

## Cases of adultery

There are a total of thirteen cases recorded in the ancient sources where women were charged with a form of sexual misconduct under the Julian law. There can be no question that the available information on adultery trials represents but a fraction of the actual cases that were brought forward. There are many other allegations of adultery where women may have been charged since every time a man is reported to have been convicted of adultery, a woman was most likely also charged.<sup>145</sup> In this body of evidence, we find only two examples of adultery trials during Augustan times, aside from the famous examples of the two Julias. C. Laetorius pled his youth and position to escape the maximum punishment for adultery.<sup>146</sup>

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<sup>145</sup> There are a number of cases where accusations of adultery or trials of adulterers are reported in the sources, but there is insufficient evidence to conclude that the adulteresses appeared in court. See also Treggiari (1991) Appendix 1. Suet. *Aug.* 45: "When [Augustus] heard that Stephanio, a Roman actor, went about attended by a page-boy who was really a married woman with her hair cropped, he had him flogged through all the three theatres – those of Pompey, Balbus and Marcellus – and then exiled." The story does not actually specify that there was sex involved but since actors were stereotypically immoral, there is no reason to believe that this actor would have earned the benefit of the doubt in this situation; Edwards (1993) 128–131. There is no word about the fate of the woman, but the law was quite clear that she was subject to divorce, then prosecution for adultery. The flogging (which was never part of the law, so far as we can tell) might have been a reaction to the sheer audacity of going about attended by a married woman in disguise. Flogging was a punishment option in later law for citizens of humble status; see Garnsey (1970) 136–141; Bauman (1996) 133–135. Suet. *Tib.* 35.1: a Roman knight had sworn that he would never divorce his wife, whatever she might do, but when he found her in bed with his son, Tiberius absolved him from his oath. We must assume that he did in fact divorce his wife and the stage was set for a formal charge of adultery against the woman; though Suetonius gives us no further information, he presents her guilt as manifest. We may wonder that the husband employed none of the violence that the Digest describes was allowed to a man who discovered his wife *in mediis rebus* with another man: Dig. 48.5.21–26; see also Rizzelli (1997) 9–67, esp. 9–18. Suet. *Cal.* 12.2: Gaius seduced Ennia, wife of Macro the Praetorian prefect. Suet. *Claud.* 16: A knight, a notorious seducer of girls and married women, escaped with a caution. Since the male lover was not convicted, prosecution could not proceed against any of the women. Tac. *Ann.* 11.2.1: Valerius Asiaticus was charged, in addition to other crimes, with committing adultery with Poppaea Sabina (mother of Nero's wife of the same name) in 47; he was not convicted, but Claudius was apparently tricked into allowing Asiaticus 'free choice of his death.' After Asiaticus' suicide, Messalina sent men to terrify Poppaea into a voluntary death by threats of prosecution. Threats were sufficient and she committed suicide before any charges were registered. Tac. *Ann.* 4.12.4: Julius Postumus committed adultery with Mutilia Prisca, no. 43. Dio 58.24.5: Mamercus Aemilius Scaurus was charged with adultery with Julia Livilla, no. 34; many others also were punished on her account, some with good reason and some as the result of false accusations. Tac. *Ann.* 13.21.3: Domitia Lepida, no. 19, committed adultery with her freedman Atimetus (alleged by Agrippina). Tac. *Ann.* 14.1: Nero committed adultery with Poppaea Sabina (while he was still married to Octavia). Tac. *Ann.* 14.15.4: While Poppaea Sabina was married to Rufrius Crispinus, a Roman equestrian, Otho seduced her; their adultery was followed by marriage. Tac. *Ann.* 14.44.1: Octavius Sagitta, deranged with love for Pontia, a married woman, bribed her into adultery and then to leave her husband. Messalina's adulteries were infamous and multiple, culminating in her adulterous marriage to C. Silius in 48.

<sup>146</sup> Suet. *Aug.* 5.

There is no indication whether his conviction was determined by the regular *quaestio* or by a senatorial trial. A certain freedman, Polus, was convicted of adultery with Roman matrons, and Augustus ordered him to commit suicide.<sup>147</sup> In neither example is there mention that the women were tried or convicted; according to the laws, they should have been. At the other end of our time period, Agrippina accused Junia Silana of adultery with Iturius and Calvisius.<sup>148</sup> All three of the accused were exiled; a fact known only from their later recall and Silana's death as she was returning from exile.<sup>149</sup>

### **Adultery as the sole charge**

There are only nine known cases recorded in the ancient sources in which women were charged with adultery alone. Although the adultery legislation was Augustan in origin, there survive no references to women on trial for adultery during Augustan times.<sup>150</sup> The first six adultery cases date from the reign of Tiberius: Paulina and Vistilia (AD 19), Aquilia (AD 25), Maria (AD 33), the younger Aemilia Lepida (AD 36), and Albucilla (AD 37). Two further cases occurred in the reign of Claudius. Julia Livilla, Caligula's sister, had been recalled from exile at the beginning of Claudius' reign and a scant few months later was convicted of adultery for a second time and exiled (AD 41). The other case is an unnamed woman. The final case is that of Octavia, the daughter of Claudius and wife of Nero (AD 62). The fact that only nine cases have survived in the sources in which a woman was

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<sup>147</sup> Suet. *Aug.* 67.

<sup>148</sup> Tac. *Ann.* 13.21.2–3.

<sup>149</sup> Tac. *Ann.* 14.12.4.

<sup>150</sup> Although Augustus himself was rumoured to have committed adultery, there were never any charges (really, who would have dared?) Suet. *Aug.* 69, 71. Edwards (1993) 47 notes that sexual prowess underscored a man's power because he had the power to disrupt the marriages of high-status people.

charged for adultery alone suggests that adultery trials were not as hot a topic as some would have us believe.

Let us turn to consider the nine cases in which adultery, *stuprum*, or incest was the sole charge against a female defendant. The two cases involving unnamed women can be briefly dealt with. Suetonius writes: *libertis laudantibus cognitionem, qua pridie quondam adulterii ream condemnarat*, “[Claudius’] freedman congratulated him on having found a certain woman guilty of adultery.”<sup>151</sup> The unnamed woman seems to have been convicted in the senate, since Claudius himself is noted as the judge; nothing else is recorded. The unnamed daughter of Sextus Marius, tentatively known as Maria, faced charges of incest with her father, the basis for which is completely unknown. It would have been a difficult accusation to refute, especially if suborned testimony had inflamed the jury, and the indignant denials of the accused parties were viewed as self-serving lies. Marius and his daughter were executed.<sup>152</sup>

Slightly more is recorded about three other senatorial women. About the case of Aquilia in 25, little is known other than her conviction and penalty.

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

[Tiberius] punished Aquilia – denounced for adultery with Varius Ligus – with exile, even though Letulus Gaetulicus the consul designate had convicted her under the Julian law.<sup>153</sup>

The punishment, although vaguely labeled *exilium*, must have been distinct from the usual punishment of *relegatio* for adultery. The context of Tacitus’ discussion indicates that the

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<sup>151</sup> Suet. *Claud.* 43.1.

<sup>152</sup> Dio 58.22.2–3; Tac. *Ann.* 6.19.1.

<sup>153</sup> Tac. *Ann.* 4.42.3.

imposed penalty in this case was harsher than usual due to Tiberius' personal interference.<sup>154</sup> No punishment is mentioned for her adulterer, Varius Ligus.<sup>155</sup> Nor is punishment mentioned for the younger Aemilia Lepida's lover who was a slave.<sup>156</sup> It seems likely that he was executed after Lepida chose to commit suicide in 36 rather than mount a defense against the adultery charges. When Julia Livilla was convicted in 41, adultery was the sole charge and L. Annaeus Seneca was accused as her lover. Both were banished, and Livilla died in exile the following year.<sup>157</sup> Dio claims that Messalina had engineered the entire situation out of pique against Livilla, her niece-by-marriage.<sup>158</sup>

In 49, Junia Calvina was accused of incest with her brother Silanus, allegedly at the instigation of Julia Agrippina; Silanus was betrothed to Claudius' daughter Octavia and Agrippina wanted her son Nero to marry Octavia.<sup>159</sup> Seneca implies that the charges were fabricated, as does Tacitus: *Fratrumque non incestum, sed incustoditum amorem ad infamiam traxit*. "He [the accuser] ascribed the siblings' love – which was not incestuous, merely unguarded – to something scandalous."<sup>160</sup> Still, she was *decora et procaz*, "beautiful and rather wild," according to Tacitus, and *festivissima*, "very lively" according to Seneca's *Apocolocyntosis*, in which everyone called her Venus except her brother who called her Juno.<sup>161</sup> Juno was sister and wife of Jupiter; if the allusion is unclear, Seneca bids you look toward Alexandria for a precedent where the Egyptian royal family allowed brother-sister

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<sup>154</sup> Rogers (1935) 91 suggests that the penalty also included confiscation of her property; Bauman (1996) 62 suggests that the penalty was actually *deportatio*; also Martin and Woodman (1989) 201.

<sup>155</sup> PIR<sup>1</sup> V 189; Syme (1986) 301 and n. 11 suggests that Ligus was a praetorian prefect under Augustus. Martin and Woodman (1989) 201 suggest that this Ligus was the son of the prefect; PIR gives no indication of a son.

<sup>156</sup> Tac. *Ann.* 6.40.3.

<sup>157</sup> Dio 60.8.5. Livilla's first conviction for adultery will be discussed below in the section on adultery as one of multiple charges. Annaeus Seneca was recalled from exile in 49 through the agency of Livilla's sister Julia Agrippina so that he would be tutor to her son Nero (the future emperor), Tac. *Ann.* 12.8.2.

<sup>158</sup> Livilla's case and Junia Calvina's will receive further discussion in chapter 3, *Women pro accusatoribus*.

<sup>159</sup> Tac. *Ann.* 12.4; 12.8.1.

<sup>160</sup> Tac. *Ann.* 12.4.2; Sen. *Octavia* 147–149.

<sup>161</sup> Tac. *Ann.* 12.4.1; Sen. *Apoc.* 8.

marriages.<sup>162</sup> Neither Suetonius nor Dio mentions the incest in their accounts of the destruction of Silanus.<sup>163</sup> Dio writes that his freedmen πείθουσι τὸν Κλαύδιον ὡς ἐπιβουλεύοντά οἱ τὸν Σιλανὸν ἀποκτείνειν, “persuaded Claudius to kill Silanus on the grounds that he was conspiring against him.”<sup>164</sup> If the incest was just barely plausible because of Calpurnia’s character and the siblings’ imprudent relationship, any hint of conspiracy would have tipped the balance. Silanus could not be allowed to marry the emperor’s daughter. He committed suicide and his sister was banished from Italy (*Italia pulsa est*).<sup>165</sup> Whether her punishment was the *relegatio* imposed under the Julian adultery law is unclear.

In another case, the senate’s attention was caught and held by the actions of Vistilia, charged in AD 19 with adultery after she registered her name with the aediles as a prostitute.

*Nam Vistilia, praetoria familia genita, licentiam stupri apud aediles vulgaverat, more inter veteres recepto, qui satis poenarum adversum impudicas in ipsa professione flagitii credebant.*

Vistilia, born of a praetorian family, published with the aediles her availability for *stuprum* (illicit sex), using a custom among the ancients who believed that there was sufficient punishment against immorality in the very confession of disgrace.<sup>166</sup>

This action seems beyond comprehension, but Suetonius gives some context:

*Feminae famosae, ut ad evitandas legum poenas iure ac dignitate matronali exolverentur, lenocinium profiteri coeperant.*

Infamous women were beginning to ply openly as prostitutes so as to be released from matronly authority and reputation and to escape the penalties of the laws.<sup>167</sup>

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<sup>162</sup> Sen. *Apoc.* 8: ‘*Quare ...sororem suam?*’ *Stulte, stude: Athenis dimidium licet, Alexandriae totum.* “Why his own sister?’ Read your books, stupid: at Athens you may go half-way, the whole way at Alexandria.”

<sup>163</sup> Suet. *Claud.* 29.2; Dio 61.31.8.

<sup>164</sup> Dio 61.31.8.

<sup>165</sup> Tac. *Ann.* 12.8.1.

<sup>166</sup> Tac. *Ann.* 2.85.2.

<sup>167</sup> Suet. *Tib.* 35.2.

Apparently the shame and social disgrace was not a deterrent, as Tacitus claims it was for women of old. There was some kind of legal loophole that Vistilia thought she would be able to exploit to avoid the penalty for adultery, and Suetonius implies that she was not the only woman to attempt this dodge. Why did it fail to work in her case? Possibly her status was too high, since her family was of praetorian rank. What tricks may have worked for women of lower status would not be tolerated among the most elite. Vistilia's registration with the aediles was unquestionably an attempted evasion of the Julian laws – she was not actually turning to prostitution as a new profession. Her boldness certainly inflamed the senate.

*Eodem anno gravibus senatus decretis libido feminarum coercita cautumque, ne quaestum corpore faceret cui avus aut pater aut maritus eques Romanus fuisset.*

In that same year [19] the lust of women was curbed by weighty senate's decrees and measures were taken that no one should make a profit from her body whose grandfather or father or husband was a Roman equestrian.<sup>168</sup>

A further clue to the content of this *senatus consultum* is found in Papinian, referring to the decree enacted as a direct result of Vistilia's case.<sup>169</sup>

*Mulier, quae evitandae poenae adulterii gratia lenocinium fecerit aut operas suas in scaenam locavit, adulterii accusari damnarique ex senatus consulto potest.*

A woman who, to avoid the penalty of adultery, has become a brothel-keeper or who has hired herself out on the stage can be accused of and condemned for adultery according to the *senatus consultum*.<sup>170</sup>

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<sup>168</sup> Tac. *Ann.* 2.85.1; see also Levick (1983) 111–114; McGinn (1992) 284–286.

<sup>169</sup> McGinn (1992) 284; Levick (1983) 114. The SC Larinum, on a bronze tablet, contains a senatorial decree of AD 19 outlining that the senate would punish anyone who had appeared on state or in the games contrary to the dignity of their social order and who had, by their offense, diminished the majesty of the senate; for full text and commentary, Levick (1983) 98–105. The SC Larinum dates to the first half of 19, based on the consuls named, but must not be confused with the decree passed in the same year as a result of Vistilia's case. McGinn (1992) 288, 291–295 cautions against filling in the lacunae in the Larinum decree with ideas not represented elsewhere in the decree and rejects the theory that the SC Larinum had anything to do with adultery in general or Vistilia in particular, arguing specifically against Malavolta (1978) and Guiffre (1980). Therefore, if the SC Larinum does not contain the decree that is described by Papinian, there must have been a second senatorial decree that remains otherwise unknown to us.

<sup>170</sup> Dig. 48.5.11(10).2 (Papinian).

Tacitus continues his account of this episode, mentioning that Vistilia's husband Titidius Labeo was criticized for not acting when his wife was in clear breach of the Julian adultery law. Labeo responded by claiming that the full sixty days granted to him for initiating a prosecution had not yet passed. The senate decided to proceed against Vistilia alone, *eaque in insulam Seriphon abdita est*, "and she was banished to the island Seriphos."<sup>171</sup> The senate made her an example – anyone who emulated her in future would be prosecuted according to this SC and not just the Julian adultery law.

The punishment prescribed for Vistilia seems to have been harsher than the *relegatio* set by the Julian law. Suetonius names the punishment for both this SC and for the SC Larinum dealing with upper-class performances as *exilium*.<sup>172</sup> If he uses the term in its technical sense, punishment under these SCC may have included loss of citizenship, restrictions on property ownership and banishment.<sup>173</sup> Garnsey points out that *exilium* and *exul* were sometimes used imprecisely to refer to both *relegatio* and to the harsher penalty *exilium* (later known as *deportatio*).<sup>174</sup> Strictly speaking, the ban on prostitution imposed by the SC is not equivalent to the Julian law on adultery, so there is no reason to assume that the penalties would be identical.<sup>175</sup> Furthermore, in the context of the senate's outraged reaction to Vistilia's boldness, it seems likely that a punishment heavier than that directed by the Julian law would be imposed – she had not only committed adultery, but had also blatantly

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<sup>171</sup> Tac. *Ann.* 2.85.3. Ironically, her husband Labeo had found a real loophole: technically he had not broken the law and he was not punished.

<sup>172</sup> Suet. *Tib.* 35.2.

<sup>173</sup> McGinn (1992) 286; on Suetonius' inclination to use technical terms, see Wallace-Hadrill (1983) 20, 90.

<sup>174</sup> Garnsey (1970) 111–122 at 112; McGinn (1992) n. 66 points out that a distinction between *relegatio* and *exilium* was made as early as Ovid's exile in AD 8 (*Tr.* 2.137; 5.11.21).

<sup>175</sup> McGinn (1992) 286.

flaunted her shameless attitude. A harsher sentence would better address the senate's double goal of punishment and deterrence.<sup>176</sup>

Nero's wife Octavia faced an accusation of adultery with the slave Eucaerus. Nero wished to divorce Octavia in order to marry his long-standing mistress Poppaea, but popular support for the emperor's wife was strong. The adultery charges were suborned, apparently at Poppaea's instigation, in order to discredit Octavia.<sup>177</sup> When Octavia's maids were interrogated under torture, however, they staunchly supported their mistress and the trial seems to have ended in an acquittal.<sup>178</sup> There is no word about the verdict of Eucaerus' trial.

The last case in this section is that of Paulina, who earned a place in this discussion because she confessed to her adultery, even though we have no evidence that she was formally prosecuted. She had caught the attention of Decius Mundus, but virtuously refused his advances even (or maybe especially) when he offered her 20,000 Attic drachmas.<sup>179</sup> His mind turned to subterfuge. Knowing that Paulina was a devotee of Isis, he enlisted the aid of his freedwoman Ide who bribed the priests of Isis to arrange a tryst in the temple of Isis where Mundus would appear to Paulina as the Egyptian god Anubis. When Mundus' boasting brought the trick to light, Paulina confessed to her husband Saturninus and begged him to obtain redress. He brought the matter to Tiberius, who, after a thorough investigation, crucified the priests and freedwoman Ide, razed the temple of Isis and ordered the cult statue thrown in the Tiber. Mundus was exiled. Of Paulina's fate, not a word. Under the terms of the Julian adultery law, she was guilty of adultery and because her husband was aware of the crime (through her own confession, no less), he was legally obliged to divorce her and

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<sup>176</sup> See *Tac. Ann.* 4.42.3, where Tiberius increased Aquilia's punishment.

<sup>177</sup> *Tac. Ann.* 14.60.2.

<sup>178</sup> *Tac. Ann.* 14.60.3; 14.62.1; *Suet. Nero* 35.2.

<sup>179</sup> *Jos. AJ* 18.65ff.

prosecute her for adultery. Furthermore, since Tiberius had been made aware of the situation, Paulina and Saturninus could not have hoped that the emperor would ignore it. There is no word in the *Digest* regarding adultery committed with a putative god. The only possible reprieve would come from an imperial admission that the trick obviated Paulina's guilt. In cultural memory, however, even Lucretia and Verginia had not been relieved of the taint of adultery even when they were obviously (to our thinking) innocent parties.<sup>180</sup>

The results of the accusations are known for eight of the nine cases examined where adultery or incest was the sole charge. Only Paulina's fate is unrecorded, but the freedwoman Ide was executed as an accomplice to Paulina's adultery. The younger Aemilia Lepida committed suicide before her trial, and Octavia was acquitted.<sup>181</sup> The other six women were duly convicted, probably all in senatorial proceedings.<sup>182</sup> Maria was executed, even though she was accused of a sub-capital crime. Two women, Junia Calvina and Livilla, suffered the penalty of *relegatio* specified by the Julian adultery law. The unnamed Claudian woman was convicted but no penalty was recorded; lack of interest in her penalty could indicate that she received the normal penalty, that is, *relegatio*. The remaining two women, Aquilia and Vistilia, were sentenced to *exilium*, a harsher version of banishment. Of these six cases convicted in the senate on adultery charges alone, therefore, only half were assessed the appropriate statutory penalty while the others received harsher sentences. The senatorial court had flexibility in assessing sentences and could be swayed by the passions of its members to give harsher penalties; Vistilia's increased penalty seems to have been the result of her outrageous contravention of elite *mores*.

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<sup>180</sup> Val. Max. 6.1.1; Livy 1.58; 3.44; Richlin (1981) 389.

<sup>181</sup> Octavia faced a second trial soon after, discussed below.

<sup>182</sup> See also Marshall (1990).

## Adultery as one of multiple charges

All seven cases in this category began with accusations of adultery and allegations of some kind of treasonous activity against the emperor.<sup>183</sup> Edwards is sensitive to the interplay between the two types of accusations when she says: “The law against adultery bore a disconcerting resemblance to that against treason – and adultery itself became more intimately associated with political subversion.”<sup>184</sup> As discussed previously, women in the imperial family like the two Julias were in positions of a politically sensitive nature. Barrett suggests that there was a tendency to distract attention from political intrigue by raising claims of an imperial woman’s sexual impropriety.<sup>185</sup> In this way, accusations of adultery could be used for more serious suspicions against a woman – under this charge, a woman’s slaves were available for questioning and the accusers might hope to uncover evidence of more serious politically involved activities.<sup>186</sup> Several women related to the imperial family faced similar allegations; after the younger Julia was exiled in 8, the first woman who faced this combination of accusations was Augustus’ great-niece Appuleia Varilla in 17.

Appuleia was accused of both *maiestas* and adultery by an unnamed *delator*. Her treasonous activities consisted of abusive speech against the emperor Tiberius, his mother, and *divus* Augustus.<sup>187</sup> Tiberius declared that no speech against himself or his mother would be prosecutable. Tiberius’ speeches during the trial suggest that he presided over the proceedings, although the emperor always had the right to express his opinion in the senate whether he officially presided over the meeting or not. Tacitus reports that *liberavit*

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<sup>183</sup> See Bauman (1974) ch. 7 on adultery and *maiestas*.

<sup>184</sup> Edwards (1993) 61–62.

<sup>185</sup> Barrett (1989) 108; see also Barrett (1996) 63–70 for a full discussion of the political intrigue surrounding this case.

<sup>186</sup> Bauman (1992) 170; cf. Bauman (1974) ch. 7; on the right to question slaves, see Dig. 48.18.4 (Papinian); 48.18.10.1 (Arcadius Charisius).

<sup>187</sup> Tac. *Ann.* 2.50.1.

*Appuleiam lege maiestatis*, “he freed Appuleia from the law of treason.”<sup>188</sup> The active verb *liberavit* indicates that Tiberius was in fact giving judgement on the trial, or that he exercised his right of *intercessio* in the sentencing phase of the trial. The meaning of the verb is not perfectly clear, however.<sup>189</sup> Does it mean that Tiberius intervened at some point before the conclusion of the trial and caused the charge to be dropped? Or was she was acquitted after a full trial? Or was she found guilty by the senate after a full trial and Tiberius nullified her sentence (in the ten days’ interval between conviction and implementation of the sentence)?<sup>190</sup> The last option seems rather unlikely since an action so autocratic would probably have left some hint of itself in Tacitus’ account.<sup>191</sup>

Tiberius is first reported to have stated that her adultery could be adequately dealt with under the Julian law. Then he urged that her penalty be mitigated and that, on their ancestors’ example, she be removed by her relatives beyond the 200<sup>th</sup> milestone.<sup>192</sup> Some scholars interpret this phrase to mean that she was turned over to a domestic court for trial and sentencing.<sup>193</sup> There is, however, another possible interpretation: Appuleia was tried in the senate to the point where a guilty verdict was rendered, then she was turned over to her relatives for sentencing with the clear expectation that they would rule according to the *mos maiorum*. The latter interpretation has the advantage of keeping the full proceeding in the senate where it seems very likely that the trial had been held. A comment in Livy’s long description of the Bacchanalian scandal of 186 BC gives some support: *Mulieres damnatas*

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<sup>188</sup> Tac. *Ann.* 2.50.3.

<sup>189</sup> Neither TLL nor OLD sufficiently clarify the matter.

<sup>190</sup> Dio 57.20.4; 58.27.5.

<sup>191</sup> Goodyear (1981) 346 suggests that she was either acquitted or, though found guilty, granted mercy. Bauman (1974) 78 suggests that Tiberius put a summary end to the proceedings because the evidence was unsatisfactory.

<sup>192</sup> Compare Suet. *Tib.* 35.1 in which he comments that Tiberius revived the ancestral custom of referring married women to a family council to judge their improprieties. Talbert (1984) 479 suggests that Appuleia’s high rank may have induced Tiberius toward leniency; cf. Garnsey (1970) 37–38.

<sup>193</sup> Bauman (1996) 55 and 177 n.19; Bauman (1992) 244 n. 23; Rogers (1935) 202.

*cognatis, aut in quorum manu essent, tradebant, ut ipsi in privato animadverterent in eas;* “Convicted women were turned over to their relatives or to those who had authority over them, that they might be punished in private.”<sup>194</sup> Investigation and trials of the Bacchanals were conducted by the consuls as charged by *senatus consultum*.<sup>195</sup> There is, however, no other attested parallel for this transfer of jurisdiction.<sup>196</sup> Another example of a domestic court can be found in AD 57 when Pomponia Graecina was charged with foreign superstitions;<sup>197</sup> in this case, there is no doubt that the entire ‘trial’ took place in the domestic court in the presence of her husband and her relatives. A third, rather less likely possibility, is that Appuleia was sentenced by the senate according to the *mos maiorum* (rather than by the Julian law) and that the implementation of her punishment was left in the hands of her relatives.

After Appuleia’s trial concluded, the trial of her lover Manlius followed and resulted in conviction.<sup>198</sup> It is appropriate that the trial of the alleged lover be conducted only after the accused adulteress’s trial has concluded with a guilty verdict.<sup>199</sup> Manlius was forbidden to reside in Italy or Africa. There is no mention in Tacitus’ account whether the *delator* tried to bring charges of treason against him. If, however, there had been evidence that he was involved in any treasonous activities such as inciting or repeating her mockery and abusive comments, it seems reasonable to expect that he would have been named as a co-defendant on the *maiestas* charges.

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<sup>194</sup> Livy 39.18.6. The entire account can be found at 39.8–19.

<sup>195</sup> Livy 39.14.6–10; 17.1; 17.7; 18.1–19.2; 19.7.

<sup>196</sup> Bauman (1992) 244 n.23 skirts this idea by saying that crimes could be “defined by a public criminal law, but trials be referred to the family court.”

<sup>197</sup> Tac. *Ann.* 13.32.2–3; Pomponia Graecina, no. 48.

<sup>198</sup> PIR<sup>2</sup> M 151.

<sup>199</sup> If she were acquitted, then *de facto* there was no adultery and the lover could not be charged: Dig. 48.5.2; 48.5.18.6. If a woman was married at the time of the adultery or had married since the adultery (but before she was charged), it would be proper to charge the male lover first: Dig. 48.5.33.1; 48.5.40.3.

Under the year 20, Tacitus provides quite a full report of the sensational trial of Aemilia Lepida.<sup>200</sup> Before we turn to the trial itself, a little background is in order. Great-granddaughter of Sulla and Pompey, Lepida had been betrothed to Lucius Caesar, grandson of Augustus, before the unfortunate young man met his demise in AD 2.<sup>201</sup> Soon after, in AD 3 or 4, she married P. Sulpicius Quirinius (*cos.* 12 BC), a friend of the emperor Tiberius; she was about seventeen, he was in his mid-fifties.<sup>202</sup> The issue of this marriage was a single child, probably a girl; then Lepida and Quirinius divorced.<sup>203</sup> After an unspecified amount of time, Lepida married again, to Mamercus Aemilius Scaurus with whom she had another daughter.<sup>204</sup>

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<sup>200</sup> Tac. *Ann.* 3.22–23; also Suet. *Tib.* 49.

<sup>201</sup> Tac. *Ann.* 3.22.1; Syme (1986) 261–262 and stemma 16.

<sup>202</sup> PIR<sup>1</sup> S 732; Townend (1962) 486 gives these ages for Lepida and Quirinius, but they are only approximate. Since Lepida had been betrothed to L. Caesar, who was born in 17 BC, she would have been about his age or younger, therefore in her late teens at the time of her marriage. She could, however, have been up to five years younger since the minimum legal age for marriage was only 12 years old for girls. Townend calculates Quirinius' age based on his consular date of 12 BC and an estimation that he did not hold it earlier than the statutory age of 42 years (not having noble connections to accelerate his promotion), thus making him about 56 at the time of the marriage.

<sup>203</sup> The duration of the marriage is the subject of some conjecture. On one interpretation, the marriage was very short and the divorce occurred some fifteen years before the trial; their child was therefore a teenager at the time of the trial. This interpretation hinges on Suetonius' words *post vicensimum annum* (*Tib.* 49). Supporters of this position include Rogers (1935) 54 and Townend (1962) 486–488, who agree that *vicensimum* is an exaggerated round number. The major objection to this interpretation is that the five-year statute of limitations for charges of adultery had long passed so that charge should not have been admitted (but it clearly was). There is no indication, however, that Quirinius was bringing charges as a cuckolded husband; he could have been an *accusator extraneus* prosecuting instead of the otherwise unknown cuckolded husband. The ten years or so after the divorce from Quirinius was plenty of time to have married, cheated on, and divorced another man before she married Scaurus. On the other hand, Woodman and Martin (1996) 210–213 suggest the possibility that the marriage between Quirinius and Lepida endured for more than ten years, proposing a tight time frame for the events: the adultery produced the first child, then they divorced, then Lepida married Scaurus and had the second child. Thus, at the time of the trial, Lepida had two very young children. The lapse of time from the adultery to the trial was thus a minimum of about 20 months (the length of two pregnancies with a minimal space between) and a maximum of five years (the statute of limitations set by Augustus for the prosecution of adultery). This interpretation has the advantage of eliminating the questions: (1) on the apparent expired statute of limitations for adultery; (2) on the long-lingering anger of Quirinius (which would, on this interpretation, be quite fresh).

<sup>204</sup> Lepida and Scaurus seem to have divorced prior to the trial, Woodman (2004) 93 n.49. If she had been married at the time of the accusation, the trial against her accused lover should have been held first and resulted in a conviction in order to have allowed charges to be presented against her, according to Dig. 48.5.12. There is no mention of this other trial either before or after Lepida's, nor, in fact is the lover mentioned at all. If the lover's trial had been held first, and resulted in condemnation, her conviction should have been assured and

The trial began early in the fall of AD 20.<sup>205</sup> Lepida's brother Manius Aemilius Lepidus was her advocate in court.<sup>206</sup> The facts of the trial and its progression are difficult to ascertain,<sup>207</sup> but the original indictments are clear enough:

*Lepida ... defertur simulavisse partum ex P. Quirinio divite atque orbo; adiciebantur adulteria venena quaesitumque per Chaldeos in domum Caesaris.*

Lepida was accused of having pretended to have borne a child to P. Quirinius, her rich and childless [ex-husband]; also thrown at her were charges of adultery, poisonings, and inquiring through Chaldean astrologers about the imperial house.<sup>208</sup>

Let us consider the charges individually. The first charge is that of 'pretending to have borne a child' to Quirinius. There are two ways to pretend here: either Lepida was never pregnant at all and had acquired a child which she presented to her husband as their offspring, or Lepida had conceived a child by some other man. The latter seems to have been the case here, which is where the adultery charges become relevant. If Quirinius could prove adultery, he could also convince the court that the child born to Lepida was not his. Lepida was charged under the *lex Julia de adulteriis* and, regarding the suppositious child, under the *lex Cornelia de falsis* (Cornelian law on fraud).<sup>209</sup> Statutory punishment was *aquae et ignis interdictio* (interdiction from water and fire).<sup>210</sup>

The third charge regarded poisonings; seemingly a more serious charge than was warranted since Quirinius, the alleged victim, was still alive, but there was no lesser

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easily decided without the extra drama of three other charges. It is preferable, therefore, to understand that she and Scaurus were already divorced before her trial.

<sup>205</sup> Woodman (2004) 94 n. 52 suggests that the trial may be placed in the early autumn based on the festival that interrupted it, the *Ludi Romani* held September 4–19; also Talbert (1984) 203–204; Koestermann (1963) 458.

<sup>206</sup> PIR<sup>2</sup> A 363.

<sup>207</sup> Woodman and Martin (1996) 223 despair that this entire episode is “desperately opaque.”

<sup>208</sup> Tac. *Ann.* 3.22.1.

<sup>209</sup> See Berger (1953) s.v. *falsum*; *lex Cornelia de falsis* was a broad statute that applied to fraud of many kinds; on suppositious children in particular, see Dig. 48.18.17.2; 48.10.19.1 (Paul): there is no statute of limitations on an accusation of a substituted child; 48.10.30.1 (Modestinus): only the parents or persons affected by the matter may bring an accusation of a substituted child.

<sup>210</sup> Dig. 48.10.33 (Modestinus).

indictment category for attempted poisoning. The relevant statute was the *lex Cornelia de sicariis et veneficis* (Cornelian law regarding murderers and poisoners).<sup>211</sup> According to Digest 48.8.1.1 (Marcian), *praeterea tenetur, qui hominis necandi causa venenum confecerit dederit*, “He also is liable who makes up [and] administers poison for the purpose of killing a man.”<sup>212</sup> Lepida’s intention, therefore, was at issue rather than the fact that her actions did not result in the death of her husband. Statutory punishment ranges from *relegatio*<sup>213</sup> to *deportatio et omnium bonorum ademptio*, “deportation and confiscation of all property.”<sup>214</sup>

The final accusation of consulting astrologers regarding the emperor’s family was considered a treasonous offense.<sup>215</sup> There will be more on the treason laws in the following chapter, so the merest taste must suffice here. Tiberius’ first reaction was that he *deprecatus senatum ne maiestatis crimina tractarentur*, “implored the senate not to proceed with the charges of treason.”<sup>216</sup> Then, Tacitus tells us, a certain Marcus Servilius, an ex-consul, was induced by Tiberius *ad proferenda quae velut reicere voluerat*, “to divulge what he had seemingly wished to suppress,”<sup>217</sup> that is, information pertaining to the accusation of treason. Immediately thereafter, Lepida’s slaves were transferred to the custody of the consuls for interrogation. Had they not been interrogated previously for information pertaining to the adultery accusation? The testimony of slaves against their owners was admissible in court

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<sup>211</sup> Berger (1953) s.v. *lex Cornelia de sicariis et veneficis*; a Sullan enactment of 81 BC, still in effect under Justinian.

<sup>212</sup> Similarly, Dig. 48.8.3.

<sup>213</sup> Dig. 48.8.3.2 (Marcian).

<sup>214</sup> Dig. 48.8.3.5 (Marcian).

<sup>215</sup> Bauman (1974) 59–69, esp. 60–61 and n. 50 where he dates the relevant *senatus consultum* to AD 17 based on the consuls named by Ulpian *Coll.* 15.2.1.

<sup>216</sup> Tac. *Ann.* 3.22.2.

<sup>217</sup> Tac. *Ann.* 3.22.2.

only in cases of treason and adultery.<sup>218</sup> The treason charge now posed a renewed and serious threat to Lepida.

Then the courts recessed for a holiday. During the games,

*theatrum cum claris feminis ingressa, lamentatione flebili maiores suos ciens ipsumque Pompeium, cuius ea monimenta et adstantes imagines visebantur, tantum misericordiae permovit, ut effusi in lacrimans saeva et detestanda Quirinio clamitarent.*

[Lepida] went into the theatre with some other ladies of rank and appealed with piteous wailings to her ancestors – to Pompey himself whose monuments were visible and whose statue was before her – and she aroused such sympathy that people burst into tears and shouted savage curses on Quirinius.<sup>219</sup>

This incident reveals that Lepida was not detained during the course of her trial and was free to move about the city and attend public events.<sup>220</sup> More interesting, however, is the way Lepida rallied popular support. Was this an unusual move in itself or was it just unusually effective? Tacitus does not record similar episodes involving other defendants, yet appeal to the crowd in the theatre was not new.<sup>221</sup> Lepida inflamed the crowd against Quirinius and apparently hoped to sway the progress of her trial by the threat of public riot.

Court reconvened after the games, the trial proceeded, and then, Tacitus tells us, *dein tormentis servorum patefacta sunt flagitia*, “by the evidence (torture) of her slaves, her disgraceful actions were brought to light.”<sup>222</sup> Then the verdict: guilty. Frustratingly, the sources don’t specify exactly what her *flagitia* were or exactly which charges she was

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<sup>218</sup> Dig. 48.18.5 (Marcian); 48.18.6 (Papinian); 48.18.8.1 (Paul); 48.18.10.1 (Arcadius Charisius); 48.18.17 (Papinian); see also chapter 5.

<sup>219</sup> Tac. *Ann.* 3.23.1.

<sup>220</sup> Compare this to Albucilla, who was imprisoned during the course of her trial, Tac. *Ann.* 6.47–48.

<sup>221</sup> Augustus used an appearance at the theatre to display the joys of family life (and obedience to his marriage laws) by dandling his great-grandchildren on his knee, Suet. *Aug.* 34; compare the necessity for appeals to the mob by Caesar, see Millar (1998) 126. In modern terms, this would be analogous to giving media interviews during the course of the trial – strictly forbidden by modern statute, but apparently acceptable by ancient standards. Her dramatic speech also brings up echoes of the Roman *contio*, a political speech addressed directly to the crowd; Millar (1998) 35, 46–47.

<sup>222</sup> Tac. *Ann.* 3.23.2.

convicted of, and her punishment is reasonably consistent with a conviction for any one of the four charges of *falsum*, adultery, poisoning or treason. On the proposal of Rubellius Blandus and with the agreement of Drusus Caesar, consul-designate, Lepida was sentenced to interdiction (*aquae et ignis interdictio*), an unsupervised exile from Rome, and confiscation of her property.<sup>223</sup> Some senators, influenced by loyalty to Lepida's family or by the reaction to her piteous wailings in the theatre, in vain proposed a milder sentence. No one seems to have believed that she was innocent. Lepida's husband Scaurus sought and received the concession that her property not be confiscated – likely for the benefit of their daughter, who would then be in a position to inherit her mother's substantial estate. The ordered punishment of exile served the state by simply removing the condemned from the scene of the crime. Her crime was such that simple removal from the heart of Rome both punished her and eliminated the possibility of recurrence since the heart of the Roman social scene was beyond her access.

At this point, Tacitus relates, Tiberius announced that his own examination of Quirinius' slaves had revealed that Lepida had indeed attempted to take their master's life by poison. The timing of his announcement is curious – the trial is over, sentence has been passed. The only logical reason for the timing of Tiberius' comment is public relations. There was a good deal of ill-feeling towards Quirinius and his relentless hostility toward Lepida. It was possibly in light of the volatile public mood that Tacitus claims Tiberius had

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<sup>223</sup> Tac. *Ann.* 3.23.2; Rubellius Blandus was the son-in-law of Drusus, the son of Tiberius; PIR<sup>2</sup> I 219. On his other activities in court, see Rogers (1932); on Drusus' reputation for savage cruelty, see Tac. *Ann.* 1.29.76; 3.23; 4.3; Dio 57.13.1; 57.14.9. On *interdictio*, see Strachan-Davidson (1912) ch. 15 and 16; Grasmück (1978) 64–109.

exempted his son Drusus, the consul designate, from the traditional place of speaking first, which he would not have done except to save him from the responsibility of condemning.<sup>224</sup>

One might wonder what had prompted Quirinius to press charges against Lepida at all, or at this point in particular – their marriage had already ended and he must have originally acknowledged the child. It is possible that he had discovered new information about his child's paternity, and the only way to disown the child as his heir was to disprove blood ties.<sup>225</sup> Quirinius was very wealthy and the disposal of his estate would have been a significant concern to him. He was otherwise childless, and likely would not have disowned a son even doubting his paternity, so we may suggest that the child was a daughter. To whom, then did he intend to bequeath his wealth, if not his putative child? Perhaps he would leave his fortune to the emperor, possibly giving Tiberius some motive to bias the trial in favour of Lepida's conviction. However, Quirinius' motives – if he had any other than vengeful pride – remain mysterious.

Less mysterious are the motives for prosecuting Claudia Pulchra, widow of Quintilius Varus, who faced multiple charges in AD 26 of *impudicitia*, poisoning and aiming curses at the princeps.<sup>226</sup> During the 20s AD, the praetorian prefect Sejanus was in the height of his power and many important personages were eliminated by his ambitious and ruthless manoeuvres. Tacitus reports that Claudia Pulchra was accused as part of Sejanus'

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<sup>224</sup> Tac. *Ann.* 3.22.4. If Drusus had spoken first, others might have felt obliged to agree with what he had said; but since he had withdrawn from speaking first, some had inferred that he would have spoken in favour of conviction on the grounds that a speech for mercy would have reflected well on himself and his father and so would not have been prevented. On Drusus' character, see Tac. *Ann.* 1.29.76; 3.23; 4.3; Dio 57.13.1; 57.14.9. On the other hand, this incident might be a garbled reflection of Tiberius' attempt to maintain judicial integrity (remember that he and Quirinius were old friends). By removing his son's (and therefore his own) opinion from the position of first speech in the senate, Tiberius might have hoped to evade accusations of judicial favoritism.

<sup>225</sup> Townend (1962) 488.

<sup>226</sup> This is the famous Quintilius Varus who lost three legions in the Teutoberg forest in Germany in AD 9.

machinations intended to lead to the extermination of Vipsania Agrippina.<sup>227</sup> She was accused by the *delator* Domitius Afer on charges of *impudicitia* (Furnius was named as her lover), poisoning, and aiming curses at the princeps.<sup>228</sup> Before the trial began, Agrippina – inflamed by the danger to her friend and relative – approached Tiberius and railed at the unfairness of the attack on Pulchra, whose only error was in being a friend to her.<sup>229</sup> Agrippina’s passionate defense of her friend was unhelpful and both Pulchra and Furnius were condemned.<sup>230</sup> Their specific punishment is not mentioned; the statutory penalty for *stuprum* was *relegatio* (exile and partial confiscation of property).<sup>231</sup>

The vague accusation of *impudicitia* seems to be a Tacitean euphemism for a charge of *stuprum*, which falls into the same category of sexual misconduct as the more common charge of adultery.<sup>232</sup> A widow could, in fact, be charged with adultery so long as the adulterous activities had taken place within the previous five years.<sup>233</sup> Pulchra had been a widow for nearly sixteen years so could not be charged with adultery; the indictment must have been for *stuprum*.

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<sup>227</sup> Tac. *Ann.* 4.52.1; see also Bauman (1992) 147.

<sup>228</sup> On Domitius Afer, see PIR<sup>2</sup> D 126; Rutledge (2001) 220–223. Afer had been praetor the year before (25), and went on to become consul in 39. He prosecuted Pulchra’s son in 27 the year after the mother’s trial (*Ann.* 66.1). He was widely regarded as one of the most successful orators of his generation, though while Quintillian praised his humourous wit (5.3.72), Tacitus questioned his morality (*Ann.* 4.52.4 and 14.19). On Furnius, see PIR<sup>2</sup> F 589; he is otherwise unknown.

<sup>229</sup> Tac. *Ann.* 4.52.2–3; Rogers (1935) 193; on the topic of the *partes Agrippinae*, see Bauman (1992) 144–149 and 153–156.

<sup>230</sup> Tac. *Ann.* 4.52.3.

<sup>231</sup> Bauman (1992) 148; also Bauman (1996) 32–35, on *relegatio* as the standard punishment for adultery.

<sup>232</sup> Alternatively, the word *impudicitia* may have been used by Afer himself and Tacitus merely prolonged the euphemism. Valerius Maximus (6.1.11) also uses the euphemism *impudicitia* for *stuprum*, see Fantham (1991) 280. At any rate, there is no formal charge of *impudicitia*, so the official charge must have been *stuprum*, so Bauman (1992) 147. Dig. 48.5.6.1 (Papinian) confirms that the *lex Julia de adulteriis* refers to adultery and *stuprum* indiscriminately, and that both are punishable under this law.

<sup>233</sup> Dig. 48.5.5 (Julian) states that a widow can be charged with adultery. Similarly, Dig. 48.5.12.8 (Papinian); also, 48.5.12.4 says that a man can be charged with adultery within the five years following the date of the offense even if the woman is dead.

The other charges of *veneficia in principem et devotiones* (poisoning and curses at the emperor) seem to have generated rather less concern than one might have expected. If Tiberius had seriously believed that Pulchra had attempted to poison him, the charges against her would likely have been inflated to treason. Furthermore, the accusation of aiming curses at the emperor seems to be just as treasonous as the *inreligiose dicta* of Appuleia Varilla, the astrological inquiries of Aemilia Lepida or the apparent verbal slander of Albucilla (below).<sup>234</sup> The frequency of treason trials during his reign shows that Tiberius had no aversion to treason trials *per se*, and there is no reason to believe that he would have held back because Pulchra was a relative (in fact, he had not protected Appuleia Varilla or Aemilia Lepida). These charges must have been dropped.

Under the year 37, Tacitus informs us that Albucilla, the former wife of Satrius Secundus and *multorum amoribus famosa*, “famous for having many lovers,” was charged with adultery and *impietas in principem* along with six senatorial co-defendants.<sup>235</sup> Denounced as *conscii et adulterii* were Cn. Domitius, Vibius Marsus, and L. Arruntius.<sup>236</sup> Tacitus states his suspicions that the charges were largely fabricated by Macro, the praetorian prefect, because of his well-known antagonism toward Arruntius and that Tiberius might not even know about them.<sup>237</sup> Domitius and Marsus did not react immediately, but Arruntius decided to commit suicide. Albucilla chose to follow suit, but when her suicide attempt was unsuccessful, she was taken to prison by order of the senate and died there.<sup>238</sup> The other three senatorial co-defendants, charged as *stuprorum eius ministri*, “accomplices of her

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<sup>234</sup> Bauman (1974) 78, 130 notes that Tiberius had proceeded with reluctance on the topic of verbal slander.

<sup>235</sup> The charge of *impietas in principem* was a derivative of *maiestas*; see Bauman (1974) for a full discussion, and for this case specifically, see pp. 130–134, 175–176.

<sup>236</sup> PIR<sup>2</sup> D 127; PIR<sup>1</sup> V 388; PIR<sup>2</sup> A 1130; see section below for a more extensive discussion of these men.

<sup>237</sup> Tac. *Ann.* 6.47.3; Dio 58.27.2 concurs.

<sup>238</sup> Tac. *Ann.* 6.48.4; Dio 58.27.4.

*stuprum*,” were Carsidius Sacerdos, Pontius Fregellanus and Laelius Balbus.<sup>239</sup> These three men were brought to trial immediately, likely since their crimes were liable under the Julian adultery law only. Their punishments are recorded: Sacerdos was deported to an island, Fregellanus was stripped of his senatorial rank, and Balbus was deported and demoted.<sup>240</sup> Tiberius was gravely ill at this point, so the trials of Domitius and Marsus were delayed, and when he died, the two escaped prosecution.<sup>241</sup>

Despite their status, there is no evidence that any of them actually plotted against the emperor; their crimes may have been no more serious than loose talk. Bauman calls the group surrounding Albucilla an ‘association of rebellious spirits meeting together to commit adultery and to sharpen their wits on the foibles of the world in general and the emperor in particular.’<sup>242</sup> He likens them to the coterie that surrounded the elder Julia before her exile. The praetorian prefect Macro had tried to institute prosecution for verbal treason before – unsuccessfully – and now that Tiberius was on his deathbed, he tried again using the solemn phrase *impietas in principem* and nearly got away with it.<sup>243</sup> The senate, mindful of Tiberius’ earlier ruling (in the case of Mamercus Scaurus) refused to accept the charges without a directive from the emperor. Since instructions from the emperor did not materialize, his death allowed the charges against Domitius and Marsus to dissipate.

Although Domitius had escaped unscathed from the prosecutions of 37, scarcely two years later his wife Julia Agrippina and her sister Julia Livilla were accused of adultery and conspiracy. Suetonius reveals that Caligula had prostituted his sisters to his friends, but in

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<sup>239</sup> PIR<sup>2</sup> C 451; PIR<sup>2</sup> P 800; PIR<sup>2</sup> L 48; Dig. 48.5.9 (Papinian) and 48.5.10 (Ulpian) state that those who provide their house for the commission of *stuprum* are liable under the Julian law.

<sup>240</sup> Tac. *Ann.* 6.48.4.

<sup>241</sup> Dio 58.27.5.

<sup>242</sup> Bauman (1974) 132; also Bauman (1992) 164.

<sup>243</sup> Bauman (1974) 134.

this case, their alleged adulterer was none other than M. Lepidus, great friend of Caligula and the husband of their dead sister Drusilla.<sup>244</sup> Lepidus himself was on trial for treason and during the proceedings against him, Caligula denounced his sisters as adulteresses and conspirators, producing letters in their handwriting that he had acquired by trickery and seduction.<sup>245</sup> Barrett suggests that this may have been “the traditional device of covering up political intrigue with the claim of sexual indiscretion.”<sup>246</sup> Caligula dedicated to Mars Ultor the three swords with which, he claimed, they had intended to kill him. Such a dedication may imply that Caligula felt there had been a serious plot against his life, or maybe only that he wanted it to appear that way to justify his reaction.<sup>247</sup> Lepidus was convicted and immediately executed; Agrippina and Livilla were convicted and exiled to the Pontian islands. Their punishment was *relegatio*, the standard punishment for adultery, which included confiscation of a portion of their property – which Caligula then auctioned off in Gaul.<sup>248</sup> He implied that they had escaped execution only at his whim: *relegatis sororibus, non solum insulas habere se, sed etiam gladios minabatur*. “He threatened, when he relegated his sisters, that he had swords as well as islands.”<sup>249</sup>

Since the trial took place somewhere outside of Rome, Lepidus, Agrippina and Livilla were convicted in an *extra ordinem* procedure under Caligula’s supervision and without a

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<sup>244</sup> Suet. *Cal.* 24.5, 29; Dio 58.22.6–9 describes him as τὸν ἐραστήν τὸν ἐρώμενον, “his lover and favourite” and may imply a homosexual relationship between the two men, though Meise (1969) 109 n. 108 says it was only close friendship. These events fall into the ten-year lacuna in Tacitus, so we must rely on Suetonius and Dio for information. Bauman (1974) 176–177 suggests that the sisters were not accused of adultery with Lepidus specifically, merely that his trial served as the context to accuse them of the other adulteries. One wonders, however, why Caligula would have deliberately condoned the adulteries and then used them as the basis of a criminal accusation. Tac. *Ann.* 14.2.2 states that Agrippina, in her girlhood years, had committed adultery with Lepidus in the hope of gaining power.

<sup>245</sup> Suet. *Cal.* 24.5.

<sup>246</sup> Barrett (1989) 108; see also Barrett (1996) 63–70 for a full discussion of the political intrigue surrounding this case.

<sup>247</sup> Barrett (1989) 108. A similar dedication of a dagger (this time to Jupiter Capitolinus) was made by Nero after he discovered and suppressed the Pisonian conspiracy of 65; Dio 59.23.8.

<sup>248</sup> Suet. *Cal.* 39.1.

<sup>249</sup> Suet. *Cal.* 24.5.

full senatorial trial.<sup>250</sup> Agrippina was assigned the grim task of carrying Lepidus' bones back to Rome before she proceeded on to exile on one of the Pontian islands.<sup>251</sup> It is implied that she was forced to undertake this task as part of her penalty, a permutation on the statutory penalty made possible by the *extra ordinem* procedure and the emperor's direct involvement. For the same reason, it is not clear whether Caligula's confiscation of his sisters' property was partial or complete. His death two years later allowed for the pardon and recall of both sisters.

More than twenty years later, another imperial woman faced a continuing legal crisis. Nero's wife Octavia was charged and acquitted of adultery with the slave Eucaerus in 62, but within months faced renewed charges. Since the servile adultery scam had failed, Nero arranged a similar confession from Anicetus, his mother Agrippina's executioner and prefect of the fleet at Misenum.<sup>252</sup> This time, they added an accusation that she had attempted to bribe the prefect in the hope of gaining the alliance of the fleet, an act of *maiestas*. Anicetus made his carefully staged confession: *fateturque apud amicos, quos velut consilio adhibuerat princeps*; "he confessed in the presence of friends whom the princeps had called in as though for a council."<sup>253</sup> Tacitus' description is evocative of a trial personally conducted by the emperor in a *cognitio extra ordinem* procedure. Nero immediately published an edict stating that Octavia had bribed the prefect of Misenum to be her ally in seditious plotting and that she had aborted a fetus conceived from their adultery. Octavia seems not to have been present at her own trial as she had been previously been confined in

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<sup>250</sup> Barrett (1989) 107 persuasively locates the trial in Mevania and not in Gaul where the sisters' possessions were auctioned. On *extra ordinem* procedures, see Jones (1972) 91–95; Strachan-Davidson (1912) 2.157–161.

<sup>251</sup> Dio 59.22.8. One wonders if this was a conscious mocking echo of the elder Agrippina returning to Rome carrying the bones of her husband Germanicus. Barrett (1996) 69 discusses details of the location of her exile.

<sup>252</sup> Tac. *Ann.* 14.62–63.

<sup>253</sup> Tac. *Ann.* 14.62.4.

Campania under the surveillance of a military guard. She was now banished to the island of Pandateria and was executed a short time later.<sup>254</sup> Anicetus was banished to Sardinia where he *non inops exilium toleravit et fato obiit*; “endured no destitute exile and met a natural death.”<sup>255</sup>

Junia Lepida was caught up in a political move by Nero against her nephew L. Junius Silanus Torquatus and husband C. Cassius Longinus.<sup>256</sup> Nero’s resentment at Cassius caused him to prohibit Cassius’ attendance at Poppaea’s funeral,<sup>257</sup> and he then sent a speech to be read in the senate ordering the removal of Cassius and his nephew from that order and accusing them of defection from the house of Caesar and sowing the seeds of civil war.<sup>258</sup>

Then, Tacitus records:

*...qui in Lepidam, Cassii uxorem, Silani amitam, incestum cum fratris filio et diros sacrorum ritus confingerent.*

They fabricated against Lepida, wife of Cassius and aunt of Silanus, [charges of] incest with her brother’s son and ominous religious rituals.<sup>259</sup>

The senate tried Cassius and Silanus and decreed deportation for both.<sup>260</sup> Nero himself was to decide Lepida’s fate, but his decision is not recorded. While Nero had gone to the effort of fabricating charges and had pulled in as accomplices the senators Volcaci<sup>u</sup>s Tullinus and Marcellus Cornelius and the equestrian Calpurnius Fabatus, it is plausible that the charges against Lepida were allowed to lapse just like the charges against Volcaci<sup>u</sup>s, Cornelius and

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<sup>254</sup> The tragic play *Octavia*, attributed to Seneca, describes her last days.

<sup>255</sup> Tac. *Ann.* 14.63–64.

<sup>256</sup> This is Cassius the famous jurist and head of the Sabinian school of juristic thought; see Bauman (1989) ch. 4; for the trial and exile specifically, 107–113; Rogers (1952) 290, 304–305.

<sup>257</sup> Furneaux (1896) s.v. 16.7.1 sees this as a form of *renuntio amicitiae*; he further notes that this Cassius was the brother of L. Cassius Longinus who was the first husband of Drusilla (above); see also PIR<sup>2</sup> C 503.

<sup>258</sup> Tac. *Ann.* 16.7.2. Nero may have been unusually paranoid – this was only a few months after the Pisonian conspiracy was detected and thwarted; Tac. *Ann.* 15.48ff.

<sup>259</sup> Tac. *Ann.* 16.8.2.

<sup>260</sup> That the harsher punishment of *deportatio* (including loss of citizenship and property) was meant here is illustrated by the next sentence where Tacitus describes them as *deportatus* (*Ann.* 16.9.1).

Calpurnius lapsed after their appeal to Nero.<sup>261</sup> Tacitus does say that the charges against these three were suborned.<sup>262</sup> After this, Lepida disappears from the historical record. The crime of incest would demand a punishment of *deportatio*. The vague charge of conducting ominous religious rituals could mean that she was suspected of some sort of divinatory inquiry or harmful magic, both of which activities aroused deep anxiety among Roman emperors.<sup>263</sup>

Of these seven cases where women were accused of adultery as one of multiple charges, the verdicts of two remain uncertain. Albucilla died in prison after her suicide attempt and the result of her trial (if it was actually completed) is unknown. Her suicide indicates, at the very least, that she felt certain that there was no escape from incipient doom. Junia Lepida's case was to be decided directly by Nero and nothing of his decision or her punishment is recorded. Five trials unequivocally ended in conviction: Appuleia Varilla, Aemilia Lepida, Claudia Pulchra, Octavia, and Julia Agrippina along with her sister Julia Livilla. The penalties are known for four of these cases (not for Claudia Pulchra) and there must be some significance to the fact that all the penalties are different.

The circumstances of the individual cases and the flexibility of the legal process for trying and sentencing are key.<sup>264</sup> The first two cases were tried in the senate under Tiberius. Appuleia Varilla was sentenced to be escorted by her relatives beyond the 200<sup>th</sup> milestone, which was a penalty considerably lighter than the statutory one of *relegatio* for adultery, and there seems to have been no consequence to the treason charge. Aemilia Lepida, on the other

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<sup>261</sup> Tac. *Ann.* 16.8.3; Bauman (1989) 109; Volcarius: PIR<sup>1</sup> V 623, Cornelius: PIR<sup>2</sup> C 1403, and Calpurnius: PIR<sup>2</sup> C 263.

<sup>262</sup> Tac. *Ann.* 16.9.1; 16.8.2. Tacitus may have had direct information about this case since Calpurnius Fabatus was the grandfather of Pliny's wife and corresponded with Pliny (who in turn corresponded with Tacitus); Bauman (1989) 109.

<sup>263</sup> Cramer (1954) 240–241; cf. Bauman (1974) 59–69.

<sup>264</sup> Talbert (1984) 478–487.

hand, was sentenced to *interdictio aquae et ignis* on the proposal of Rubellius Blandus, *quamquam alii mitius censuissent*, “although others judged more leniently.”<sup>265</sup> An appeal from her ex-husband Scaurus gained the boon of preserving her property from confiscation. There was clearly the possibility for a debate in the senate in the sentencing phase of the trial that could result in mitigation or intensification of the statutory penalty. Even more flexible was the *cognitio extra ordinem* process by which Caligula judged his sisters Agrippina and Livilla on charges of adultery and conspiracy. Ironically, their penalty was the one prescribed by statute: *relegatio* (with confiscation of a portion of their property). On the other hand, their co-defendant and erstwhile brother-in-law, M. Lepidus, was executed as part of the same trial and on the same charges. Octavia was also judged by an *extra ordinem* process, and was sentenced by her husband Nero to exile on Pandateria, and soon after she was executed. Her execution, strictly speaking, was outside the law.

### **Adultery as a political charge**

Between 42 and 31 BC, Antony and Octavian relentlessly accused one another of bribery, adultery and luxury: those who could not govern themselves were not fit to govern Rome. Accusations of immorality were a fundamental part of the political vocabulary of the elite, but Augustus withdrew from these competitive accusations of immorality as he became established in sole power.<sup>266</sup> After adultery became a criminal offense, such accusations could result in serious consequences yet Quintilian suggests that this practice continued under the principate.<sup>267</sup> Bauman asserts that when adultery involved the interests of the state or the emperor, it was withdrawn from the regular procedure, that is, withdrawn from the

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<sup>265</sup> Tac. *Ann.* 3.23.2.

<sup>266</sup> Edwards (1993) 27.

<sup>267</sup> Edwards (1993) 25–26.

queue for the *quaestio de adulteriis*.<sup>268</sup> This statement may shed light on why adultery cases are so easily deemed ‘political’ because those ones tried in the senate and recorded by Tacitus have already been judged to “involve the interests of the state or the emperor” in some way. Who were the actual targets of the charges? If the case were deemed to have involved the interests of state and/or emperor, was it the woman herself involved, her husband, or her lover?

When combined with other charges, especially *maiestas*-type charges, sex and politics become very entangled. And in Roman elite terms, ‘political’ meant family. Consider how many trials really had adultery as their focus. Were they really about adultery or were they really about politics? Examination of family connections becomes central as it bears on the question of motivation: were women being charged for political reasons with the aim that her husband, father, brother, or son would be politically injured by the pejorative attention to their women? These questions are addressed at length in the section below.

Many scholars suggest in their discussions on adultery the idea that the trials we hear about are ‘political’ in nature.<sup>269</sup> The idea of politically-motivated adultery charges can be traced back to Tacitus when he suggests that evidence of adultery has been manufactured against elite women.<sup>270</sup> What does it mean, then, to say that the charges were ‘political’ or that the trials were ‘political’? It is necessary to define ‘political,’ to articulate the assumptions that lie within that description, then re-examine the evidence. In order for charges to be called political, there must be some intention on the part of the accuser to

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<sup>268</sup> Bauman (1968) n.38; for the position under Augustus, see Bauman (1967) 198–200; for the position thereafter, see Bleicken (1962) 53–57.

<sup>269</sup> Garnsey (1970) 22–24; Levick (1983) 114; Barrett (1989) 108; (1996) 20, 63.

<sup>270</sup> Aquilia (Tac. *Ann.* 4.42); Claudia Pulchra (4.52); and charges were also manufactured against men: Faenius Rufus (15.50); Antistius Vetus (3.38).

derive, from the existence of the charges or the trial that followed, some financial or social advantage to aid his political career.

What assumptions lie within the idea that charges of adultery could be political? First is the assumption that a woman would be a valid and viable target; second, that there could be some political gain for the accuser or someone connected to him; third, that there could be political harm for the accused or someone connected to her. How would a man derive benefit from legally attacking a woman for adultery? How does one settle a political score through adultery charges? The key to answering this question is to consider exactly who is the target against whom a political score must be settled, and who was the target of harm:

- (a) male family members were political targets
- (b) women themselves were political targets
- (c) their male lovers were political targets.

In all of these possibilities, we must consider some practical details. How would anyone know about the adultery? If the lovers were flagrantly obvious about their meetings, there is no mystery. With the heightened awareness of the risk of prosecution for adultery, it seems reasonable that lovers would attempt to embrace discretion so as not to be punished for their activities. It is unlikely that the guilty parties of a discreet liaison would spontaneously confess and invite prosecution. Paulina, however, did just that. After she had been duped into sleeping with Decius Mundus in the guise of the god Anubis, she immediately told the entire story to her husband so as to pursue vengeance against Mundus.<sup>271</sup> Another possibility is that a man could himself commit adultery with his enemy's wife; but since he would then be a prosecutable lover, we may discount the idea that politicians were attempting to seduce their enemies' wives as a prelude to adultery charges. A husband could accidentally discover his wife *in flagrante delicto* and the Digest contains

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<sup>271</sup> Jos. *AJ* 18.3.65–84; Paulina, no. 45.

useful guidance on the *ius occidendi* (the right to kill) that was, at least theoretically, legally allowed in such circumstances.<sup>272</sup> None of the cases under discussion involve women actually discovered in bed with an adulterer.

The remaining possibility, and the likeliest one, is the use of spies, likely slaves or freed persons, who would have had access to the private activities of their master or mistress. For example, the freedman Narcissus informed Claudius, via his concubines, about Messalina's licentious activities.<sup>273</sup> Similarly, all but one of Octavia's maids defected to Sabina when Nero made it clear that he preferred her.<sup>274</sup> Politicians must have had spies gathering information about the activities of other elite persons, political enemies and their families. Information is power. The enemy must, however, have arranged for the husband to discover his wife's adultery, maybe via a report of a tryst witnessed by a slave.<sup>275</sup> The husband was legally required to initiate divorce or be charged with *lenocinium*. Divorce itself was no scandal, but charges of *lenocinium* would be.<sup>276</sup>

A total of ten cases from this chapter could be considered as 'political' on the basis of the identity of the defendant, her male family members and the political circumstances: Appuleia Varilla, Aemilia Lepida, Claudia Pulchra, the daughter of Sextus Marius, the younger Aemilia Lepida, Julia Livilla and Agrippina, Albucilla, Junia Calvina, Octavia, and Junia Lepida. Let us turn our attention to the three possible targets mentioned above against

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<sup>272</sup> Dig. 48.5.21–25 (Papinian, Ulpian, and Macer); for a full discussion of this topic, see Rizzelli (1997) 9–65.

<sup>273</sup> Dio 60 (61).31.4; someone handed over notes to Claudius informing on Messalina's activities, Tac. *Ann.* 11.34.2.

<sup>274</sup> Dio 62.13.4; only Pythias refused to betray her mistress, even under Tigellinus' tortures.

<sup>275</sup> Compare, for example, Sejanus' sending people to warn Agrippina, in a display of friendship, that poison had been prepared for her and she should avoid Tiberius' banquet. *Immissis qui per speciem amicitiae monerent paratum ei venenum, vitandas soceri epulas*. There is no hint of the status of these people, but their actions were spy-like.

<sup>276</sup> Divorce was common: Augustus divorced Scribonia, Tiberius divorced Vipsania, Claudius divorced Urgulanilla and so on. See Treggiari (1991) ch. 13; Gardner (1986) ch. 5; Corbett (1930) ch. 9.

whom a political score might be settled by means of adultery charges and examine how each of these cases fits in.

**(a) Male family members were political targets**

Any attack on a family member – particularly a female member – reflected on the honour of the family as a whole. If a woman were immoral, then her family had been lax in her upbringing and in supervising and moderating her behaviour. The idea that families control their female members is expressed in the power of the *paterfamilias*, and in Julio-Claudian times, women were referred to family councils for judgment in certain instances.<sup>277</sup> In very early Roman history the family council had been the standard means of dealing with a wayward woman. All of this suggests that a woman's reputation could and did have an impact on the perceived moral fibre of male family members. Because of this, any attack on a woman might be politically injurious to her brother, husband, or son.

On a purely practical level, how can we determine if male family members were injured at all? If the attack on a woman were timed carefully (for example, during the time leading up to an important election in which her husband was a candidate) damage to the outcome of that election could have been substantial. Divorce and prosecution of the errant wife would ensue, thus saving face for the husband, and subsequent elections or political activity would remain untouched. An insidious campaign against an entire family could employ techniques such as this where there is no individual target of the damage. For

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<sup>277</sup> For example, Pomponia Graecina, no. 48, and Appuleia Varilla, no. 12.

example, a glance at the family tree of the Domitii Ahenobarbi shows that several women were criminally prosecuted.<sup>278</sup>

One might expect, however, that an astute political mind like Tacitus' would have noticed if women were being sacrificed on the altars of their menfolk's political enemies. It is, therefore, difficult to make a case that their male family members suffered politically in any tangible or definable way. Lack of evidence plays a key role: it is not possible to determine if a husband's (brother's or son's) career collapsed because of the woman's legal entanglements or for other reasons, or, indeed, whether he died or simply dropped out of the historical record because he did nothing more of note. Certainly in the live, thriving political culture of Rome, even unsupported accusations fed the rumour mill and could have damaged reputations, which in turn could have damaged political ambitions.

A final possibility requires mention. A woman convicted of adultery would pay a third of her property and half her dowry as a financial penalty.<sup>279</sup> If her husband was counting on using her money as a means to help finance his budding political career, his chances would be dramatically reduced when her money disappeared, especially if he had not yet risen above the expensive office of aedile. Financial motives, however, receive no mention in the sources. Of the ten women listed as possible political targets, three were unmarried so their husbands could not have been harmed financially or politically. Money, therefore, was only one of several possible motivations.

The strongest case where one can argue that the male family member is the target of harm from charges involving sexual misconduct is the case of the daughter of Sextus

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<sup>278</sup> Appendix 2.3, stemma Domitii Ahenobarbi, shows five women out of eleven were charged: Julia Agrippina, Domitia, Domitia Lepida, Claudia Octavia, and Valeria Messalina.

<sup>279</sup> Paul, *Sent.* 2.26.14; Bauman (1968) 79–80.

Marius.<sup>280</sup> Tacitus indicates that the father was the real target of this prosecution and the daughter was collateral damage.

*Sex. Marius Hispaniarum ditissimus defertur incestasse filiam et saxo Tarpeio deicitur; ac ne dubium haberetur magnitudinem pecuniae malo vertisse, aurarias <argentarias>que eius, quamquam publicarentur, sibimet Tiberius seposuit.*

Sextus Marius, the richest man in the Spains, was denounced for incest with his daughter and was thrown from the Tarpeian Rock; and so, lest there be any doubt that the magnitude of his fortune turned his fate so badly, Tiberius set aside for himself his gold and silver mines, even though they had been publicly confiscated.<sup>281</sup>

The reference to the Tarpeian Rock securely places the trial in Rome, well within reach of the emperor or other political machinations.<sup>282</sup> That Marius was subject to political enmity is beyond doubt; an earlier attempt to destroy him had failed.<sup>283</sup> Ownership of the gold and silver mines may have provided additional motivation.<sup>284</sup> Dio presents a completely different story: Marius, friend of the emperor had sent his beautiful daughter away to prevent her being disgraced by Tiberius, and because of this, Marius was charged with incest and both he and his daughter were destroyed.<sup>285</sup> In either version, the father was the real focus of the prosecution and the daughter's demise was incidental.

Similarly, sisters Junia Calvina and Junia Lepida were destroyed in political manoeuvres implemented against their menfolk. Calvina was accused of incest with her

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<sup>280</sup> Marius: PIR<sup>2</sup> M 295.

<sup>281</sup> Tac. *Ann.* 6.19.1.

<sup>282</sup> Garnsey (1970) 23 suggests that the earlier friendship of Marius and Tiberius and the unusually cruel punishment of precipitation from the Tarpeian Rock indicates the emperor's personal involvement in the case. Bauman (1996) 60, however, notes that this punishment was not unique but was implemented in two other cases during the reign of Tiberius: L. Pituanus in AD 16, Tac. *Ann.* 2.32.5; and Aelius Saturninus in 23, Dio 57.22.5.

<sup>283</sup> Tac. *Ann.* 4.36.1 under the year 25.

<sup>284</sup> Compare Plin. *HN* 34.2.4, who mentions Marian copper mines in Spain that produced high quality ore for making *sestertii* and *dupondii* while Cypriot copper was used for the *as*. Gold and silver mines, however, must have supplied the imperial mint at Lugdunum in Gaul. Control over these mines, therefore, would have been important to the emperor.

<sup>285</sup> Dio 58.22.3.

brother L. Junius Silanus in 49 by Julia Agrippina.<sup>286</sup> The path of harm identified for this charge is quite direct: Calvina was apparently accused only as a means to the end of harming her brother so that his betrothal with Octavia would be broken. Silanus committed suicide. Repercussions for Calvina's other male relatives, however, are unknown. Her other brothers M. Silanus and D. Iunius Silanus Torquatus, both consulars, did nothing of note after Calvina's trial in 49.<sup>287</sup> Barely five years later, in 54, Agrippina allegedly engineered the execution of M. Silanus.<sup>288</sup> A decade later, in 64, Torquatus was forced to die at Nero's behest, a death unrelated to his sister's downfall.<sup>289</sup> Their nephew L. Iunius Silanus Torquatus never attained the consulship, and the year after his uncle's death, he was accused of incest with his aunt Junia Lepida.<sup>290</sup> Tacitus' opinion is clearly stated: against Silanus, *inania simul et falsa*, "accusations were as empty as they were false" and evidence of incest was *in Lepidam ... confingerent*, "fabricated against Lepida."<sup>291</sup> Lepida was also accused of ominous rites and rituals. Like Calvina, Lepida was accused as a means to the end of harming her male family member but whether either woman actually committed a crime is wholly unclear. In the end, all five siblings from that family were destroyed.

When Claudia Pulchra was charged with adultery in 26, her husband Quintilius Varus had been dead for more than sixteen years. Their son of the same name, although wealthy and related to the imperial family, was known only for his oratorical skills and not his

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<sup>286</sup> Tac. *Ann.* 12.4; 12.8.1; PIR<sup>2</sup> I 829; Bauman (1992) 180. There is a high degree of irony here: by law, Octavia and Nero were brother and sister even though they shared no parent. Claudius therefore arranged for Octavia to be adopted by another family so as to avoid even the hint of technical incest, Dio 60.33.2<sup>2</sup>.

<sup>287</sup> M. Iunius Silanus, PIR<sup>2</sup> I 833, consul *ordinarius* in 46 for the entire year – no small mark of distinction; proconsul of Asia in 54. D. Iunius Silanus Torquatus, PIR<sup>2</sup> I 837, consul *ordinarius* 53.

<sup>288</sup> Tac. *Ann.* 13.1.1.

<sup>289</sup> Tac. *Ann.* 15.35.1.

<sup>290</sup> PIR<sup>2</sup> I 838, son of M. Iunius Silanus (833, above); Tac. *Ann.* 16.8–9.

<sup>291</sup> Tac. *Ann.* 16.8.1–2.

political career.<sup>292</sup> He was attacked in 27 by the *delator* Domitius Afer, the same man who had prosecuted his mother the previous year.<sup>293</sup> The charges were not accepted and no trial occurred.<sup>294</sup> There may be something here: his prosecution could have been connected to that of his mother – although crucial details are unknown. It may, on the other hand, merely have been a personal vendetta on the part of Domitius Afer against the family (Pulchra and Varus).

An examination of the male family members of the other women who were prosecuted does not reveal any definitive political ramifications. For example, Aemilia Lepida's brother Manius Lepidus (*cos.* AD 11) defended her at her trial in AD 20 (at which she was convicted) and then went on to be proconsul of Asia in the following year.<sup>295</sup> Of the subsequent career of her second husband, Mamercus Aemilius Scaurus, to whom she had been married at the time of her trial, we know that he was a suffect consul in 21, the year after her trial.<sup>296</sup> He led the prosecution against C. Silanus for *repetundae* the year after that.<sup>297</sup> A full decade later in 32, and certainly too late to claim as a repercussion of Lepida's conviction, Scaurus was accused of *maiestas*; the trial was delayed, but in 34 he and his new wife, Sextia, committed suicide to evade conviction.<sup>298</sup> Lepida's conviction, therefore, had

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<sup>292</sup> PIR<sup>2</sup> Q 29; *Sen. Contr.* 1.3.10.

<sup>293</sup> Rutledge (2001) 143–144, 220–223; *Tac. Ann.* 4.66.1 claims that Afer had squandered the reward money he got from prosecuting Claudia Pulchra and sought another reward for prosecuting her son Varus.

<sup>294</sup> Rutledge (2001) 143.

<sup>295</sup> *Tac. Ann.* 3.32.2; Syme (1986) 129 argues for a revision of Groag's PIR<sup>2</sup> A 369 entry for M.' Lepidus. Only two of the Tacitean references can conclusively stand for Manius Lepidus: *Ann.* 3.22.1 and 3.32.2. The other eight passages which were modified by Lipsius, and accepted by Groag, to read M.' instead of M. are: 1.13.2; 3.11.2; 3.35.1; 3.50.1; 4.20.2; 4.56.3; 6.5.1; 6.27.4. Therefore Marcus was the '*capax imperii*' of 1.13.2, not Manius. Recent editors E. Koestermann and F. Goodyear have accepted Syme's revision, as have translators M. Grant and A.J. Woodman. For more information on proconsuls in Asia under Tiberius, see Syme (1983) 191 = *Roman Papers* 4.19.

<sup>296</sup> PIR<sup>2</sup> A 404; *Tac. Ann.* 3.66.1.

<sup>297</sup> *Tac. Ann.* 3.66.1

<sup>298</sup> *Tac. Ann.* 6.69.4–7; *Suet. Tib.* 61.3; *Sen. Suas.* 2.22; *Dio* 58.24.3–5; Rogers (1935) 138–140; Sextia, no. 51.

no discernable negative impact on the political lives of her brother or husband; she had no sons.

The younger Aemilia Lepida, accused in 36 of adultery with a slave, was the childless widow of the younger Drusus Caesar, and hence erstwhile sister-in-law of Gaius Caligula, Agrippina, Drusilla and Livilla. She committed suicide rather than present a defense at trial.<sup>299</sup> Her illustrious father Marcus Lepidus had died in 33 and so was unaffected by her scandal;<sup>300</sup> Tacitus even suggests that he had protected her, despite her infamy, during his lifetime.<sup>301</sup> She had one brother, M. Lepidus, known to be a favourite friend of Gaius Caligula and who married Drusilla sometime after 33.<sup>302</sup> If the accuser had hoped to damage Lepidus' standing with the young emperor-to-be, he had made a grave miscalculation; immorality did not phase Caligula. Possibly, Lepidus had suffered political eclipse while Tiberius lived, but gained favour again under Caligula. At any rate, no political change is even suggestively linked with his sister Lepida's conviction.

A scant three years later in 39, sisters Livilla and Agrippina faced charges of treason and adultery with this same Lepidus. The sisters were exiled; he was executed.<sup>303</sup> Little is known about the circumstances except that Caligula, their closest male relative, may have been behind the accusations. Their husbands are curiously absent from the scene and neither is recorded as providing any assistance to his wife.<sup>304</sup> At any rate, an adultery conviction would likely have meant the end of both marriages.<sup>305</sup> When Caligula died, the sisters were

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<sup>299</sup> Tac. *Ann.* 6.40.3.

<sup>300</sup> On M. Lepidus, see Syme (1986) 128–140.

<sup>301</sup> Tac. *Ann.* 6.40.3.

<sup>302</sup> PIR<sup>2</sup> A 371 in which Groag is tentative about the relationship, but Syme (1986) 136 is more certain.

<sup>303</sup> Dio 59.22.7; Suet. *Cal.* 24; 29.5; Sen. *Ep.* 4.7; Jos. *AJ* 19.20.49.

<sup>304</sup> The lack of husbandly assistance may be explained by the speed of the proceedings and the fact that they took place outside of Rome.

<sup>305</sup> Dig. 48.5.12.13 (Papinian) says that, in accordance with the *lex Julia*, one is forbidden to keep a wife who has been convicted of adultery. Dig. 48.5.2.2 (Ulpian) reminds us that, via charges of *lenocinium*, a penalty is

recalled from exile by the new emperor Claudius. In 41, Julia Livilla was again accused of adultery, this time with Seneca the philosopher; she was condemned and exiled.<sup>306</sup> Any suggestion of harm done to male relatives due to the shame of immorality amongst his female family members does not apply to Caligula as he was already flagrantly unconcerned with morality.<sup>307</sup> For this reason, attacking the sisters of the emperor for adultery was a very poor means of politically harming him, and thus may be discounted as a motivation.

Appuleia Varilla, great-niece of Augustus, niece of Quintilius Varus and Claudia Pulchra, was convicted of treason and adultery in 17. Her only living male relative at the time was a brother, Sextus Appuleius, consul in 14 and close friend of Augustus.<sup>308</sup> After he reached the consulship, his career disappears from the historical record.

Albucilla's case of 37 will be discussed extensively below; her husband Satrius Secundus had likely died in the post-Sejanian executions and she had no other identifiable family members who might have been harmed by her legal troubles.<sup>309</sup>

These eight cases show only three instances, the cases of Maria, Junia Calvina and Junia Lepida, where the male family members of the defendant seem to have been the target of the charges and suffered harm because of the woman's prosecution. A fourth case, that of Claudia Pulchra, might be construed as another example except that she does not seem to have been the means of harming her son; he was simply prosecuted after his mother. There is the possibility that Afer held a personal grudge against the family that turned his prosecutions into something like a vendetta; this possibility undermines the theory that the

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appointed by the *lex Julia* for the husband who keeps his wife after she has been caught in adultery. Both quotes are from second-century jurists and it is not certain whether these measures were included in the original law of 18 BC or whether they were in effect in AD 39.

<sup>306</sup> Dio 60.8.5.

<sup>307</sup> See, for example, Suet. *Cal.* 24, 25, 29, 36.

<sup>308</sup> PIR<sup>2</sup> A 962; Dio 56.29.5.

<sup>309</sup> Syme (1958) 406 n. 11; 753; Furneaux (1896) s.v. 6.47.2. Bauman (1974) 132 suggests that Satrius had not died, but had divorced Albucilla immediately prior to launching charges against her.

woman was accused as a means of harming her male family member. The other four cases discussed similarly fail to support this theory.

A remaining possibility exists: accusations of adultery were made against women with the intention of politically harming their male family members but were merely unsuccessful. Unfortunately, intentions leave few traces in the historical record but it seems persuasive that none of the cases discussed support the theory at all. Women must have been accused for other reasons.

In two instances, women accused of sexual misconduct were protected by their male family members. The younger Aemilia Lepida, Tacitus tells us, *quamquam intestabilis, tamen impunita agebat, dum superfuit pater Lepidus: post a delatoribus corripitur*, “although notorious, nonetheless she lived unpunished as long as her father Lepidus survived: afterwards, she was seized by accusers.”<sup>310</sup> This statement implies that her father was aware of her activities and prevented accusations being brought against her for as long as he could. One might speculate that his power was greater than that of potential accusers. In another case, the elder Aemilia Lepida was actually defended at trial by her brother, Manius Lepidus. A brother’s defense at a sister’s senatorial trial on adultery charges is a complete reversal of the ancestral custom of judging an immoral woman in a family *consilium*. He could not have believed she was innocent; Tacitus describes her as *infamis et nocens* (infamous and guilty). These two examples show a shift from men enforcing the moral behaviour of their female family members to men defending their female family members against moral charges brought by outsiders, even though both women seemed unquestionably guilty.

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<sup>310</sup> Tac. *Ann.* 6.40.3.

**(b) The women themselves were political targets**

If the women themselves are the political targets, we need to consider in what way the women were considered 'political'. They were not allowed to be active in political office, but as Bauman points out, "politics is not only about votes."<sup>311</sup> At very least, women had access to and influence over (male) people who held power. Control of access is power. For example, the early base of Sejanus' power was gained by controlling access to Tiberius. If a woman of the imperial family was controlling access to her powerful husband or male family member, a political enemy could easily conclude that the most direct route to his goals was to remove the obstacle. The financial penalties suffered by a woman who was convicted for adultery would have little effect politically,<sup>312</sup> but her divorce and exile would remove her from any political role that she had played by controlling access to her husband (brother or son) or by influencing their opinions. A politically astute woman like Augustus' wife Livia realized that she must accomplish her political goals carefully without risking prosecution for adultery or *stuprum*.

If we view marriage connections as political, which they certainly were, a way could be made for a remarriage if a current wife were accused and convicted of adultery since the marriage would be ended. This brings up the idea of behind the scenes brokering and problems of evidence thereof. There were likely arrangements made by Livia and her friend Urgulania to marry the latter's granddaughter Urgulanilla to Livia's grandson Claudius. Vipsania Agrippina approached Tiberius looking for a new husband (but she needed his permission) and Sejanus tried to get permission to marry Livilla. Marriages were made with

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<sup>311</sup> Bauman (1992) 1-7.

<sup>312</sup> See section above. Husbands of imperial women were less likely to depend on their wives' wealth as a means of prospering in politics. Most of the imperial women, when charged, were married to men who had already attained the consulship and were well-established in politics. A conviction (and the loss of the woman's dowry and other property) would not be a financial burden to them.

an eye to political aims, so the opposite must also be true: marriages could be broken for political aims. Augustus forced the divorce between Tiberius and his beloved Vipsania in order to have Tiberius marry Julia. A woman condemned for adultery could not remarry.<sup>313</sup> If the woman was a desirable target for a new marriage due to her family connections, a conviction for adultery would destroy any future marriage connections. It is difficult to tell whether this would be more damaging to the woman herself, for personal reasons, or to her family for the loss of potential marriage alliances. This must remain a theoretical possibility as none of our cases contains explicit evidence on such motives.

A final consideration: regardless of the actual target of the accusation, the slaves of the accused woman and her lover would be made available for interrogation, and their testimony could be used against their owner. This could be the real political corkscrew. The enemy might hope to uncover other activities (treason, for example) that could lead to real political damage. Since, as has been argued, adultery was relatively common in elite circles and spies were constantly gathering information, charges of adultery could simply be an excuse to gain access to the slaves of the accused. There are not, however, any cases reported where our sources explicitly state that adultery charges were laid and subsequent information from slaves led to treason charges being brought.

Turning to the specific cases on our list, let us examine the possibility that the women themselves were the targets of political damage. The younger Aemilia Lepida must have been the intended target of harm when she was charged with adultery with a slave in 36.<sup>314</sup> She only had one living male relative, a brother (discussed above), who was harmed in no discernable way by her disgrace. Her slave lover could not have been a political player or

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<sup>313</sup> Dig. 23.2.49.

<sup>314</sup> Tac. *Ann.* 6.40.4.

threat in any way. Furthermore, if he had been the intended target of harm, there were much easier and more certain ways to inflict harm on a slave. That leaves only Lepida herself as the target. Her position, with close marital ties to the imperial family, may have been perceived as politically threatening to her (unknown) accuser. On the other hand, if we stop looking for political conspiracies behind every bush, she may have been accused by an outraged moralist after engaging in flagrantly scandalous behaviour.

Similarly, when Julia Livilla and Agrippina were charged with treason and adultery with M. Lepidus in 39, the sisters themselves seem to have been the targets of political harm. Given the way that Caligula had honoured his sisters and had elevated and adored Drusilla in particular, might these other sisters take her place and become behind the throne advisors and confidantes?<sup>315</sup> If so, they would have wielded great power – as, in fact, Agrippina did in her later life. If the associated charges of treasonous conspiracy are given credence, all three of the accused were valid targets of political harm.

Nero's young wife Octavia was unquestionably the target of harm in the trials against her. She had no children and no close male relatives still living. She may be seen as an innocent pawn in political games being played by Nero and Poppaea; certainly, this is how she is presented in the sources. Her mere existence was a potential political threat because she was the daughter of Claudius and she had significant popular support.<sup>316</sup>

A few other cases require brief notice. About Aquilia's case, nothing is known except that Tiberius increased her sentence for adultery from the standard *relegatio* to a harsher sentence of *exilium*.<sup>317</sup> There is no hint of the aggravating factor, nor of the identity

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<sup>315</sup> Suet. *Cal.* 15.3, *Tib.* 54.1; Dio 58.28.8; 59.3.4–5; 59.9.2; Barrett (1989) 62–63.

<sup>316</sup> Tac. *Ann.* 14.61; 14.63.2.

<sup>317</sup> Tac. *Ann.* 4.42.3; Rogers (1935) 91.

of her family. Her accused lover Varius Ligus escaped prosecution.<sup>318</sup> Aemilia Lepida's case seems to have been motivated by nothing more political than the impassioned hatred of her first husband P. Sulpicius Quirinius.<sup>319</sup> One might say that prosecuting Vistilia after she registered her name with the aediles as a prostitute could have had political motives. Certainly the magistrates involved took a public stance against her and her attempt to subvert the laws against adultery; this public stand on morality must be considered political given that the senate reacted with a *senatus consultum*.<sup>320</sup> Her husband suffered no lasting harm on account of his wife's scandalous behaviour as he went on to be the proconsular governor of Gallia Narbonensis, and lived to a ripe old age.<sup>321</sup> If there were political motives or pressures on the part of the husband's political enemies in instigating the case, there were no lasting repercussions. If the husband suffered embarrassment or public humiliation because of his wife's situation, at least his career did not die.

In all but two cases, the evidence for the women defendants themselves as the targets of intended political harm is tenuous at best, pure speculation at worst. Thus far, we have seen that adultery charges were a poor means of settling a political score against the male family members of a female defendant, and that the female defendants only tentatively had any claim to being a political target. The younger Aemilia Lepida, Julia Livilla and Julia Agrippina stand out as being political targets on their own merits.

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<sup>318</sup> PIR<sup>1</sup> V 189; Syme (1986) 301 and n. 11 suggests that Ligus was a praetorian prefect under Augustus. Martin and Woodman (1989) 201 suggest that this Ligus was the son of the prefect; PIR gives no indication of a son.

<sup>319</sup> Tac. *Ann.* 3.22–23.

<sup>320</sup> Levick (1983) and McGinn (1992).

<sup>321</sup> Pliny, *HN* 35.20.

**(c) The accused women's male lovers were the political targets**

If the lovers were the intended targets of harm, it seems reasonable to expect that their names and consequences would have been the focus of the historical record. Instead, we find that they all but disappear. In those cases where the adulterers are named, information on their subsequent careers is lacking and an argument from silence is risky in the extreme. They seem to have been relatively unimportant to the main theme of the historians and, of course, men were never expected to be chaste, only to exercise their lust with appropriate women. Their sin was not about sex, it was about poor judgment in the choice of a sexual partner.

On the other hand, the adulterer was the man who, if convicted, paid the biggest price. The convicted lover would lose half his property and be exiled to an island (*relegatio*). Whether he was the intended target or was just collateral damage, his penalty was a heavy one. The financial penalties, which could be large, were secondary to the exile. Any politician would view exile with horror, as it would most likely be the end of his career. In the case of Paulina, her lover Decius Mundus, a prominent knight, seems to have been punished under the Julian adultery law.<sup>322</sup> After his adultery with Paulina was made known, he was sentenced to exile.<sup>323</sup> There is no word on any financial component to his punishment, but certainly any hopes for a political career would have ended; after this incident, he disappears from the historical record. This case, while having no overt political overtones, is a clear example where the adulterer is actually the target of harm because his duplicity enraged his accusers whereas the adulteress Paulina was viewed mainly as a victim. Appuleia Varilla's lover Manlius was convicted and he was forbidden to reside in Italy or

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<sup>322</sup> PIR<sup>2</sup> D 26; Jos. *AJ* 18.3.65–84, esp. at 79–80; Garnsey (1970) 22–23.

<sup>323</sup> Jos. *AJ* 18.3.80; Mundus' accomplices Ide (his freedwoman) and the priests of Isis were crucified, 18.3.79.

Africa.<sup>324</sup> Manlius appears nowhere else in the historical record, so if he had political ambitions, they never reached fruition either before or after the adultery. The younger Aemilia Lepida's lover was a slave, and was therefore not worth the effort of a full prosecution.<sup>325</sup>

Julia Livilla, sister of Caligula, was condemned for adultery twice, the first time accused with her sister Agrippina and their lover M. Lepidus in 39, and the second time accused with Seneca in 41. Seneca was exiled.<sup>326</sup> Lepidus, on the other hand, was executed; both sisters were banished. Lepidus had been a great favourite of Caligula's, and was married to the beloved Drusilla. His sister Aemilia Lepida had already been destroyed by charges of adultery with a slave. His position as friend and confidante of Caligula earned him no favour in the senate – he could very well have been the subject of political machinations for this reason.<sup>327</sup>

There is sufficient evidence in the case of Albucilla in AD 37 to suggest that her lovers were the targets of the charges of *impietas in principem* and adultery. Six senatorial men were implicated, of whom four suffered penalties. Accused as *conscii et adulteri* (co-conspirators and adulterers) were three consulars: L. Arruntius, C. Vibius Marsus, and Gn. Domitius Ahenobarbus.<sup>328</sup> Accused as *stupratorum eius ministri* (accomplices of her *stuprum*) were Carsidius Sacerdos, Pontius Fregellanus, and Laelius Balbus.<sup>329</sup> In order to understand the significance of this case, we must first know who these men were.

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<sup>324</sup> PIR<sup>2</sup> M 151; Tac. *Ann.* 2.50.4.

<sup>325</sup> Tac. *Ann.* 6.40.4.

<sup>326</sup> Dio 60.8.5; Seneca was recalled from exile in 49, ran foul of Nero and retired in 62, then died in 65.

<sup>327</sup> Lepidus was a member of an illustrious family, see PIR<sup>2</sup> A p. 57 (Groag) stemma Lepidorum.

<sup>328</sup> Tac. *Ann.* 6.47.2.

<sup>329</sup> Tac. *Ann.* 6.48.4.

L. Arruntius claimed descent from both Sulla and Pompeius Magnus. He had been consul with M. Lepidus in AD 6 and had adopted a son, L. Arruntius Furius Camillus Scribonianus who went on to be consul in AD 32 with Gn. Domitius Ahenobarbus.<sup>330</sup> Augustus, in his famous death-bed assessment of possible successors, described Arruntius as *non indignum et, si casus daretur, ausurum* (not unworthy and, if the chance were given, he would dare it.)<sup>331</sup> Tacitus then immediately points out that all but one of the men mentioned in this list were later trapped by charges set up by Tiberius.<sup>332</sup> At this same time, Tacitus notes that, although Arruntius had offended the new emperor with his frank speech, Tiberius felt no inveterate anger toward Arruntius, but still suspected him for other reasons.<sup>333</sup>

Tacitus gives no indication of Tiberius' motives in his description of Arruntius' role in Albucilla's case more than twenty years later, but his earlier statement that Tiberius engineered the destruction of his potential rivals seems plausible. The praetorian prefect Macro, firmly in Caligula's camp in these last few months of Tiberius' life, was also known to be hostile to Arruntius, and Tacitus suggests that there may have been considerable fabrication of evidence because of it.<sup>334</sup> Since Arruntius had been a potential rival for Tiberius in 14, he could still have been a dangerous rival to Caligula's succession in 37. If these were indeed the motives behind Albucilla's case, it definitely qualifies as political, and

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<sup>330</sup> PIR<sup>2</sup> A 1140.

<sup>331</sup> PIR<sup>2</sup> A 1130; Tac. *Ann.* 1.13.2.

<sup>332</sup> The other men named in this conversation were M. Lepidus, Gallus Asinius, and maybe Gn. Piso instead of L. Arruntius; only Lepidus was not eventually brought up on charges, *Ann.* 1.13.2–3.

<sup>333</sup> *Post quae L. Arruntius haud multum discrepans a Galli oratione perinde offendit, quam<quam> Tiberio nulla vetus in Arruntium ira: sed divitem promptum, artibus egregiis et pari fama publice, suspectabat. Ann.* 1.13.1.

<sup>334</sup> *...nullaeque in eos imperatoris litterae suspicionem dabant invalido ac fortasse ignaro ficta pleraque ob inimicitias Macronis notas in Arruntium. Ann.* 6.47.3. On the topic of motivation behind this case, P. Forsyth (1969) 204–207 is especially useful.

the adulterer was the target. Having assessed the situation and his chances of surviving unscathed, Arruntius opened his veins.<sup>335</sup>

Arruntius' son suffered no obvious political consequences from the criminal accusations against his father and his subsequent suicide. Camillus Scribonianus had an illustrious career: after his consulship in 32 with Gn. Domitius Ahenobarbus, he was *legatus pro praetore* in Dalmatia and Illyricum under Gaius Caligula, and *legatus* of Dalmatia again under Claudius.<sup>336</sup> His career (and life) ended after an abortive rebellion against Claudius in company with Annus Vinicianus and A. Caecina Paetus.<sup>337</sup> His wife Vibia, likely a daughter of Vibius Marsus (below), was banished.<sup>338</sup> At any rate, the charges against his father had not prevented him from attaining and successfully completing high political office; Scribonianus' downfall was caused by his own actions.

Also charged was C. Vibius Marsus, *cos. 17, procos. Africae 27–30*.<sup>339</sup> Marsus was married to Laelia, daughter of D. Laelius Balbus (one of the men accused as *ministri* in this case) and father-in-law to P. Plautius Pulcher (grandson of Urgulania, who had been Livia's best friend, and brother of Plautia Urgulanilla, wife of Claudius).<sup>340</sup> He escaped prosecution when Tiberius died shortly after the adultery charges were laid. Marsus went on to be legate of Syria from approximately AD 42 to 47.<sup>341</sup> *Legatus Syriae* was a highly prestigious position, an imperial appointment central to stability in the easternmost portions of the empire and in control of four legions.<sup>342</sup> This was not a job given to someone whose

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<sup>335</sup> Tac. *Ann.* 6.48.3.

<sup>336</sup> CIL 3.9864a = ILS 5950;

<sup>337</sup> Suet. *Claud.* 13; Dio 60.15.3; Pliny *Ep.* 3.16.7; Tac. *Ann.* 12.52; *Hist.* 1.89.

<sup>338</sup> Tac. *Ann.* 12.52; Pliny *Ep.* 3.16.9; Vibia, no. 55.

<sup>339</sup> PIR<sup>1</sup> V 388.

<sup>340</sup> PIR<sup>2</sup> P 472; the marriage between his sister Plautia Urgulanilla and the future emperor Claudius was of relatively brief duration, ending in perhaps AD 27, PIR<sup>2</sup> P 488.

<sup>341</sup> Jos. *AJ* 19.316; 20.1; Tac. *Ann.* 11.10.1.

<sup>342</sup> Tac. *Ann.* 4.5.2.

loyalties or character were doubtful. The accusations brought against him in connection with Albucilla had not harmed his career or reputation in any substantive way.

The third man charged as Albucilla's lover was Gn. Domitius Ahenobarbus, *cos.* 32, husband of Agrippina the Younger (therefore grandson-by-marriage of Tiberius) and father of Nero.<sup>343</sup> Domitius also escaped prosecution when Tiberius died. Sometime during the reign of Caligula he was inducted into the priestly college of the Arval Brethren.<sup>344</sup> The remainder of his life has not been transmitted in the historical record; he died in 40/41.<sup>345</sup> The criminal accusations against him had no impact on the rapid advancement of his son Nero – advancement due without doubt to the relentless actions of the boy's mother, Agrippina, but not hindered or rendered impossible by taint from the father's actions.

Accused as accomplices (*stuprorum eius ministri*) were Carsidius Sacerdos,<sup>346</sup> Pontius Fregellanus,<sup>347</sup> and Laelius Balbus.<sup>348</sup> The first two are relatively unknown. Sacerdos is mentioned only twice in the *Annales* and (probably) named as *praetor urbanus* for AD 27;<sup>349</sup> as punishment for his involvement in this case, he was deported to an island.<sup>350</sup> Even less is known about Pontius Fregellanus. He might be the same man as the Pontilius Fregellanus, consul, commemorated in CIL 3.8715, but he is otherwise completely absent from the historical record.<sup>351</sup> As punishment for his involvement with Albucilla, he was

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<sup>343</sup> PIR<sup>2</sup> D 127. Domitius and Agrippina had married in 28 (Tac. *Ann.* 4.75); Nero was born in December 37 (Suet. *Nero* 6.1); see also Barrett (1996) 234, Appendix 3.

<sup>344</sup> One inscription suggests that his induction occurred as early as 27 (CIL 6.2024), but the majority give later dates: CIL 6.2025 = 32342 (AD 33); 6.2027 = 32343 (AD 37?); 6.2028 = 32344 (AD 38); 6.32346 (AD 39).

<sup>345</sup> Suet. *Nero* 6.2.

<sup>346</sup> PIR<sup>2</sup> C 451.

<sup>347</sup> PIR<sup>2</sup> P 800.

<sup>348</sup> PIR<sup>2</sup> L 48; Rutledge (2001) 242–243.

<sup>349</sup> Tac. *Ann.* 6.48; and 4.13 where he was absolved from providing aid to Tacfarinas. *II.* 13.1.24 (p. 299) reads: [*Cars*]idius Sa[*cerdos urbanus* / *Se*]x Papini[*us Allenius peregrinus*].

<sup>350</sup> Tac. *Ann.* 6.48.4.

<sup>351</sup> CIL 3.8715 = ILS 960: *C. Pontilio Fregellano cos patrono d d publice.*

stripped of his senatorial rank.<sup>352</sup> There is no hint why one man was deported and another was merely demoted in rank.

Laelius Balbus suffered these same punishments of demotion and exile.<sup>353</sup> He also had family links to the other members of this group: his sister Laelia was married to C. Vibius Marsus. (See Appendix 2.2.) In his public life, he was an orator, delivering a speech in defense of Volusenus and another as prosecutor against Acutia on charges of *maiestas*.<sup>354</sup> As a result of his general unpopularity, Balbus' sentence delighted his peers, but his senatorial rank was later restored by Caligula and his son was suffect consul in 46.<sup>355</sup> Since Balbus' son attained the consulship, we may conclude that the father's crimes had no impact on the son's career. Whatever damage was done to Balbus' career as a result of this prosecution was neither permanent nor permanently injurious to his son's political aspirations.

It seems unlikely that a Roman would have believed that a woman was the target of these charges rather than the six senatorial men. On the other hand, Albucilla was the widow of one of Sejanus' associates and likely generated ill-will all on her own. She seems to have been the nexus of a group of powerful men, of whom Arruntius and Ahenobarbus had the potential to be serious rivals to Caligula's succession.<sup>356</sup> Ahenobarbus was a particular threat since he was related to Tiberius by marriage in the same degree of closeness that Caligula was by birth.<sup>357</sup> None of these men had done anything that generated enough evidence to

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<sup>352</sup> Tac. *Ann.* 6.48.4.

<sup>353</sup> Tac. *Ann.* 6.48.4: *et eadem poenae in Laelium Balbum decernuntur*. The plural *eae poenae* presumably refers to both punishments rather than just the latter (demotion).

<sup>354</sup> Quint. 10.1.24; Tac. *Ann.* 6.47.1; Acutia, no. 1.

<sup>355</sup> Rutledge (2001) 242; Gallivan (1978) 408–409.

<sup>356</sup> On Arruntius in particular, see Syme (1986) 268–269.

<sup>357</sup> Bauman (1992) 164 points out that this group did not have the intention of killing the moribund Tiberius. It seems plausible, nonetheless, that their collective influence could have posed a challenge to Caligula's accession.

attack them directly in a political way (or via treason charges), but by ensnaring them all in adultery charges, they were sufficiently dealt with. It was politically expedient to attack Albucilla as the nexus of this threatening political association and any damage to her seems to have been beside the point. After Tiberius' death and Caligula's smooth succession, Marsus and Ahenobarbus were allowed to escape punishment and indeed Marsus went on to continued political success.

In the above-mentioned cases in which the names of the adulterers have been preserved, only two cases stand out where the male lovers seem to have been the targets of the charges. While nearly all the adulterers who were named were also punished, Paulina's lover Mundus was clearly the target of the charges in that case and Albucilla's lovers were the people against whom a political score was settled. M. Lepidus, lover of both Livilla and Agrippina, was destroyed by Caligula and was arguably the target of the attack. Even when the lovers were the targets of the charges, as argued, not all were irreparably harmed by the accusations made against them; when the dust settled, Balbus, Marsus and Domitius continued their public careers.

## **Conclusion**

The examination of the sixteen cases in which women were charged with adultery leads to several conclusions. There were four essential motivations for bringing a prosecution (a) justice or revenge; (b) money; (c) power and politics; (d) zealous morality. The last would particularly apply in adultery prosecutions whereas the first might not. Some women had obvious political connections through their families (Appuleia Varilla, Claudia Pulchra, Octavia, Julia Livilla and Agrippina) and may have been involved in power

brokering behind the scenes for men of their families or social circles. Yet the question remains as to why any society would decide to use adultery charges as a political weapon. Garnsey points out that the adultery trial would not have been an effective weapon of political intrigue if the senate had not been interested in the punishment of conspicuous moral lapses in themselves.<sup>358</sup> Good morality was a political boost; bad morality was taken to mean that a person who could not govern himself (or his family) would be unable to govern the state.<sup>359</sup> Almost all cases of adultery referred to in Tacitus and Suetonius involved defendants of senatorial stock (so far as can be ascertained), thus suggesting that emperors were primarily concerned about the morals of the nobility.

When considering whether the actual targets of political harm were the male family members of the female defendant, the defendants themselves, or their male lovers, we must conclude that there is at least one case that fits into each category. Three women (Maria, Junia Calvina, and Junia Lepida) were caught up in accusations clearly aimed at their menfolk and were harmed almost incidentally. No argument can be made on a more subtle level that the disgrace suffered by the other convicted women caused political damage to their male family members. In the second category, Julia Agrippina, Julia Livilla, and Octavia stand out as having themselves been targets of political harm. The prosecution of the younger Aemilia Lepida, although there was no target of harm other than the defendant herself, may have been motivated on exclusively moral grounds rather than political ones. The final category discussing the targets of political harm, the female defendants' male lovers, bears the richest fruit. These were the men, who, when convicted, suffered the most

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<sup>358</sup> Garnsey (1970) 22.

<sup>359</sup> Dio 56.40.1: Augustus' eulogy read by Tiberius: "Who was there who could rule better than Augustus even his own house, to say nothing of so many other human beings?" 56.40.6: "Wantonness on the part of his next of kin he followed up relentlessly, but the offences of others he treated with human kindness."

direct injury, both political and personal. A total of ten male lovers are named in four trials and only two escaped penalty; fully half suffered various forms of exile, a grave injury for a politician, and only Seneca is known to have been recalled and to have resumed his life in Rome.

It comes as no particular surprise that men were the targets of political harm when the entire Roman political system was operated by men. Nonetheless, nearly all the women in these cases were involved by their own free choices and a good many seem to have been politically minded and possibly engaged in behind-the-scenes power brokering. Morality must always be a factor in evaluating accusations of adultery, and the fact that the only cases available for our perusal are those of elite women in the midst of Rome's political scene may tend to obscure moral motivations and highlight possible political ones. If this is a difficult separation for us, it was no less difficult for the Romans themselves.

## Chapter 2, part 2

### Women as defendants on charges of *maiestas*

There can be no question about the inherently political nature of *maiestas* charges: treason is never apolitical. This chapter considers women's treasonous activities as discovered through *maiestas* charges lodged against them. Charges were taken seriously after activities such as consulting astrologers or uttering insults about the emperor (or deified emperor) but did Roman men really believe (or perceive) that women were politically threatening? What other treasonous activities were women engaged in? From possibly innocent women who were convicted alongside their husbands to imperial women who could sway the allegiance of armies and scheme to topple emperors, many women faced accusations of *maiestas* in the Julio-Claudian era, and all such charges were taken very seriously.

As background to the discussion about women charged with *maiestas*, a brief history of the *leges de maiestate* is in order. Treason laws are known from the first decade of the last century BC when a *lex Appuleia de maiestate* reacted to and devised punishment for the incompetence of the generals who had mishandled a campaign against hostile Germanic tribes, and a *lex Varia* condemned those who had assisted and encouraged the Italian tribes against Rome in the Social War.<sup>360</sup> Certainly by the time of Sulla, a permanent *quaestio de*

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<sup>360</sup> Robinson (1995) 75; Lear (1965) 18.

*maiestate* was in operation.<sup>361</sup> In about 88 BC, a *lex Cornelia de maiestate* was enacted by Sulla to prevent army commanders from taking their armies out of their provinces.

Caesar replaced and modified the Cornelian law with a *lex Julia de maiestate* that addressed unspecified crimes.<sup>362</sup> There may have been a further revision of the law by Augustus though, confusingly for later historians, its name remained the same.<sup>363</sup> The latest version of the law included activities defined as *laesa maiestas* (injured *maiestas*) generally smaller attacks on the imperial majesty such as verbal abuse, slander, and non-physical threats like consulting astrologers about the imperial family.<sup>364</sup> Of course, the *lex* still protected the state against ambitious army commanders and from threats against the security of the state (also called *perduellio*), but it also began to protect the person, position, and dignity of the emperor against threats as well.<sup>365</sup> The crimes addressed in this law were not precisely defined, nor was the new regime it protected. As the new monarchic order gradually defined itself, the definitions of treasonous activity against it were also clarified.<sup>366</sup> The statutory penalty according to the *lex Julia de maiestate* is believed to have been *aquae et ignis interdictio*.<sup>367</sup> In practice, however, because of the legal authority exercised by the

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<sup>361</sup> Bauman (1967) 45–46 suggests it was set up by the *lex Appuleia*; Lear (1965) 18 argues that it was a Sullan innovation and part of the *lex Cornelia judiciaria* of 81 BC.

<sup>362</sup> Levick (1979) 364–365; Bauman (1967) 155.

<sup>363</sup> Bauman (1967) 273; Allison and Cloud (1962) 727–730 argue persuasively that there was no Augustan *lex Julia de maiestate* and that the known expansions of interpretation of *maiestas* were adequately provided for in the Caesarian law.

<sup>364</sup> Bauman (1967) 68–70 argues that each law submitted a further category to the jurisdiction of the *quaestio maiestatis* and that none of the laws was ‘general’ in the sense that it aimed at a comprehensively addressing all forms of *maiestas*.

<sup>365</sup> The term *maiestas* is much broader in scope than *perduellio* and seems to have all but replaced the use of the latter in the principate, Lear (1965) 26; Allison and Cloud (1962) 730 n. 1; Dig. 48.4.11 (Ulpian). Even when its sense is implied, as in the case of Cn. Piso in 20, the word itself is not used, Bauman (1974) 109–110; cf. Lear (1965) 28.

<sup>366</sup> On the development and definition of the treason law under Tiberius, its period of most pronounced activity, see Levick (1976) 180–200.

<sup>367</sup> Cic. *Phil.* 1.9.23; Tac. *Ann.* 3.50.4; Paul. *Sent.* 5.29.1; Bauman (1974) 11; Lear (1965) 34; Allison and Cloud (1962) 723. Cf. Dig. 48.19.28.14 (Callistratus); Dig. 48.19.24 (Modestinus); Levick (1979) 362 argues that the penalty laid down in the law was death.

senate and emperor, punishments included interdiction (exile), death, nullification of the defendant's will, and confiscation of property.<sup>368</sup>

Several features particular to treason trials require comment. First, in an exception to the usual rule, the slaves and freedmen of a defendant charged with *maiestas* could be tortured for testimony against their master or mistress.<sup>369</sup> This anomaly was also in effect for cases of adultery. Second, there were rewards for successful convictions, paid out of the property of the convicted, which led to the rise of *delatores*, a much-hated category of informers motivated more by greed than nobility of purpose. These circumstances led to serious abuses, exacerbated by the ill-defined nature of the crime.<sup>370</sup> Third, in cases of *maiestas*, a defendant's suicide prior to conviction did not halt trial proceedings, so posthumous convictions and penalties were possible.<sup>371</sup> The early-third-century jurist Ulpian notes the following:

*Is, qui in reatu decedit, integri status decedit: extinguitur enim crimen mortalitate. nisi forte quis maiestatis reus fuit: nam hoc crimine nisi a successoribus purgetur, hereditas fisco vindicatur. plane non quisque legis Iuliae maiestatis reus est, in eadem condicione est, sed qui perduellionis reus est, hostili animo adversus rem publicam vel principem animatus: ceterum si quis ex alia causa legis Iuliae maiestatis reus sit, morte crimine liberatur.*

He who dies while under accusation dies with his status unimpaired; for the charge is extinguished by death. Unless perchance he has been charged with treason; for with this offense his inheritance is claimed by the imperial treasury, unless he is cleared by his successors. Clearly, not everyone charged with treason under the *lex Julia* is on

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<sup>368</sup> Bauman (1996) 61–64; Robinson (1995) 78; Jones (1972) 94; Lear (1965) 34–35; Allison and Cloud (1962) 724–727 point out that modern historians are more concerned about the exact statutory penalties than the Romans were. Pliny *Ep.* 4.9.17: *senatui licet et mitigare leges et intendere*; “It is permitted to the senate to either soften the laws or to increase them [i.e. with reference to penalties].”

<sup>369</sup> This was permitted by a legal sleight-of-hand: the slaves were sold to the imperial treasury, then questioned and gave information, therefore, about a former master, not a current one; Tac. *Ann.* 2.30.3; Dig. 48.4.7.2 (Modestinus); 48.18.5 (Marcian). Rutledge (2001) 88; Bauman (1974) 44–45; 55–56.

<sup>370</sup> Rutledge (2001) 88; Lear (1965) 19–20; Levick (1976) 183–184, citing Cic. *ad Fam.* 3.11.1, observes Cicero's opinion that it was “unsporting to accuse a man of *maiestas* because it is unclear what constitutes the offence.”

<sup>371</sup> For example, Libo Drusus (16) and Cn. Piso (20) were both convicted after their suicides; from the present study, see also Sextia and Antistia Pollitta (no. 52).

the same footing, but he who is charged with *perduellio*, animated by a hostile spirit against the state or the emperor [is liable even after death]; he who is charged under the *lex Julia* on treason on other grounds is cleared of the charge on his death.<sup>372</sup>

The full implications of this passage lead well beyond the scope of the present study,<sup>373</sup> only two statements will receive comment. Since treason charges were not necessarily erased by the death (whether by chance or by suicide) of the defendant, and are the only charges known as having this feature, it is possible to extrapolate that any trial that continues after the death of its defendant must be a treason trial. Furthermore, this excerpt shows that the practice of nullification of the defendant's will and the confiscation of his property even after his death became a standard part of the penalty for a treason conviction from at least the early third century, although it was not routinely applied by the Julio-Claudians.<sup>374</sup>

Finally, proceedings could be conducted by the emperor *in camera*, using a *cognitio extra ordinem* process, thereby leading to a belief that members of the imperial household (especially wives or freedmen) were heavily involved in many trials.<sup>375</sup> This *extra ordinem* process was an innovation of the principate and was used on rare occasions in the early decades of the empire and with increasing frequency thereafter.<sup>376</sup> The flexibility of this process allowed trials to proceed on acts not specifically encompassed in the public criminal laws, although in practice most crimes continued to be classified under the established rubrics.<sup>377</sup> With reference to *maiestas* specifically, the extraordinary process allowed for the refinement and definition of *maiestas* in light of the shifting perceptions of the position of emperor, and for the justiciability of acts not previously viewed as criminal. That these acts

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<sup>372</sup> Dig. 48.4.11 (Ulpian).

<sup>373</sup> For discussion of this passage, see Allison and Cloud (1962) 730 n. 1; Rogers (1959); Chilton (1955).

<sup>374</sup> Tac. *Ann.* 6.29.1; see also Dio 58.15.4. Rutledge (2001) 43; Griffin (1997) 262.

<sup>375</sup> On the emperor's jurisdiction and exercise of *cognitio*, see Robinson (1995) 9–11.

<sup>376</sup> Bauman (1996) 50, and generally 50–76; Jones (1972) 94, and on the procedure of *extra ordinem* cases, 113–114.

<sup>377</sup> Bauman (1996) 50.

would come to the personal attention of the emperor is not surprising, nor that they would be subsumed under his imperial jurisdiction. Since *cognitio extra ordinem* trials did not always proceed under clearly specified rubrics, our sources may sometimes be exonerated from our accusations of obtuseness or inaccuracy about the charges faced in a trial.

The practice of having women stand trial for treason was an innovation of the reign of Tiberius, and sixteen women are known to have faced accusations of *maiestas* during his reign (see Appendix 1). Suetonius reveals that there were more about whom we know nothing: *nemo punitorum non in Gemonias abiectus uncoque tractus, viginti uno die abiecti tractique, inter eos feminae et pueri*; “The bodies of those punished were hurled onto the Gemonian stairs and dragged with a hook [to the Tiber], as many as twenty in one day including women and children.”<sup>378</sup>

A total of twenty-four trials involving more than thirty women can be identified as proceeding on charges of *maiestas* from the reign of Augustus to that of Nero, although naturally there is not the same degree of certainty about the charges in every case. Thirteen cases proceeded on the basis of *maiestas* charges alone.

### **Defendants charged with *maiestas* alone**

Sosia Galla stands as the first woman in the principate definitively convicted under the *lex Iulia de maiestate*. She and her husband Gaius Silius faced *repetundae* and *maiestas* charges in 24 ostensibly brought by the consul L. Visellius Varro, but arranged by Sejanus and Tiberius.<sup>379</sup> Sosia was accused as an accessory (*socia*) to her husband’s crimes. The trial in the senate was conducted, according to Tacitus, on the treason charges alone, even

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<sup>378</sup> Suet. *Tib.* 61.4.

<sup>379</sup> Tac. *Ann.* 4.19.

though he claims the extortion charges would have stuck.<sup>380</sup> Silius foresaw his conviction and committed suicide. Sosia's trial continued and concluded with her conviction and exile on the motion of Asinius Gallus. A debate followed on the disposition of her property and M. Lepidus ensured that the law was followed in granting a quarter to her accusers and preserving the remainder for her children.<sup>381</sup>

The nature of the *maiestas* was described as their complicity with the Gallic chieftan Sacrovir and extending the length of the war, but Agrippina later claimed that Sosia had been destroyed because of their friendship. Simple friendship with Agrippina would not have supported an accusation of *maiestas*. Sejanus had warned Tiberius that Agrippina had a political following (the *partes Agrippinae*) that was on the verge of tearing the country apart. Agrippina's relationship to Germanicus gave her a special claim to the allegiance of the Germanic legions, supported by the backing of Silius who had commanded them as well. There may have been more to the prosecution of Silius and Sosia than Tacitus concedes.<sup>382</sup>

In the same year, a transparently fabricated charge of *maiestas* was brought by Firmius Catus against his own sister. Catus had established a reputation as an informer when he, along with a number of other disreputable informers, initiated charges against Scribonius Libo Drusus in 16.<sup>383</sup> When he accused his own sister, however, the clear lack of evidence resulted in charges of *calumnia* (malicious prosecution) against Catus.<sup>384</sup> He was convicted,

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<sup>380</sup> Tac. *Ann.* 4.19.4; Rogers (1935) 77 interprets Tacitus' statement to mean that their guilt on the *repetundae* charges was admitted and therefore the trial needed only to address the question of treason.

<sup>381</sup> Tac. *Ann.* 4.20.2; Bauman (1992) 145; the M. Aemilius Lepidus here was the consul of 6 and the man famously assessed by Augustus as *capax imperii*.

<sup>382</sup> Rutledge (2001) 142; Barrett (1996) 34.

<sup>383</sup> PIR<sup>2</sup> F 158; Rutledge (2001) 232; Rogers (1935) 13–20. Libo's other accusers were L. (or C.?) Fulcinius Trio, Fonteius Agrippa, C.(?) Vibius Serenus and unnamed others.

<sup>384</sup> On *calumnia*, see Berger (1953) 378–379

expelled from the senate and exiled.<sup>385</sup> Catus' sister, exonerated and free, disappears again from the historical record.

One of the most serious treason trials of Tiberius' reign was the one that saw his daughter-in-law (Vipsania) Agrippina and his grandson (and heir-apparent) Nero convicted in 29.<sup>386</sup> Criminal proceedings against Agrippina began only after Sejanus had already succeeded in removing Agrippina's friends and supporters.<sup>387</sup> An earlier attack in 27 based on charges of immorality and arrogance had resulted in house arrest for Agrippina and Nero; she was probably held at a villa in Herculaneum.<sup>388</sup> The soldiers assigned to guard them reported their messages, visits, and conversations to Sejanus; he in turn planted spies in the guise of supporters to encourage Agrippina and Nero to flee to the armies in Germany or to embrace the image of *divus* Augustus in the forum and call on the people and senate for help.<sup>389</sup> These allegations formed the basis for charges against them, very serious accusations – indubitably *maiestas*, particularly because of the threat of flight to the armies in Germany. Tiberius had withdrawn to Capri more than two years earlier, so his involvement in the trial was peripheral. He sent instructions for his friend Avillius Flaccus to prosecute

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<sup>385</sup> Tac. *Ann.* 4.31.4.

<sup>386</sup> See Appendix 2.1. Livia's protection has been proposed as a reason for the lenient treatment of Agrippina in 27, and her death in 29 then allowed Tiberius to implement a harsher exile for his troublesome daughter-in-law – deportation to a small island. Livia's protection (if it existed at all) could only have been passive as she is known to have detested her grandson's wife: Tac. *Ann.* 1.33; 2.43; 4.12. Seager (2005) 176.

<sup>387</sup> For example Sosia Galla, Claudia Pulchra and her son Quintilius Varus, Titus Sabinus. Sejanus had also fomented distrust between Tiberius and Agrippina, as illustrated by the emperor's offer of an apple at dinner – spurned by Agrippina because there were suspicions of poison, Tac. *Ann.* 4.54.

<sup>388</sup> Sen. *de Ira* 3.21.5; Barrett (1996) 37. The background to the chronology followed in this discussion is laid out more fully in the Prosopographical Survey, Agrippina, no. 6. On the trial in 27, see Tac. *Ann.* 5.3.1; Suet. *Cal.* 10.1; Pliny *HN* 8.145; Vell. Pat. 2.130.4–5. The theory of two trials was initially suggested by Meise (1969) 237–244, followed by Levick (1976) 167–170, Bauman (1992) 151, Barrett (1996) 36, and Seager (2005) 176–177.

<sup>389</sup> Tac. *Ann.* 4.67.3–4.

Agrippina and Nero, for which service he was later made prefect of Egypt.<sup>390</sup> Both defendants were convicted.

More is known about Agrippina's punishment than about her trial. She was exiled to Pandateria, an island off the coast near Naples.<sup>391</sup> When she and Nero were moved, they travelled in closed litters under heavy guard, a measure meant to prevent the traitors from contacting supporters; Nero was even declared an enemy of the state.<sup>392</sup> She was a non-compliant prisoner – perfectly in keeping with her personality – and suffered beatings and force-feedings, the first ill-treatment recorded for an exile of the imperial family. Ultimately, however, her determination to starve herself to death was successful and she died on 18 October 33, two years to the day after Sejanus died.<sup>393</sup> Although she did not suffer the additional posthumous penalty of the erasure of her name in public records, a practice that modern scholars call *damnatio memoriae*, her birthday was added to the days of ill-omen.<sup>394</sup> Tiberius boasted of his clemency because he had not strangled her and thrown her body on the Gemonian Stair, a traditional punishment for someone convicted of the most serious treasonous offenses.<sup>395</sup>

The political situation surrounding Agrippina's trials is complex and our understanding is hindered by the fragmented accounts of Tacitus and Dio for the critical years of 27–31. Sejanus' interest was in Tiberius' succession and therefore he was fomenting trouble against Agrippina and her children, the eldest of whom, Nero and Drusus,

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<sup>390</sup> Philo in *Flacc.* 3.9; he was prefect of Egypt from around 32 until he was recalled to Rome and prosecuted under Caligula; Rutledge (2001) 201–202. Levick (1976) 206 comments on the friendship between Tiberius and Flaccus.

<sup>391</sup> Agrippina's mother Julia (no. 27) had already been exiled to Pandateria in 2 BC; she died in exile.

<sup>392</sup> Suet. *Tib.* 54.2; 64; *Cal.* 7; Pliny *HN* 8.145.

<sup>393</sup> Tac. *Ann* 6.25.1; Suet. *Tib.* 53.2, *Cal.* 15.1.

<sup>394</sup> Suet. *Tib.* 53.2; M. Antonius' birthday was similarly decreed ill-omened (Jan. 14), EJ p. 45.

<sup>395</sup> Suet. *Tib.* 53.2; Sejanus, his family, and his followers, for example, suffered this posthumous penalty; Suet. *Tib.* 61.4.

were directly in line to succeed to the imperial throne. Tiberius himself had reason to dislike Agrippina, and in fact showed no inclination to reduce her suffering after the death of Sejanus.<sup>396</sup> The fact that Agrippina's son Nero was tried and convicted at the same time as his mother precludes any suggestion that the charges against her were intended to harm her son or his political career. Charges were soon laid against her second son Drusus as well; he was declared a public enemy, as his brother Nero had been, and was detained in a dungeon under the imperial residence at Rome. He too died of starvation in 33, a few months before his mother.<sup>397</sup> Agrippina's surviving children were Gaius Caligula and her three daughters Agrippina, Drusilla, and Livilla.<sup>398</sup>

At the height of his power, Sejanus had successfully destroyed Agrippina, Nero, and Drusus, but when he himself was toppled from power in October 31, his family suffered as well. His daughter Aelia Junilla was indicted and convicted in a senatorial trial along with her brother Capito in late November or early December of 31; their mother Apicata had committed suicide and brother Strabo had been executed within a week after their father.<sup>399</sup> Although the charges are not specified, there can be no doubt that the basis for their prosecution was *maiestas*. After her conviction, Junilla was executed by the *tresviri capitales*. Tacitus, Suetonius, and Dio all preserve the horrifying detail that she was raped before her execution because it was not acceptable to execute a virgin.<sup>400</sup> In the ensuing weeks, many more were executed: extended family members, and imprisoned associates,

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<sup>396</sup> Tac. *Ann.* 6.23–24 reports a rumour that Tiberius might reconcile with Agrippina and Drusus, but his reaction shows his unabated anger: he refreshed allegations against Drusus and publicized the names of slaves whom he had employed to beat his grandson.

<sup>397</sup> Tac. *Ann.* 6.23; Suet. *Tib.* 54.2; *Cal.* 7.

<sup>398</sup> Two of her three daughters would eventually face prosecutions: Agrippina, no. 5, and Livilla, no. 34.

<sup>399</sup> EJ p. 42; a lacuna in the *fasti* leaves the precise date of their execution uncertain, though it was certainly between the Ides of November and the Ides of December. Rogers (1935) 147–148 confirms the location of the trial. On the last days of Sejanus and the immediate aftermath of his execution, see Seager (2005) 180–188 and Levick (1976) 177–179.

<sup>400</sup> Tac. *Ann.* 5.9.2; Suet. *Tib.* 61.5; Dio 58.11.5.

including women and children.<sup>401</sup> It is likely to this time period that we should attribute Suetonius' statement that as many as twenty people a day – including women and children – were executed and their bodies were thrown on the Gemonian Stairs.<sup>402</sup>

Also caught up in the fallout after Sejanus' death was Livilla, widow of Tiberius' son Drusus Caesar.<sup>403</sup> She was brought to trial in 31 after Sejanus' ex-wife Apicata wrote a damning letter to Tiberius, revealing that he and Livilla had conspired to murder Drusus by administering poison through the agency of two slaves, Eudemus and Lygduus.<sup>404</sup> Apicata wrote the letter within days after Sejanus' execution on 18 October 31; she delivered it and committed suicide two days after their eldest son was executed.<sup>405</sup> Although modern scholars are convinced that she did not give an accurate account, Tiberius took her information very seriously.<sup>406</sup> For eight years he had believed that his son died a natural death and, now in shock over this newly discovered betrayal, he reacted severely. The two slaves were tortured to provide corroboration and their testimony was used against Livilla during her trial in the senate.<sup>407</sup> The charge against her is not recorded, and notwithstanding allegations of adultery, the official charge must have been *maiestas*.<sup>408</sup> She was convicted

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<sup>401</sup> Tac. *Ann.* 6.19.2; Dio 58.14.1.

<sup>402</sup> Suet. *Tib.* 61.4.

<sup>403</sup> Drusus (husband): died in 23, PIR<sup>2</sup> I 219. There is some inconsistency about Livilla's name: Tacitus refers to her as Livia, but Suetonius and Dio call her Livilla. In secondary studies, she is most frequently called Livilla to distinguish her from her grandmother Livia. Technically, her name was perhaps Claudia Livia Julia, so Raepsaet-Charlier (1987) and Groag, PIR<sup>2</sup> L 303, though this was not certain enough to merit her entry under PIR<sup>2</sup> C.

<sup>404</sup> Tac. *Ann.* 4.11.2; see also Apicata, no. 11.

<sup>405</sup> EJ p. 42, *Fasti Ostiensis*.

<sup>406</sup> Seager (2005) 155–156; Martin (1981) 235 n. 31; Levick (1976) 161–162. How could Apicata, divorced eight years previously, a few months before Drusus' death, have known what was done (presumably in strictest secrecy) by Sejanus and Livilla? And why would Sejanus have allowed the two complicit slaves to live?

<sup>407</sup> Tac. *Ann.* 4.11.2; the trial narrative would have appeared in the lost portion of book 5 of the Annals (which would have covered the end of 29, all of 30, and most of 31); the few bits of information we can glean from Tacitus were recorded out of annalistic sequence. Book 6 opens, albeit in a fragmentary state, with what is thought to be the very end of Livilla's trial.

<sup>408</sup> Rogers (1935) 121 uses the word *perduellio*, but there is no evidence of two categories or degrees of offense under the *lex Iulia de maiestate*. The term *maiestas* is much broader in scope than *perduellio* and seems to have all but replaced the use of the latter in the principate according to Lear (1965) 26; Allison and Cloud

and executed.<sup>409</sup> Even without Apicata's inflammatory letter, Livilla might have been doomed. Her close connection to Sejanus was well known – there was talk of their marrying – and she would plausibly have been accused as complicit.<sup>410</sup>

Livilla is one of only two women in this study to have suffered the posthumous penalty of having one's name and images expunged from public view that modern scholars call *damnatio memoriae*.<sup>411</sup> The senate met early in 32, a few weeks after she had been executed, and “frightening proposals were voiced against her likenesses and memory;” *atroces sententiae dicebantur, in effigies quoque ac memoriam eius*.<sup>412</sup> Sejanus was also subjected to *damnatio memoriae*, and given her connection to the now-reviled prefect, it is perhaps unsurprising that Livilla should have suffered a similar fate.<sup>413</sup>

Even after the fallout from Sejanus' spectacular destruction had subsided, the treason trials continued. Sancia was co-defendant with her brother Considius Proculus on charges of *maiestas* brought by Q. Pomponius Secundus in 33.<sup>414</sup> Although Tacitus describes their demise in a single sentence, he goes on to mention that their accuser is the brother of a

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(1962) 730 n. 1; Dig. 48.4.11 (Ulpian). Even when its sense is implied, as in the case of Cn. Piso in 20, the word itself is not used, Bauman (1974) 109–110; cf. Lear (1965) 28. Regarding the allegations of adultery, see Tac. *Ann.* 4.3.3, Suet. *Tib.* 62.1, and Dio 57.22.2: Livilla committed adultery with Sejanus; Tac. *Ann.* 6.29.4, Dio 58.24.5: with Mamercus Scaurus; Pliny *HN* 29.20: with the slave Eudemus, her doctor.

<sup>409</sup> Dio 58.11.7 records a variant tradition that Livilla was given into the custody of her mother Antonia and was starved to death.

<sup>410</sup> Tac. *Ann.* 5.6.2 refers to Sejanus as “consular colleague and son-in-law.” Tiberius and Sejanus shared the consulship in 31, EJ p. 42, although Sejanus' name was erased from the consular *fasti*. Tacitus mentions the subject of marriage between Sejanus and Livilla several times: “hope of marriage” *ad coniugii spem* (*Ann.* 4.3.3); “since Livia was importuning him for the promised marriage” *promissum matrimonium flagitante Livia* (*Ann.* 4.39.1). Tiberius' refusal to allow the marriage, given in *oratio recta* (*Ann.* 4.40) under the year 25, is definitive. Dio 58.3.9 records that Livilla's daughter Julia was betrothed to Sejanus, possibly in 30. Seager (2005) 271 n. 127 expresses uncertainty about Dio's statement, and suggests that Tiberius may have relented and allowed a betrothal between Sejanus and Livilla; also Barrett (1989) 26.

<sup>411</sup> The other is Messalina, no. 41.

<sup>412</sup> Tac. *Ann.* 6.2.1; her name is known to have been erased from an inscription in Lepcis, *Africa Italiana* 6 (1935) 15.

<sup>413</sup> Sejanus' name was chiseled out of the consular *fasti* for 31, EJ p. 42; his statues were pulled down, Dio 58.11.3.

<sup>414</sup> Proculus (brother): PIR<sup>2</sup> C 1281; Secundus (accuser): PIR<sup>2</sup> P 757. For problems with her nomenclature, Sancia or Sancta, see Syme (1970) 73.

Pomponius Secundus, who had been accused by a Considius some two years earlier.<sup>415</sup> It is likely that this is the same Considius and, therefore, that the accusations against Considius and Sancia in 33 were retribution in kind for the accusations against their accuser's brother in 31. There is no indication about the precise nature of the actions that led to the charge of *maiestas*, only that Considius was executed and Sancia was banished (*aquae et ignis interdictio*).<sup>416</sup> Since the action against Considius was likely begun in the spirit of retribution, his sister Sancia seems not to have been the target of harm but to have been swept up in the case against her brother.

Similarly, Paxaea was co-defendant with her husband Pomponius Labeo and was seemingly swept up in the charges against him. They faced charges of *repetundae* and *maiestas* based on their conduct when Labeo was the governor of Moesia, although the details of their crimes are not recorded.<sup>417</sup> Both Paxaea and Labeo forestalled conviction by committing suicide, a decision that Tacitus claims preserved the validity of their wills and their right to proper burial.<sup>418</sup> Her suicide suggests that Paxaea foresaw conviction and wished to avoid those penalties imposed on the convicted and executed, but not on those who had chosen death voluntarily. Tiberius claimed, according to Tacitus, that Paxaea, "although guilty, had no share in her husband's danger;" (*etsi nocentem periculi tamen expertem fuisse*).<sup>419</sup> Guilty of what, precisely, cannot be determined, but it was apparently a sub-capital offense.<sup>420</sup>

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<sup>415</sup> Tac. *Ann.* 5.8.1, where he adds a comment about the brother's steadfast loyalty. Pomponius survived this accusation and lived beyond the end of Tiberius' reign.

<sup>416</sup> Tac. *Ann.* 6.18.1; Bauman (1992) 63.

<sup>417</sup> Labeo (husband): PIR<sup>2</sup> P 726; he was governor of Moesia for eight years; see Tac. *Ann.* 4.47.1 for a description of some of his actions as governor.

<sup>418</sup> Tac. *Ann.* 6.29.1; see also Dio 58.15.4; Rutledge (2001) 43; Griffin (1997) 262.

<sup>419</sup> Tac. *Ann.* 6.29.2.

<sup>420</sup> Although it is not mentioned in the narrative of this case the following may have been relevant to the trial: an SC of 20 or 24 established that when an official was accompanied to his province by his wife, he would be

The last woman tried on the sole charge of *maiestas* in Tiberius' reign was Acutia, widow of P. Vitellius. Her husband had been accused in 31 of complicity with Sejanus and, when conviction seemed imminent, he committed suicide.<sup>421</sup> Five years later, Acutia was indicted for *maiestas* by D. Laelis Balbus.<sup>422</sup> Nothing is recorded about the form of her crimes, but the five year interval since her husband's conviction clarifies that her crimes were not directly linked with his. She was convicted, but her sentence is unknown. Tacitus suggests that she was a victim of *delatores*, since a reward was forthcoming for her accuser until tribune Junius Otho intervened.<sup>423</sup>

*Maiestas* accusations against women did not end when Tiberius died. When Claudius was planning to remarry after the death of Messalina, Lollia Paulina was proposed as a potential wife by the imperial freedman Callistus; for this reason, according to Tacitus, Agrippina destroyed her.<sup>424</sup> The charges brought against her were of consulting Chaldean astrologers, magicians, and the image (oracle) of Clarian Apollo about Claudius' impending marriage.<sup>425</sup> The charges would have been much more serious if she had been believed to have consulted astrologers about Claudius' marriage *after* he and Agrippina were married.<sup>426</sup> Although, officially, the charge of *maiestas* was suspended during Claudius' reign and no source uses that word in connection with the charges and cases discussed below, similar

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liable for any offense committed by her, Tac. *Ann.* 3.33.3; 4.20.4; Talbert (1984) 439 no. 24. According to the terms of this decree, Paxaea's offenses would have added to her husband's danger.

<sup>421</sup> Tac. *Ann.* 5.8; Vitellius was prefect of the treasury and had allegedly offered to give Sejanus access to the money within; PIR<sup>1</sup> V 502.

<sup>422</sup> Tac. *Ann.* 6.47.1; Balbus: PIR<sup>2</sup> L 48; this is the same Balbus who was accused a little later the same year along with Albucilla, no. 7. Forsyth (1969) 206 argues for Acutia's innocence based on Tacitus' description of Balbus as "ready against the innocent" (*promptum adversum insontes*), *Ann.* 48.4; see also Rutledge (2001) 242–243.

<sup>423</sup> PIR<sup>2</sup> I 789; this Otho is the son of the more famous orator of the same name, Rutledge (2001) 241–242.

<sup>424</sup> Tac. *Ann.* 12.1.2; 12.22.1: *atrox odii Agrippina ac Lolliae infensa, quod secum de matrimonio principis certavisset*; "Agrippina, fierce in her hatred, was dangerous to Lollia because she had competed with her for the princeps' hand in marriage."

<sup>425</sup> Tac. *Ann.* 12.22.2.

<sup>426</sup> Bauman (1992) 182; the implication would then have been that she was hoping for Agrippina's death.

accusations had previously been the basis for a charge of *maiestas* against others.<sup>427</sup> The sources do not record the name of the person who brought the charges into court but Tacitus reveals that he was Agrippina's agent.<sup>428</sup> We can securely place her trial in the senate because Claudius spoke at length before that body, first expounding her noble connections, then adding that she had designs on the state.<sup>429</sup> Tacitus describes Lollia as an *inaudita rea*, suggesting that either she was not allowed to speak in her own defense or that she had no personal interview with Claudius. Under normal procedures, she would have been allowed to speak on her own behalf.

The verdict was that she should leave Italy and the majority of her property should be confiscated, leaving her with five million sesterces out of her vast wealth. The punishment suggests that the charge may actually have been *maiestas* since she was sentenced to *deportatio* (exile and confiscation of property). Soon after Lollia was sent into exile, a tribune of the Guard was sent to her (by Agrippina?) who enforced her suicide.<sup>430</sup> Agrippina's involvement in this case is reinforced by the fact that immediately after Agrippina's death in 59, Lollia's ashes were returned to Rome for burial.<sup>431</sup>

The discovery of a conspiracy early in Claudius' reign, in 42, headed by Vinicianus and Scribonianus led to reprisals against a number of women.<sup>432</sup> L. Arruntius Furius Camillus Scribonianus, while governor of Dalmatia, had entered into a conspiracy with Annus Vinicianus to overthrow Claudius. The rebellion was put down after only a few days,

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<sup>427</sup> For example, Tac. *Ann.* 3.32.2 where Aemilia Lepida was charged with consulting astrologers under the heading of *maiestas*, though those charges may have been dropped.

<sup>428</sup> Tac. *Ann.* 12.22.1.

<sup>429</sup> Tac. *Ann.* 12.22.2.

<sup>430</sup> Tac. *Ann.* 12.22.3.

<sup>431</sup> Tac. *Ann.* 14.12.6.

<sup>432</sup> Dio 60.16.3; Vinicianus had been proposed for the throne after Caligula's death (Dio 60.15.1) and he recruited Scribonianus, then governor of Dalmatia and in command of a large body of troops. See also Suet. *Claud.* 13.2; 35.2; *Otho* 1.2. Tacitus' account of these years is missing.

and both Vinicianus and Scribonianus committed suicide.<sup>433</sup> Because of the serious nature of their offenses (*perduellio*), their trials were held posthumously. An unknown number of women were also charged as conspirators, tried in the senate before Claudius, convicted and executed.

μέλλουσαί τε ἀποθνήσκειν, ἐπὶ βῆμα καὶ αὐταὶ ἀνήγοντο δεδεμέναι ὡσπερ αἰχμάλωτοι, καὶ τὰ σώματα καὶ ἐκείνων ἐξ τοῦς ἀναβασμοῦς ἐρριπτέιτο.

The women who were about to die were led in chains upon a platform just like captives, and the bodies of these women were thrown out on the Stairway.<sup>434</sup>

The unknown women's roles in the conspiracy are not stated, but the fact that their bodies were thrown on the Gemonian Stair strongly suggests that they had been convicted of *maiestas*, or possibly even *perduellio*.<sup>435</sup>

Scribonianus' wife, Vibia, was also punished in the aftermath of this conspiracy.<sup>436</sup>

Vibia is known to have testified about her husband's activities at his trial, which roused the redoubtable Arria (whose husband Caecina Paetus was also sentenced to die) to a sharp rebuke.

*Eadem apud Claudium uxori Scriboniani, cum illa profiteretur indicium, 'Ego' inquit 'te audiam, cuius in gremio Scribonianus occisus est, et vivis?'*

This same woman [Arria] said, in the presence of Claudius, to Scribonianus' wife after she voluntarily gave testimony, "I should listen to you, in whose lap Scribonianus died, and you still live?"<sup>437</sup>

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<sup>433</sup> Vinicianus: Dio 60.15.5; Scribonianus: Dio 60.15.3; Tacitus, however indicates that he was killed; *Hist.* 2.75.3 gives the name of the soldier who was rewarded for killing Scribonianus.

<sup>434</sup> Dio 60.16.1.

<sup>435</sup> For example, Sejanus and his family and supporters had been thrown on the Gemonian Stair, Levick (1990) 60; Suet. *Tib.* 60.

<sup>436</sup> Pliny's text (*Ep.* 3.16.9) does not name Scribonianus' widow, which has not solved the confusion raised in the Tacitean manuscripts between the names Vibia and Vinicia as the name of Scribonianus' widow. Syme (1964) 415 n. 2, followed by Levick (1990) 60, argues for 'Vinicia'; the majority of scholarship accepts 'Vibia': PIR<sup>1</sup> V 410; RC 798; RE 8.2 (1958) 1998 Vibia no. 70, also Koestermann (1963–) 3.197 and Bauman (1992) 171, 261 n. 29.

<sup>437</sup> Pliny *Ep.* 3.16.9; Arria is famous for encouraging her vacillating husband toward suicide by her own example and with the words: *Paete, non dolet!* "Paetus, it does not hurt!" Pliny, *Ep.* 3.16.6.

The immediate repercussions faced by Vibia are not recorded, but Dio notes that all the sons of those who were put to death were granted immunity, including Vibia's son Furius Scribonianus.<sup>438</sup>

Ten years later in 52, however, when her son Scribonianus was accused of consulting astrologers about the death of the emperor Claudius (certainly a *maiestas* charge), Vibia was charged along with him with the added accusation *ut casus prioris (nam relegata erat) impatiens*; "that she had been intolerant of her previous plight (she had been relegated)."<sup>439</sup> There is no indication precisely when, nor precisely why, she had previously been relegated, but her intolerance of the situation may suggest that she had been relegated in 42 after she gave testimony against her husband and most likely expected the same immunity that had been granted to her son. If the conspiracy case of 42 was not the occasion of her exile, then she was tried and convicted in another case about which we know nothing. At any rate, she resented Claudius, by whose order she was in exile, and whose death she anxiously awaited. Since she was back in Rome and was tried with her son in 52, her earlier punishment of *relegatio* may have been the more lenient *relegatio ad tempus*, or, more likely, her and Furius' consultation of astrologers occurred at her place of exile and she was brought back to Rome only for the trial. About her subsequent punishment, nothing is recorded.

Twenty years later, Antistia Pollitta, widow of Rubellius Plautus, and her grandmother Sextia were tried and convicted posthumously in 65 along with Pollitta's father L. Antistius Vetus.<sup>440</sup> The charges were most likely *maiestas*, for two reasons: first, because

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<sup>438</sup> Dio 60.16.2.

<sup>439</sup> Tac. *Ann.* 12.52.1.

<sup>440</sup> Rubellius Plautus was the son of Julia (no. 29) and Rubellius Blandus, grandson of Drusus and Livilla (no. 35), great-grandson of the emperor Tiberius and was, therefore, descended from Augustus in exactly the same degree as the emperor Nero. He became a focus for fears of rebellion and, in 60, was encouraged to withdraw to his estates in Asia; Tac. *Ann.* 14.22.3. This is five years after Agrippina diffused accusations of plotting with Rubellius Plautus to displace Nero as emperor; Tac. *Ann.* 13.19.3. For a more on this, see Barrett (1996)

*maiestas* charges are apparently unique in surviving the death of the defendant, and second, because of the context of the trials.<sup>441</sup> Vetus faced charges of *maiestas* on the accusation of his freedman Fortunatus and Claudius Demianus, whom Vetus had imprisoned while he was proconsul of Asia.<sup>442</sup> Since Vetus was under guard, Pollitta travelled to Naples on his behalf where she accosted Nero repeatedly when he left his residence, shrieking and shouting that he should listen to her guiltless father, but the princeps was unmoved.<sup>443</sup> She returned to her father's side and reported that there was no hope: his trial was imminent and the guilty verdict seemed inevitable. Vetus, Pollitta, and Sextia opened their veins.<sup>444</sup> Although only Vetus had previously been indicted, all three were tried posthumously and convicted: *accusati post sepulturam decretumque ut more maiorum punirentur, et Nero intercessit, mortem sine arbitro permittens*; "They were accused after burial and it was decreed that they be punished according to ancestral custom, and Nero intervened, permitting them death without witness (i.e. suicide)."<sup>445</sup> Perhaps their suicides were taken as evidence of their guilt.

Marcia Servilia and her father Barea Soranus were also allowed free choice of the manner of their death after convictions for *maiestas*.<sup>446</sup> Servilia's alleged crimes took place

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175–176; for a broader consideration of Nero's rivals, see Rogers (1955) 195–212. Two years later, in 62, Plautus was assassinated on Nero's orders; Tac. *Ann.* 14.57–59.

<sup>441</sup> Dig. 48.4.11 (Ulpian), discussed at the beginning of this chapter; Rogers (1955) 210; compare, for example, the posthumous *maiestas* convictions of Cn. Piso in 20 and Libo Drusus in 16.

<sup>442</sup> Tac. *Ann.* 16.10.2; Nero released Claudius Demianus from prison in Asia as a reward for his accusation. Rogers (1955) 210. Vetus: PIR<sup>2</sup> A 776; he had been Nero's consular colleague in 55.

<sup>443</sup> Tac. *Ann.* 16.10.4.

<sup>444</sup> Tac. *Ann.* 16.11.2.

<sup>445</sup> Tac. *Ann.* 16.11.3.

<sup>446</sup> Barea Soranus (father): PIR<sup>2</sup> B 55, was suffect consul in 52 and proconsul of Asia in 63 or 64. Annius Pollio (husband): PIR<sup>2</sup> A 678, also a senator, was exiled in 65 in connection with the Pisonian conspiracy. Tacitus describes Servilia as *viduata* at the time of her trial in 66; *viduata* may mean 'widowed,' but may also be used in the sense of simply 'deprived'; RC 526 suggests that Pollio may have survived and returned to Rome after the death of Nero.

in the context of the *maiestas* trials of her father and P. Clodius Thrasea Paetus in AD 66.<sup>447</sup> Though the two trials are described concurrently, the association seems to be based on their timing and the character and status of the defendants rather than on any legal connection. Tacitus gives an extended and detailed narrative, devoting a total of thirteen (surviving) chapters to the narrative of Soranus' and Paetus' last days.<sup>448</sup> He relates that the precise charges against Soranus were friendship with Rubellius Plautus and courting the provincials with revolutionary intentions.<sup>449</sup> The charges pertaining to magicians fell on the shoulders of his daughter, Servilia. While her father was on trial for his life, she had sold off her clothing and jewelry to pay for consultations with magicians, asking them about the prospects of her family's survival, whether Nero would be compassionate, and whether the senate's investigation would end badly. She was, therefore, indirectly caught up in the politically based accusations that touched many of Plautus' associates after his assassination.

Servilia was most likely also charged under the *lex maiestatis*. The law of treason had long included offenses such as consulting astrologers, as in the cases of Libo Drusus in 16 and Aemilia Lepida in 20.<sup>450</sup> She was summoned into the senate during her father's trial, and Tacitus reports her speech in *oratio recta*. She had only asked the gods to preserve her

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<sup>447</sup> The presentation of these cases is convoluted and difficult; for discussion, see Rogers (1952) 287–295; for Thrasea Paetus, see PIR<sup>2</sup> C 1187. Tacitus gives the precise charges against Paetus (above and beyond Nero's long-standing hatred for him) in an *oratio recta* speech by Cossutianus Capito: evading the regular oath, not sacrificing for the emperor's welfare or divine voice, and not attending senate-meetings. Then the climax: *Secessionem iam id et partes et, si idem multi audeant, bellum esse. Ut quondam C. Caesarem, inquit, et M. Catonem, ita nunc te, Nero, et Thraseam avida discordiarum civitas loquitur.* "That was factionalism and secession. If many more have the same daring, it is war. As this faction-loving country once talked of Caesar versus Cato, so now, Nero, it talks of you versus Thrasea." Tac. *Ann.* 16.22.2.

<sup>448</sup> Tac. *Ann.* 16.21–34. Dio's epitomator Xiphilinus has confused the story slightly, claiming that Soranus was executed on the charge of having practised a kind of magic through the agency of his daughter; the basis for the charge was that father and daughter had offered a sacrifice when Soranus fell ill; Dio 62.26.3.

<sup>449</sup> *Sed crimini dabatur amicitia Plauti et ambitio conciliandae provinciae ad spes novas*; *Ann.* 16.23. Rubellius Plautus was the great-grandson of Tiberius and therefore had a claim to the imperial throne as strong as Nero's (13.19.3) but he went into exile in Asia at Nero's request in 60 (14.22) and seems to have lived quietly. His Stoicism and integrity earned him such a good reputation that the emperor could not abide it; Plautus was executed in 62 by a centurion sent by Nero (14.59).

<sup>450</sup> Aemilia Lepida, no. 3; Rives (2006) 61, 65.

father, and made no mention of the princeps except among the divinities. Soranus defended his daughter, saying that she had not been connected with the crimes of her husband or father. All in vain; Soranus and Servilia were allowed to choose their own deaths. The statutory penalty was *aquae et ignis interdictio*, unsupervised exile, but could, at the emperor's discretion, be increased to death. Given the context of her trial, after both her father and husband had been found guilty of treason there seemed no compelling grounds to doubt Servilia's involvement. Her admission that she had consulted astrologers – an activity that always aroused suspicion – simply made the senate's decision easy.

Of the thirteen cases discussed above, only that of Firmius Catus' sister resulted in acquittal and only Paxaea escaped a verdict by suicide. Defendants Sextia and Antistia Pollitta were the only ones convicted posthumously, after their suicides. The remaining ten defendants were convicted; half were penalized with various forms of exile: Sosia Galla, Agrippina the elder, Sancia, Lollia Paulina, and Vibia. Although she was convicted, Acutia's sentence is unknown. In the remaining four cases, the women convicted of *maiestas* died for their crimes. Marcia Servilia was allowed to choose her own death, a forced suicide, but a death with some dignity. Junilla, her family members, and Livilla were executed in the wake of Sejanus' demise, and the unnamed women participants in the conspiracy of Scribonianus in 42 were also executed. Junilla, her family, and the women conspirators all suffered the additional posthumous penalty of having their bodies thrown out on the Gemonian Stair. Livilla alone was further punished by a senatorial decree against her memory and likenesses (*damnatio memoriae*). These are weighty penalties and would not have been assessed for crimes perceived as trivial; these were not 'pink collar' or lightweight versions of *maiestas*

trials. These women were perceived as, and tried as, fully capable of committing crimes that threatened the imperial dignity or the well-being of the state.

### Defendants charged with *maiestas* as one of multiple charges

Four women were charged with *maiestas* as one of several charges registered against them. Appuleia Varilla was denounced in 17 by a *delator* on charges of *maiestas* and adultery, but Tiberius demanded that the two charges be kept separate and that she not be condemned for any irreverent comments about him or his mother.<sup>451</sup> Accusations regarding irreligious talk about *divus* Augustus, on the other hand, would be allowed to stand. On the next day that the senate met, Appuleia's case proceeded; then *liberavit Appuleiam lege maiestatis*, "He [Tiberius] freed Appuleia from the law of treason."<sup>452</sup> She was convicted on the charge of adultery alone and Tiberius requested that her punishment be mitigated from the *relegatio* demanded by the *lex Julia*, so she was removed by her relatives beyond the two-hundredth milestone.<sup>453</sup>

According to Tacitus, she had mocked *divus* Augustus, the emperor Tiberius and his mother Livia in abusive conversations. The *delator* was attempting to expand the definition of *maiestas* to include (a) insults towards a god, (b) insults toward the living emperor, (c) insults toward the emperor's mother, and (d) moral offenses committed by a member of the imperial family.<sup>454</sup> Tiberius' reaction to this attempt is exceedingly important: he demanded, with all the imperial *auctoritas* behind him, that the charges of *maiestas* and

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<sup>451</sup> Tac. *Ann.* 2.50.

<sup>452</sup> Tac. *Ann.* 2.50.3. The verb *liberavit* causes some consternation. Does it mean that the charge was dropped or that she was tried and acquitted? Neither TLL nor OLD (s.v. *libero*) clarify Tacitus' usage; Furneaux does not address it; Woodman's 2004 translation skirts the issue and translates as "he freed Appuleia" as above. At any rate, it is clear that she was not convicted.

<sup>453</sup> Tac. *Ann.* 2.50.3; Pliny *HN* 7.122 reports that Appuleia's husband M. Lepidus died of a broken heart after their divorce and her conviction.

<sup>454</sup> Bauman (1974) 77–78.

adultery be considered separately. This decision put a halt to any further attempts to link adultery involving an imperial woman automatically with treason.<sup>455</sup> Tiberius refused to allow any insults to himself to be included in the trial, nor, after consultation with his mother, were any insults against Livia to be punished. Tiberius established a careful line between the position of the living emperor and the deified emperor, solidifying the notion that the deified emperor had the right to protection under the *lex maiestatis*.<sup>456</sup> This distinction, of course, did not persist; when Dio reported this same trial a century after Tacitus, he equalized the charges of *asebeia* regarding the insults to *divus* Augustus, Tiberius and Livia.<sup>457</sup>

Aemilia Lepida was also accused of *maiestas* – of consulting astrologers regarding the imperial house – along with adultery, poisoning, and pretending to bear a child.<sup>458</sup> The charges were brought by her bitter ex-husband P. Sulpicius Quirinius, an old friend of Tiberius. As her trial began, Tiberius first begged the senate not to consider the charge of *maiestas* (*deprecatus primo senatum, ne maiestatis crimina tractarentur*).<sup>459</sup> This is consistent with his treatment of Appuleia Varilla three years earlier, apparently desirous that treason charges not be debased by allowing small misdemeanours to be tried under that heading. Soon, however, Tacitus relates, “he [Tiberius] enticed M. Servilius (one of the consulars) and other witnesses to produce what he had seemed to want kept quiet,” (*mos M. Servilium e consulibus aliosque testes inlexit ad proferenda quae velut reicere voluerat*).<sup>460</sup> Tacitus cannot have known that Tiberius had “enticed” (*inlexit*) Servilius and others to come

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<sup>455</sup> Bauman (1967) 234; it is important to note, however, that the bedrooms of imperial women really could be a weak link in the emperor’s security – as demonstrated by the activities of Sejanus and Livilla (no. 35) in 31.

<sup>456</sup> Bauman (1974) 78–79.

<sup>457</sup> Dio 57.19.1. It is difficult to determine whether Dio is erroneous in his description or simply anachronistic. Bauman (1974) 79 indicates anachronism in this instance; Rogers (1933) argues, in another context, that Dio is imperfectly educated in the law.

<sup>458</sup> The adultery charges against Aemilia Lepida are further discussed in chapter 2.1, the poisoning and *falsum* charges in chapter 2.3.

<sup>459</sup> Tac. *Ann.* 3.22.2.

<sup>460</sup> Tac. *Ann.* 3.22.2.

forward – why could the solicitation of this testimony not be attributed to Quirinius himself, a high-ranking consular and friend of the imperial family? If this single factor, that is, the motivation for Servilius’ and other witnesses’ testimony on the topic of astrological consultation, is removed from consideration, then Tiberius’ behaviour through this trial is much more consistent. Although Lepida’s slaves were held in custody (first by the praetorian guard, then by the consuls), Tiberius refused to allow their interrogation by torture on any topic pertaining to his household.<sup>461</sup>

Given Tiberius’ personal foibles on the topic of astrology, his restraint in this case is quite remarkable. He was notoriously superstitious and had relied on consultations with astrologers to guide his own decisions (most famously, he clung to the prediction of the astrologer Thrasyllus that he would become emperor).<sup>462</sup> Moreover, only four years previously a young and very well-connected aristocrat, M. Scribonius Libo Drusus, had been convicted of ‘plotting revolution’ after having engaged in magical practices and consulting astrologers.<sup>463</sup> Following Libo Drusus’ suicide and conviction, all astrologers were expelled from Rome and Italy by decree of the senate.<sup>464</sup> Tiberius was, therefore, particularly sensitive to the charge of consulting astrologers in Lepida’s case for four reasons: (1) he personally believed in astrology; (2) the charge was brought by an old friend; (3) the accused was a person closely enough connected to the imperial family to be feared as a possible political threat; and (4) the case appeared only four years after the sensational case of Libo Drusus and the expulsion of astrologers.

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<sup>461</sup> This is not to suggest that he forbade their interrogation entirely; Tacitus states that Lepida’s slaves were tortured on other topics, *Ann.* 3.23.2.

<sup>462</sup> *Tac. Ann.* 6.20–21; for more on Thrasyllus, who was one of Tiberius’ closest advisors until his death in 36, see Cramer (1954) 92–108; his granddaughter Ennia Thrasylla was wife of the praetorian prefect Macro and lover of Caligula.

<sup>463</sup> *Tac. Ann.* 2.27.

<sup>464</sup> *Tac. Ann.* 2.30, where we also discover that Lepida’s ex-husband Quirinius was Libo Drusus’ relative. Could this have had any impact on his prosecution of his ex-wife four years later? Koestermann (1963) 1.305.

In the end, Lepida was convicted, but not, it seems, on the *maiestas* charge. The torture of her slaves had revealed her “outrages” (*flagitia*), but Tiberius had forbidden that they be questioned pertaining to his household, so the accusations about adultery and the suppositious child are most likely the basis for her conviction. She was sentenced to *aquae et ignis interdictio*.<sup>465</sup> Tiberius announced after the trial that he had learned from Quirinius’ slaves that the accusation of poisoning had substance – but the information was disclosed too late to have had an influence on the verdict.

Munatia Plancina was accused in 20 along with her husband Cn. Piso of treason and the murder by poisoning of Germanicus Caesar. Tacitus provides a lengthy and sensational account of the events leading up to the death of Germanicus in Syria, including a deathbed speech in which the dying prince blames Piso and Plancina for his condition.<sup>466</sup> The trial began almost immediately after Piso and Plancina’s arrival at Rome.<sup>467</sup> Plancina is named in Tacitus’ trial narrative as having participated in causing the death of Germanicus by *devotiones et veneficia*, and in the SCPP as facing many serious charges (*plurima et gravissima crimina*).<sup>468</sup> Piso’s defense was aggressive and seems to have disproved the accusation of poisoning.<sup>469</sup> The other charges against Piso included insubordination and sedition (fomenting civil war and wars with Armenia and Parthia, centred around the person

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<sup>465</sup> Tac. *Ann.* 3.23.3; she was sentenced on a motion from Rubellius Blandus, husband of Tiberius’ granddaughter Julia.

<sup>466</sup> Tac. *Ann.* 2.69–83, speech at 2.71: *nunc scelere Pisonis et Plancinae interceptus*.

<sup>467</sup> The inscription known as the *Senatus Consultum de Pisone Patre* (SCPP) has produced important new scholarship on the trials of Piso and Plancina. See, for example, Eck, Caballos, and Fernandez (1996), the *editio princeps*; Griffin (1997); Barnes (1998); and a special issue of the *American Journal of Philology*, vol. 120 (1999) entirely devoted to discussion of the SCPP.

<sup>468</sup> Tac. *Ann.* 3.13.2; SCPP 109–110. The charges of *veneficia et devotiones* are discussed further in chapter 2.3.

<sup>469</sup> Tac. *Ann.* 3.14.1.

of Vonones, former king of Armenia and no friend to the Parthians), corruption of military discipline, and violating the divinity of *divus* Augustus.<sup>470</sup>

To what degree might Plancina have been involved in those seditious activities? Tacitus reports that, while in Syria, she participated in cavalry exercises and military inspections (*Plancina ... exercitio equitum, decursibus cohortium interesse*).<sup>471</sup> When Germanicus' advisors wished to inflame anger against Piso, they made statements "to accuse Piso, Plancina and their sons in various ways" (*ipsumque [Pisonem] et Plancinam et filios variis modis criminari*).<sup>472</sup> Her behaviour had aroused suspicion and censure quite some time before Germanicus' death. Perhaps most alarming is that she seemed to have had some direct connection with Vonones. When at last Germanicus moved the deposed and exiled Armenian king farther away from the Parthian border, Tacitus relates that this relocation was not only pleasing to the Parthian king, Artabanus, but was also "an insult to Piso, by whom he was highly favoured on account of the many duties and gifts by which he [Vonones] had closely bound himself to Plancina;" (*contumeliae Pisonis, cui gratissimus erat ob plurima officia et dona, quibus Plancinam devinxerat*).<sup>473</sup> The obvious implication of this statement is that Vonones was buying Piso's support by plying his wife with gifts, but we must not overlook the possibility that he was also buying Plancina's support. The combination, therefore, of her involvement with the troops, the suspicions aired by Germanicus' advisors, and her close connection with Vonones, suggests that there was reason to sustain treason charges against Plancina.

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<sup>470</sup> SSCP 29–70.

<sup>471</sup> Tac. *Ann.* 2.55.6; similar recriminations were leveled against Agrippina the elder's behaviour in Germany, Tac. *Ann.* 1.69.

<sup>472</sup> Tac. *Ann.* 2.57.2.

<sup>473</sup> Tac. *Ann.* 2.58.2.

As their trial proceeded, and when it began to be clear that Piso's conviction was inevitable, Plancina separated her defense from his and, through Livia's intervention, was assured of pardon.<sup>474</sup> After Piso committed suicide, two days were used to conclude Plancina's trial – Tacitus says *imagine cognitionis*, “in the appearance of a trial.”<sup>475</sup> With the public support of Livia and Tiberius, Plancina's punishment was remitted (*remittique poenam Plancinae*).<sup>476</sup> She was not, therefore, technically deemed ‘not guilty’ or acquitted in the modern sense, but an exercise of imperial influence assured her impunity.<sup>477</sup> The fact that Plancina was not convicted reveals that Tiberius did not deem her a seditious threat; of course, she would not have another opportunity to contact the exiled Armenian king, Vonones, or the eastern legions.<sup>478</sup>

Plancina faced accusations again in 33, but the sensational circumstances of the trial in 20 overshadow the trial of 33; we do not know for certain what the charges were or if there was a full trial before her suicide. Tacitus reports that, “she was the target of accusations that were by no means unfamiliar, and that she paid by her own hand a late rather than undeserved punishment;” (*petitaque criminibus haud ignotis sua manu sera magis quam immerita supplicia persolvit*).<sup>479</sup> The implication seems to be that the old charges were

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<sup>474</sup> Tac. *Ann.* 3.15.1; SCPP 109–120. The fact that Plancina had time to distance herself effectively from Piso when his prospects at trial diminished poses problems in understanding the chronology of the trial; Talbert (1999) 111.

<sup>475</sup> Tac. *Ann.* 3.17.3. There must have been some hiatus in trial proceedings to allow Piso's sons to prepare their defense of their mother; Talbert (1999) 94.

<sup>476</sup> SCPP 119–120.

<sup>477</sup> Notably, the SCPP 120–124 reveals that two members of Piso's staff (Visellius Karus and Sempronius Bassus) were full partners and agents in all of his crimes and they were sentenced to *aquae et ignis interdictio* and their property was confiscated. Plancina could not, therefore, have been seen as a full partner in all of Piso's crimes, particularly those of insubordination and sedition.

<sup>478</sup> Vonones was killed by a certain soldier Remmius during an escape attempt in 19 (before Piso and Plancina's trial), Tac. *Ann.* 2.68.2.

<sup>479</sup> Tac. *Ann.* 6.26.3.

simply renewed but that, without imperial protection this time, the outcome was appropriate and final.<sup>480</sup>

The younger Agrippina and her sister Julia Livilla were accused in 39 of conspiracy and adultery with their brother-in-law M. Aemilius Lepidus.<sup>481</sup> The trial took place by an *extra ordinem* procedure outside of Rome, for Caligula had first accused them via letter to the senate, then reported on their conviction by another letter to the senate.<sup>482</sup> During the trial, Caligula adduced as evidence letters in his sisters' handwriting (acquired by trickery and seduction, according to Suetonius).<sup>483</sup> Caligula even dedicated to Mars Ultor the three swords with which Lepidus, Agrippina, and Livilla had meant to kill him, implying that he believed the threat against his life to have been very real.<sup>484</sup> Interestingly, the accusations of conspiracy were not downplayed in any way – Caligula openly acknowledged that his sisters and former best friend had plotted against him.

Lepidus was executed, and Agrippina was ordered to carry the urn bearing his bones back to Rome, a cruel parody of her mother's journey back to Rome carrying her father's ashes.<sup>485</sup> The two sisters were banished to the Pontian islands.<sup>486</sup> An unknown portion of their property was confiscated and wagonloads of their possessions were auctioned off in

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<sup>480</sup> Livia had died in 29 and Tiberius had already withdrawn to Capri, so their protection was not available in 33.

<sup>481</sup> Dio 59.22.6; Suet. *Cal.* 24.1–2. Lepidus had been married to their sister Julia Drusilla. On events surrounding these accusations, see Barrett (1996) 63–70.

<sup>482</sup> Dio 59.22.8–23.1.

<sup>483</sup> Suet. *Cal.* 24.2. Despite the fact that the sisters would indubitably have been sufficiently educated to write their own letters, the authenticity of such letters seems unlikely, given, first, the common practice of dictating letters to slaves, and, second, the foolishness of committing to writing treasonous plots hatched within the emperor's very household; Barrett (1996) 63.

<sup>484</sup> Compare, for example, Nero's dedication of the dagger to Mars Ultor after the discovery of the Pisonian plot in 65, Tac. *Ann.* 15.74.2.

<sup>485</sup> See Tac. *Ann.* 3.1.4.

<sup>486</sup> The island of Pontia is located off the west coast of Naples in a cluster that includes the smaller island of Pandateria, the final resting place of Agrippina the elder and previous home of Agrippa Postumus and his mother Julia (daughter of Augustus); Barrett (1996) 69.

Gaul.<sup>487</sup> Suetonius records the sale of their furniture, jewelry, slaves, and freedmen, and that Caligula's agents commandeered so many wagons and draught animals from Rome that there was a bread shortage in the city. Almost immediately after the assassination of Caligula, nearly three years later, the new emperor Claudius recalled his nieces from exile.<sup>488</sup>

The first three of the four cases in this category have several features in common. Chronologically, Appuleia Varilla, Aemilia Lepida, and Munatia Plancina are the earliest known female defendants who faced *maiestas* charges in the principate. Varilla and Lepida were both related to the imperial family and faced charges of adultery combined with *maiestas*, though the actions encompassed in the accusation of *maiestas* were quite different. Tiberius interceded on behalf of Varilla and Lepida in order to force the withdrawal of the *maiestas* accusations, and with Livia's assistance on behalf of Plancina to deliver her from all penalties. In the fourth case in this category, Agrippina and Livilla, sisters of the emperor Caligula, faced accusations of sexual misconduct along with *maiestas*, were convicted in an *extra ordinem* procedure presided over by the emperor himself, and banished. Their convictions illustrate again that women's actions were taken seriously when they were perceived as a threat to the well-being of the emperor and the state. Cases like those of Varilla, Lepida, Agrippina and Livilla (foreshadowed by the two Julias) have inclined historians, ancient and modern alike, to see accusations of sexual misconduct as a distraction from underlying political activity or even conspiracy. These circumstances led to modern speculation that, if treason were suspected and there wasn't enough information to charge him, adultery charges could be laid as a means of getting the opportunity to investigate the

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<sup>487</sup> Suet. *Cal.* 39.1.

<sup>488</sup> Dio 60.4.2.

household (including slaves) of the accused. There is no evidence, however, that this scheme was ever actually applied.

### **Defendants on probable charges of *maiestas***

The following six cases involve women who were likely charged with *maiestas*. Mutilia Prisca was the wife of Fufius Geminus, who was charged with *maiestas* in 30, the year after he held the consulship; there is no indication of the specific actions that led to his indictment, though he was apparently inclined to acerbic witticisms aimed at Tiberius.<sup>489</sup> Tacitus' narrative of this case would have appeared in the lost section of book five, so we are obliged to rely on Dio's account. He reports that Geminus had tried to redeem himself by reading his will in the senate, showing that he had left half of his property to the emperor and half to his children, but then he was called a coward as well a traitor. He left the senate-house before the vote on his verdict and was about to commit suicide when a quaestor arrived with orders for his execution.<sup>490</sup> Dio immediately turns to Prisca's case. The charge against her is not specified, but may have been linked with the *maiestas* accusation against her husband.<sup>491</sup> Dio states that Prisca's friendship with Livia was the cause of her demise. When Prisca appeared in the senate for her trial, she stabbed herself to death with a dagger in the

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<sup>489</sup> Tac. *Ann.* 5.2.2; see Bauman (1974) 25–52 for more on defamation and *maiestas*.

<sup>490</sup> Dio 58.4.6.

<sup>491</sup> Rogers (1935) 107–108. Although Tacitus alleges that Prisca had committed adultery with Julius Postumus in 23, there is no indication that there was any trial in 23, and by the time of Geminus' trial in 30, the five year statute of limitations had expired. Adultery could not have been the basis for the charges against Prisca in 30.

presence of the assembled senators.<sup>492</sup> Dio goes on to record that her two daughters were also destroyed; no word of indictment or trial.<sup>493</sup>

Geminus' mother Vitia was executed almost two years later in 32 because she had wept at the death of her son (*quod filii necem flevisset*).<sup>494</sup> Although Tacitus trivializes and obfuscates the events, it is likely that she was also charged with *maiestas* and faced a real trial.<sup>495</sup> The timing of her trial, more than a year after her son's death, and those of her daughter-in-law and two granddaughters, suggests that her excessively long mourning was an implicit and continued criticism of Tiberius' decision to convict Geminus and a reminder of traitors best forgotten.

Pompeia Macrina faced charges in 33; her father and brother were co-defendants. The basis for the accusation was found in the fact that their ancestor Theophanes, intimate friend of Pompey the Great, had been deified by the Greeks.<sup>496</sup> If Theophanes was deified immediately after his death, as seems most likely, there is no explanation for the more than half-century delay in reprisals.<sup>497</sup> Nor is there an immediate explanation for the reprisals against his descendants unless one of them was using the phrase *divi filius* as political coin. Macrina's father Pompeius Macer, an equestrian, had been charged by Augustus with the task of organizing his libraries, was later made *procurator* of Asia, and was listed as a friend

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<sup>492</sup> Dio 58.4.6. Vibullius Agrippa also committed suicide in full view of the senate during his trial in 36. When his accusers (on unrecorded charges) had finished their declamations, he produced poison from a fold of his garment and swallowed it. He was carried off to prison by the lictors and was strangled although already on the point of death; Tac. *Ann.* 6.40.1.

<sup>493</sup> Dio 58.4.7; this bit of information was preserved by John of Antioch, who made an epitome of Dio's work; his recorded 'Mucia' is assumed to be an error for 'Mutilia'.

<sup>494</sup> Tac. *Ann.* 6.10.1.

<sup>495</sup> Marshall (1990) 346; Rogers (1935) 140, citing Ulpian Dig. 3.2.11.3. Marshall (1990) 346 n. 33 points out that Ulpian is arguing that violation of the traditionally denied mourning for the specified people (including those convicted of *maiestas*) was undesirable and socially inappropriate but not actually illegal.

<sup>496</sup> Tac. *Ann.* 6.18.2. Theophanes was a well-known historian and statesman; Strabo 13.2.3.

<sup>497</sup> Although there is no specific information about the date of Theophanes' death, his friendship with Pompey (who died in 48 BC at age 57), and his status and reputation already in 62 BC (Cic. *pro Archias* 10) makes it very unlikely that he lived beyond the early years of Augustus' reign.

of Tiberius in 19.<sup>498</sup> His ability to be a friend of emperors without causing offense is thereby proven. Macrina's brother, also Pompeius Macer, attained senatorial status and successfully ascended the *cursus honorum* to the praetorship in 15. It is possible that, if he was campaigning for the consulship, the phrase *divi filius* or *nepos* was used to describe him in an attempt to elevate his status. Alternatively, a political enemy (perhaps a competitor for the consulship) wishing to discredit Macer brought up the detail that his grandfather had been deified. The phrases *divi filius* or *divi nepos* had become the sole prerogative of the imperial family, so anyone else claiming this status would have been subject to an accusation of diminishing the majesty of the emperors (*laesae maiestas*).<sup>499</sup> In Tiberian times there was no shortage of accusers who were willing to expand the concept of the *crimen maiestas*, and Tiberius himself, two years after the fall of Sejanus and only four years before his death, did not see fit to intervene to protect his erstwhile friend and his children. Pompeius Macer and his son committed suicide while the trial was in progress but conviction seemed inevitable; Macrina survived the trial and was convicted and exiled.<sup>500</sup>

Also probably accused of *maiestas* was Cornelia, wife of Gaius Calvisius Sabinus (*cos.* 26), who had barely escaped the post-Sejanian reprisals.<sup>501</sup> She had travelled with her husband to his proconsular governor's post in Pannonia in 36 and both Tacitus and Dio record that Cornelia conducted herself inappropriately in the army camps, making the rounds

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<sup>498</sup> Suet. *Caes.* 56.7; Strabo 13.2.3. This is not the Pompeius who appears at Suet. *Tib.* 57.2.

<sup>499</sup> See Bauman (1974) 57; *laesae maiestas* must be distinguished from the *maiestas* that refers to treasonous acts. Rogers (1935) 146 proposes that Argolicus and Laco, members of the distinguished family of Eurycles of Sparta (who had been deposed during the reign of Augustus, twice convicted of sedition and extortion and exiled, *Jos. AJ* 16.310; *BJ* 1.531), were destroyed after an attempt to re-establish their family's primacy. Familial proximity may have been a factor in the subsequent demise of the Pompeii Macri. This still supports a theory of *maiestas* charges, but changes the motives around. Rogers acknowledges that the worship of Eurycles and of Theophanes may have played a role in their misfortune.

<sup>500</sup> Tac. *Ann.* 6.18.2.

<sup>501</sup> Sabinus (husband): *PIR*<sup>2</sup> S 354; he had been indicted for *maiestas* in 32, but the case seems to have been dismissed, Tac. *Ann.* 6.9; Rutledge (2001) 98–99.

of the sentries and inspecting the troops.<sup>502</sup> This description would undoubtedly remind the reader of the actions of Agrippina in Germany and Plancina in Syria, both of whom came to bad ends.<sup>503</sup> But Cornelia allegedly went further than her predecessors: “she dared to commit *stuprum* right in the legionary headquarters,” (*in ipsis principiis stuprum ausa*).<sup>504</sup> Titus Vinius was charged as a participant in this crime and was, by Caligula’s direct orders, loaded with chains.<sup>505</sup> There is no record that Cornelia faced formal charges of adultery, and she was still married to Sabinus when they returned to Rome in the summer of 39 and faced a new indictment. The accusation against them seems to have been *maiestas*.<sup>506</sup> If the earlier tale of sexual misconduct was intended to distract attention from an underlying political offense, then her presence in the legionary headquarters may be interpreted as participation in an attempt to suborn the Pannonian legions.<sup>507</sup> Sabinus’ offenses are not recorded. Both Cornelia and Sabinus committed suicide before the trial began.<sup>508</sup>

In the aftermath of the conspiracy headed by Annius Vinicianus and L. Arruntius Camillus Scribonianus, discovered in 42, several women faced charges; Vibia and the unnamed female conspirators were discussed above.<sup>509</sup> Cloatilla, wife of a convicted member of the conspiracy, was likely charged with *maiestas* after she buried her husband’s

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<sup>502</sup> Tac. *Hist.* 1.48; Dio 59.18.4. Tacitus adds the detail that she had actually disguised herself as a soldier.

<sup>503</sup> Agrippina, no. 6, Tac. *Ann.* 1.69; Plancina, no. 42, Tac. *Ann.* 2.55.6.

<sup>504</sup> Tac. *Hist.* 1.48.2.

<sup>505</sup> Tac. *Hist.* 1.48.3. There is no reason given for the unusual punishment, but after the death of Caligula, he was restored to favour and enjoyed notable career advancement under Claudius: he held the praetorship, commanded a legion, then was proconsular governor of Gallia Narbonensis and a close friend of Galba, with whom he was murdered in 69.

<sup>506</sup> So Rutledge (2001) 353 n. 100, Rogers (1935) 148; Talbert (1984) 507 includes Sabinus in a list of governors who faced *repetundae* charges, but admits that the accusation is uncertain in this case.

<sup>507</sup> Barrett (1989) 101; Simpson (1980) 358 suggests that the crime may have been limited to lowering the morale of the Pannonian legions and allowing discipline to grow lax. This in itself is a serious charge given the Pannonian mutinies twenty years previously.

<sup>508</sup> Dio 59.18.4.

<sup>509</sup> Dio 60.15–16; see also Suet. *Claud.* 13.2; 35.2; *Otho* 1.2.

body, an action for which permission would have been required.<sup>510</sup> She had either failed to ask permission or defied its refusal and so had incurred indictment. The closest comparanda is the case of Vitia in 32, accused of mourning for her son who had been convicted of *maiestas*; Vitia was executed.<sup>511</sup> Cloatilla, however, was pardoned by Claudius (*Cloatillam ... remiserat Claudius*), whether as an actual trial verdict or an exercise of imperial clemency is unknown.<sup>512</sup>

Over a decade later, Claudia Antonia, daughter of the emperor Claudius and his second wife Aelia Paetina, was charged with conspiracy and executed. Tacitus and Suetonius give conflicting information about the reasons for Antonia's demise. Tacitus records that she was an integral part of the Pisonian conspiracy. She was to meet Piso after Nero's assassination and travel to the praetorian camp with him in order to elicit the goodwill of the public.<sup>513</sup> Tacitus cites a lost history written by Pliny the Elder as the source of this information, but immediately denies its accuracy (*quamvis absurdum videretur*).<sup>514</sup> Why would Piso have committed himself to marry Antonia when he was well known for his devotion to his wife? Why would Antonia take such a risk for an empty hope?<sup>515</sup> The theory was that Piso and Antonia would travel together to the praetorian camp, he would be acclaimed emperor, they would marry and be the new imperial couple after the successful coup.

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<sup>510</sup> Quint. 8.5.16; Tac. *Ann.* 6.23.1; Dig. 48.24.1 (Ulpian); Rogers (1945) 266; Marshall (1993) 26–27 suggests that a charge of unlawful burial could have been appended to a *maiestas* charge.

<sup>511</sup> Vitia, no. 58.

<sup>512</sup> Quint. 8.5.15.

<sup>513</sup> Tac. *Ann.* 15.53.3; an acclamation from the praetorian guard was a significant step in declaring an emperor, as in the case of Claudius; see Furneaux (1896) 304 n. 7.

<sup>514</sup> Tac. *Ann.* 15.53.4; Woodman (2004) 254 n. 41; this is one of the rare and important occasions where Tacitus cites the source of his information. The classic study of the sources for Tacitus' *Annales* is Syme (1958) 271–304; the citation of Pliny the Elder for this particular incident is discussed at 290–292.

<sup>515</sup> This is a paraphrase of parts of Tacitus' sentence at 15.53.4: *nobis quoque modo traditum non occultare in animo fuit, quamvis absurdum videretur aut inane <m> ad spem Antoniam nomen et periculum commodavisse, aut Pisonem notum amore uxoris alii matrimonio se obstrinxisse, nisi si cupido dominandi cunctis adfectibus flagrantior est.* See Koestermann (1968) 280–281 on the textual difficulties of this passage.

A single sentence in Suetonius reveals another motive for her destruction:

*Antoniam Claudii filiam, recusantem post Poppaeae mortem nuptias suas, quasi molitricem novarum rerum [Nero] interemit.*

When Claudius' daughter Antonia refused to marry him after Poppaea's death, [Nero] had her executed on a charge of attempted rebellion.<sup>516</sup>

As the only surviving child of Claudius, Antonia's marriage was of significant political import.<sup>517</sup> Dynastically speaking, a connection between Nero and Antonia was a good one for many of the same reasons that the connection between Agrippina and Claudius had been desirable.<sup>518</sup> She was of proven fertility and young enough to bear more children. If her son was still alive at the time of the proposal, it would have been a perfect way to keep him in the imperial fold and curb any chance of rebellion. Antonia, however, could not have forgotten that Nero had been the cause of the deaths of her husband Sulla, her brother Britannicus and her sister Octavia; the scope of her ill-will is unknowable.

To understand the situation, we must address the timing of the events. The Pisonian conspiracy was discovered in April of 65 during the festival of Ceres.<sup>519</sup> Poppaea died in August 65 just after the Neronia, providing a *terminus post quem* for Nero's marriage proposal to Antonia.<sup>520</sup> The interval of at least four months between conspiracy and rejected

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<sup>516</sup> Suet. *Nero* 35.4. The non-political motives would have been anger, embarrassment, and the like brought on by her rejection of his marriage offer. We have no way of knowing how publicly this rejection took place (assuming that greater publicity would increase humiliation).

<sup>517</sup> Antonia was first married to Pompeius Magnus (PIR<sup>2</sup> P 630) in 41, Suet. *Claud.* 27.2; Dio 60.5.7; then to Faustus Sulla, half-brother of Messalina (PIR<sup>2</sup> C 1464) in 47, Suet. *Claud.* 27.2; Tac. *Ann.* 13.23; Dio 60 (61)29.6a; Sen. *Apoc.* 11.5. Sulla died in 62, Tac. *Ann.* 14.57. She is known to have had one son whose name and fate are unrecorded, but since he never appears as a rival to Nero, he may have died young; Suet. *Claud.* 12.1; Dio 60 (61)30.6a. The child seems to have been a product of Antonia's second marriage, PIR<sup>2</sup> C 1464, Groag. Suetonius melded into a single sentence the (private) celebration of Octavia's wedding and the birth of Antonia's son, thus suggesting a temporal proximity as well. Octavia was married to Nero in 53, therefore it is likely that the child in question was born at approximately that time and that Sulla was his father. The fragment of Dio (Zonaras) mentioning the birth is placed by modern editors in the year 48. Since Dio's account at this point is fragmentary and his chronology is problematic, the date gleaned from Suetonius is to be preferred.

<sup>518</sup> Tac. *Ann.* 12.2.3.

<sup>519</sup> Tac. *Ann.* 15.53.1; Townend (1980) 237; Scullard (1981) 91.

<sup>520</sup> Tac. *Ann.* 16.6.1; Townend (1980) 237; Bradley (1977) 79.

marriage proposal shows two things. First, Antonia was still alive at least four months after the discovery of the conspiracy, indicating that her involvement in the conspiracy is extremely unlikely. Other conspirators were immediately executed.<sup>521</sup> Second, the two events were not so temporally proximate that one should be confused with the other. Tacitus is, therefore, correct in suspecting the report that Antonia was involved in the conspiracy.

Since the memory of the conspiracy was still fresh, it was easy for Nero to disguise his personal motives for vengeance with the unquestionable motive of punishing anyone who might have rebellious inclinations. Suetonius' use of the word *quasi* enforces the notion of fabricated charges. The details of the trial or its procedure are unknown; plausibly, it was an *extra ordinem* trial conducted at Nero's discretion. Although the Pisonian conspiracy did not provide a political basis for the particular charges against Antonia, certainly the motive for eliminating her was largely political.

Of the six defendants probably charged with *maiestas*, only Cloatilla escaped entirely without punishment, and only Pompeia Macrina was sentenced to exile. The remaining four defendants died as a result of the charges against them, Mutilia Prisca and Cornelia by suicide, Vitia and Antonia by execution.

One further case requires mention: although Albucilla was not officially charged with *maiestas* in 37, she was saved only because the senate refused to accept the charges without express permission from Tiberius. The praetorian prefect Macro had tried to institute prosecution for verbal treason before – unsuccessfully – and now that Tiberius was on his deathbed, he tried again using the solemn phrase *impietas in principem* and nearly got away

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<sup>521</sup> Tac. *Ann.* 15.59.5, 60.1–2, 67.4, 70.1–2.

with it.<sup>522</sup> This was an important stage in the process of defining *maiestas* under the new order and women were a part of it. The senate refused to proceed on the accusation without a directive from the emperor (having in mind the case of Mamercus Scaurus). Since instructions from the emperor did not materialize, his death allowed the charges to dissipate.

### **Politically Motivated Charges**

All treason charges are, by very definition, political. Nonetheless, given the ill-defined nature of *maiestas* as a charge and the varied activities that generated *maiestas* accusations, it is worth investigating whether or not, or to what degree, the charges were politically motivated. As before, we must ask who was harmed by the accusation, the trial, or the conviction.

#### **(a) Male family members as the targets of harm.**

Into this category must also fall those cases where the women were harmed incidentally in trials that seemed to have been aimed at their male family members. Unlike the charges of adultery discussed previously, there is no suggestion that charges of *maiestas* were used against women as a means of settling political scores. Nor are *maiestas* charges likely to be obfuscating a more sensitive political motive, as has been proposed for charges of sexual misconduct.

First, the women who were swept up in charges launched against their male family members. A total of five women committed suicide before conviction when they were faced with charges along with male family members. Cornelia and her co-defendant husband

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<sup>522</sup> Bauman (1974) 134; see also the case against Appuleia Varilla in which Tiberius insisted that her verbal transgressions against *Divus* Augustus, Livia, and himself not be prosecuted.

Sabinus committed suicide before their trial began. Paxaea and her co-defendant husband Pomponius Labeo committed suicide as conviction loomed. Mutilia Prisca's trial immediately followed her husband's *maiestas* conviction and may have been connected; when she appeared in the senate for her trial, she dramatically committed suicide in front of the assembled senators. There is no opportunity to suggest that the charges against Sextia and Antistia Pollitta might have been intended to harm a family member, or even the defendants themselves, since they were tried and convicted posthumously. They had been swept up in the charges against Vetus and the lingering fear of Pollitta's husband Rubellius Plautus. In a similar vein, Sancia and Pompeia Macrina were caught up in charges aimed at their brothers. Young Junilla was charged and executed simply because she was the daughter of Sejanus, and an unknown number of unnamed female relatives suffered the same fate. There is nothing in the historical record that indicates that any of these women had actually engaged in any criminal activities; plausibly, this is simply an omission of our sources. On the other hand, these cases may show that these women were regarded as being vital supports to their husband's or brother's activities. If he were engaged in treasonous plotting, she must have been assisting.

Two cases clearly support the suggestion that wives were regarded as associates in their husband's crimes. Sosia Galla was convicted as an accessory (*socia*) to her husband's crimes.<sup>523</sup> Specific details of her actions are not known, but she was convicted even after her husband G. Silius had committed suicide. Agrippina the elder later asserted that Sosia had been convicted on the strength of their friendship, and that her demise was an oblique attack

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<sup>523</sup> Of their children, only C. Silius is known to have had a political career. He was consul-designate in 48 when he married Messalina in an apparent attempt to claim Claudius' imperial title as well as his wife. Unsurprisingly, he was executed. His political career had been measurably successful prior to that point and had not been precluded by his parents' destruction in 24.

on Agrippina herself. More is known in Plancina's case; she was specifically accused of having assisted Piso in causing the death of Germanicus by potions and curses (*veneficia et devotiones*). She was known to have participated in military exercises and to have had a close connection to Vonones, the exiled and troublesome Armenian king. Livia's intervention, however, ensured that Plancina was not convicted. Belief in her guilt was so pervasive and sustained that when charges were brought again thirteen years later, Plancina committed suicide. Although Tiberius had not believed that she posed a serious threat in 20 and had allowed her to go free, her accusers believed that she had to have been an essential support to her husband's seditious activities.

The accusations against Marcia Servilia were intimately entwined with the accusations against her father. Although it is never suggested that she was involved in or bore any responsibility for his crimes, his trial provided the impetus for her consultation of astrologers, for which she subsequently faced charges. Nero's enmity against her father Soranus was such that it seems plausible that he would have welcomed the opportunity to prosecute the daughter in order to intensify the suffering of the father. In that regard, then, she was caught up in the legal proceedings against her father; both father and daughter were the targets.

**b) Women themselves as the targets.**

The remaining cases seem to have had the purpose of harming the women defendants themselves. Women of the imperial family provide the most high-profile examples: Agrippina the elder, wife of Germanicus; Livilla, the wife of Drusus; Agrippina the younger and Livilla, sisters of Caligula; and Antonia, step-sister of Nero.

The first two women faced destruction in connection with Sejanus's schemes. He had carefully plotted and escalated his campaign against Agrippina, her sons, and her supporters in the senate. Although many men were involved in the so-called *partes Agrippinae*, Agrippina herself was the figurehead and would have continued to press boldly forward in the absence of any male supporters. She was bold and vocal in emphasizing her relationship to *divus* Augustus and her intentions to see her sons rule. Therefore, Agrippina herself had to be removed, and she was indubitably the primary target of harm in her trial. Indeed, once Agrippina's protection had been compromised, her sons Nero and Drusus were left vulnerable and all three perished in prison within a few months of each other.

Livilla was tried and executed on the basis of Apicata's letter stating that she had conspired with Sejanus to poison her husband, Tiberius' son Drusus. At the time of her trial, Drusus had been dead for eight years and Sejanus for at least a short time.<sup>524</sup> As the ultimate source of the proceedings against her, Tiberius could not have been the target of harm. Livilla's two surviving children appear to have been legally untouched by their mother's trial and execution. Her son Gemellus lived until 38 (about age 18) when he was murdered by Caligula, and her daughter Julia lived until 43 when she fell victim to Messalina's schemes.<sup>525</sup> We must conclude that Livilla herself and no one else was meant to be harmed by the *maiestas* charges against her.

When Agrippina and Livilla, sisters of the emperor Caligula, faced *maiestas* charges in 39, both were married and Agrippina had a young son, the future emperor Nero. Their co-defendant and brother-in-law Lepidus was executed, but he was the only man harmed by this

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<sup>524</sup> Apicata had sent her accusatory letter to Tiberius and committed suicide within a week after Sejanus' death. Livilla's trial would have proceeded not long afterward.

<sup>525</sup> Gemellus: Suet. *Cal.* 23.3; Julia, no. 29. Germanicus died as a toddler (about age 3) in 23, the same year his father died, Tac. *Ann.* 4.15.1.

trial.<sup>526</sup> Agrippina's husband Domitius Ahenobarbus seems not to have been involved at all in his wife's trial or its aftermath. He may already have been in declining health; he died of dropsy in the following year. Their young son Nero was entrusted to the care of his paternal aunt, Domitia Lepida, after Agrippina was banished.<sup>527</sup> Livilla's husband Vinicianus is mentioned nowhere in the context of his wife's trial or subsequent banishment. He was neither involved nor harmed. Agrippina and Livilla themselves were the only targets of the accusations against them.

Antonia faced alone the *maiestas* charges brought by her own step-brother, the emperor Nero. Her only other living male relative at the time of her trial may have been her son – the date of his death is unknown; if living, he would have been a young teenager when his mother died and a possible target of harm for the charges against her.<sup>528</sup> Since this boy never appeared as a rival to Nero, it is likely that he did not survive childhood. Although her trial occurred in the same year as the discovery of the Pisonian conspiracy, its timing several months later strongly suggests that it was not connected. Antonia herself, therefore, is the only certain target of the *maiestas* charges.

Three further women who were closely connected with the imperial family faced *maiestas* charges: Appuleia Varilla, Aemilia Lepida, and Lollia Paulina. Although the first two defendants were both convicted on other charges (adultery), the *maiestas* accusations seem to have been dropped. Other than increasing the danger of the defendants themselves, there cannot be any claim, then, that the *maiestas* charges harmed anyone. Lollia Paulina, as

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<sup>526</sup> Barrett (1989) 104–108 examines and rejects the possibility that Lepidus was connected to the little-known conspiracy of Gaetulicus, discovered earlier in 39.

<sup>527</sup> Suet. *Nero* 6.2; this is the same Domitia Lepida (no. 19) against whom Nero later gave testimony in a trial engineered by his mother Agrippina.

<sup>528</sup> The child seems to have been a product of Antonia's second marriage to Faustus Sulla, Messalina's half-brother.

a prospective candidate for Claudius' hand in marriage, was unquestionably the target of harm in the case against her. Agrippina the younger, who was believed to have instigated the charges, was interested in eliminating a rival candidate – a motive equally personal and political.<sup>529</sup>

Other elite women were also the targets of harm in the cases against them. Acutia, a childless widow, faced her trial alone; there was no one to be harmed other than the defendant herself. Mutilia Prisca, her daughters, and her mother-in-law Vitia all faced destruction because of the *maiestas* trial of Fufius Geminus. But because Geminus committed suicide before his verdict, however, it cannot be argued in any way that the subsequent prosecution of his wife Prisca or his mother Vitia was intended to harm him. Similarly, Vibia, Cloatilla, and the unnamed women conspirators faced prosecution in the wake of the conspiracy of Scribonianus and Vinicianus. If Vibia had not volunteered to give testimony against her husband, she might have been considered to have been swept up in the case against him. As it is, her deliberate choice to testify shows that she was taking action on her own behalf to deny that she had assisted her husband in his criminal activities. She must, therefore have been prosecuted either because her testimony revealed that she was actually criminally linked to her husband, or because she had done something else criminal on her own. Cloatilla's husband had been convicted as a result of this same conspiracy and she was accused because she had buried his body. No one other than the defendant herself could have been harmed by this accusation, although the memory of her husband would have been harmed by the denial of proper burial. An unknown number of other women were also charged in connection with this conspiracy and because no men were named along with them, they themselves must have been the targets of harm in the cases against them.

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<sup>529</sup> For more on this case, see chapter 3, Women *pro accusatoribus*.

## Conclusion

There are twenty-four known cases in Julio-Claudian times in which women were charged with *maiestas*, nearly double the number of cases known to have proceeded on charges of adultery. Seven of those cases, involving upwards of a dozen women, show that women could be swept up in charges aimed at their male family members, who must be identified as the primary targets of the accusations.<sup>530</sup> There is no way to know how deeply those women might have been involved in supporting their husband's treasonous activities. Plancina and Sosia Galla, however, were both charged with the full understanding that they were associates (*sociae*) in their husband's crimes. The remaining fifteen defendants faced accusations based on their own actions and were themselves the targets in their trials. It is perhaps surprising to discover that the families of most of the convicted and disgraced women did not suffer notable political damage, although in several cases nothing is known about the defendant's family either before or after her trial. On the one hand, the sons of the conspirators in 42 were granted immunity, the sons of Piso and Plancina experienced some political success after their parents' trials, the son of Silius and Sosia Galla was very successful, Drusus and Livilla's son Tiberius Gemellus was raised in the imperial household and his sister Julia married well; although charges were brought against her in 43, the twelve year interval since her mother's conviction strongly suggests that there was no connection.

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<sup>530</sup> These seven cases are: Junilla and other family members (no. 2), Sancia (no. 50), Sextia and Antistia Pollitta (no. 52), Pompeia Macrina (no. 47), Mutilia Prisca and her two daughters (no. 43), Cornelia (no. 18), and Paxaea (no. 46).

On the other hand, Agrippina's sons Drusus and Nero faced prosecutions (persecutions?) partially attributable to the actions of their mother.<sup>531</sup>

It is significant to note that only two defendants escaped their trials without any punishment at all: Cloatilla and the sister of Firmius Catus. Although Appuleia Varilla and Aemilia Lepida were not convicted on the *maiestas* indictments laid against them, they were convicted of adultery. Plancina, too, escaped immediate reprisal because of Livia's intervention, but eventually paid the penalty thirteen years later. A trial on charges of *maiestas* was serious and dangerous, resulting in conviction or preemptive suicide for three-quarters of the women accused. Women were executed, their bodies thrown out on the Gemonian Stair, and one even suffered the egregious posthumous penalty of *damnatio memoriae*. These are weighty penalties assessed for crimes perceived as equally weighty.

*Maiestas* charges were used with particular effectiveness against women of the imperial family, especially in the cases of Antonia and sisters Agrippina and Livilla, because their trials were conducted in *extra ordinem* processes by the emperors themselves, their brothers. It is unlikely that anyone would claim that these were fair and unbiased trials. Certainly no Roman with any claim to political or diplomatic ability would have attempted to defend them. These women were perceived as, and tried as, fully capable of actions that threatened the imperial dignity or the well-being of the state.

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<sup>531</sup> Although virtually all family members of Sejanus were destroyed, this is not attributable to the progress or result of Junilla's trial or that of any other woman.

## Chapter 2, part 3

### Women as defendants on charges of *veneficia et devotiones* and others

Although there is no single charge that forms the basis of this section, there is a discernible theme wherein women were accused of attempting to harm someone, in many cases by occult means (*veneficia et devotiones*, *venena*, *diri ritus*, and the like). These women were not charged with physical aggression or violence, but with secretive, stealthy actions against their victims. Crimes of this type could be called ‘womanly’ crimes because they are often associated with women. This section will address the same key questions asked pertaining to the cases of adultery and treason: What do we know of individual cases? Were any charges politically motivated, and can we discern who was the intended target? The cases in this section also require, in some instances, investigation into the exact charges laid against the defendant.

As background, and as a link that connects several cases in this section, let us examine the *lex Cornelia de sicariis et veneficis*, a Sullan enactment of 81 BC, that laid out punishments for murderers and poisoners.<sup>532</sup> The law was still in effect in Justinian’s time, as evidenced by an entire chapter of the *Digest* devoted to it (48.8), though several revisions are known between the first century BC and the sixth century AD.<sup>533</sup> The original Sullan law had at least six sections; the contents of three of these sections are known.<sup>534</sup> The first

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<sup>532</sup> Berger (1953) 550; there was a *quaestio inter sicarios* already in 142 BC, according to Cicero, *Fin.* 2.54. Certainly the Sullan law was not the first to address the crimes of murder or poisoning. For early republican cases dealing with *veneficium*, see Livy 8.18; 39.38.3; 39.41.5; 40.37.4; 40.43.2–3; 40.44.6.

<sup>533</sup> Rives (2003) 313–339.

<sup>534</sup> This outline is based on Ferrary’s reconstruction in Crawford (1996) 749–753; see also Rives (2003) 317–319.

concerned those who, within the city of Rome, were armed with a weapon with the intent to kill a person or perpetrate a theft, and those who killed a person or arranged for someone to be killed. Sections two through four are lost, though one of them likely addressed murderers outside the city of Rome. The fifth section, the one most pertinent to this study, dealt with those who prepared, sold, bought, possessed, or administered a dangerous substance (*venenum malum*) for the purpose of killing someone. The sixth section concerned those who caused someone to be wrongfully condemned on a capital charge.

The ambiguous nature of the words *venenum* and *veneficium* has generated scholarly debate over the purpose of this section of the law. Was it meant to address poisoning, or magic? *Venenum* can be translated as either ‘poison’ or ‘magic potion’ and *veneficium*, therefore, as either the act of giving poison or that of engaging in magical acts.<sup>535</sup> The conceptual distinction between poison and magic potion is a modern one, since we conceive of a poison as somehow natural, and therefore explained by science, while a magic potion is supernatural. The Romans would not have made the same distinction; the reason a poisonous herb caused a particular effect, for example, was just as mysterious as the reason a magical love potion caused its effect.<sup>536</sup> It is, therefore, the combination of mysterious substances and malicious intent that this section of the law was meant to address.<sup>537</sup>

Penalties under the *lex Cornelia de sicariis et veneficis* ranged from *relegatio ad tempus* to *exilium perpetuum* to *deportatio ad insulam*, including loss of property, to execution.<sup>538</sup> Capital punishment was not customary until the mid-second century AD,

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<sup>535</sup> Rives (2003) 319; Beard, North, and Price (1998) 233, Ogden (1999) 83, and Dickie (2001) 15 argue that the *lex Cornelia* embraced both poisoning and magic.

<sup>536</sup> Rives (2003) 320; see also Goodyear (1981) 410 n. 3.

<sup>537</sup> The law was not static over time and later emendations expanded the scope of the original law to include certain deviant religious practices; see the *Apologia* of Apuleius; and, in the early 3<sup>rd</sup> century, Paul. *Sent.* 5.23 *de lege Cornelia de sicariis et veneficis*; also Dig. 10.2.4 (Ulpian).

<sup>538</sup> Dig. 48.8.1.5 (Marcian); 48.8.3.5 (Marcian).

according to the jurist Marcian.<sup>539</sup> Under the Julio-Claudians, therefore, penalties varied between relegation, exile, and deportation, assigned at the discretion of the judge in each case.

### Defendants on a single charge

Let us now examine the individual trials. There are four defendants who were accused on a single charge. The first is Annia Rufilla in AD 21. Convicted of fraud on civil charges brought by the senator C. Cestius Gallus, she harassed him in the streets with threats and verbal abuse while clutching an image of the emperor for protection.<sup>540</sup> There was an increasing number of low-ranking Romans, like Rufilla, using portable images of the emperor as a means of proactive protection for their criminal actions. Anyone who violated the asylum would be subject to accusations of *maiestas*.<sup>541</sup> Unable to respond to the harassment, Gallus and other senators sought a solution from the consul Drusus Caesar, the emperor Tiberius' son. Rufilla was summoned before the senate, convicted, and sentenced to public prison (*accitam convictamque attineri publica custodia iussit*).<sup>542</sup>

Verbal harassment such as this was usually actionable under a civil proceeding *de iniuria*, but likely because of the repetition of her crime and the difference in status between Rufilla and the senatorial Gallus, the charge was upgraded to *atrox iniuria*, which was

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<sup>539</sup> Dig. 48.8.3.5 (Marcian); see also Garnsey (1970) 103–173 on the dual penalty system (*honestiores* and *humiliores*) that evolved in the second century. Capital punishment was decreed for members of the lower classes (*humiliores*) rather than for members of the elite (*honestiores*).

<sup>540</sup> Tac. *Ann.* 3.36. The circumstances of her first conviction are completely unknown. Fraud was actionable under civil law, and resulted in monetary penalties (restitution or damages); Dig. 42.8; Nichols (1962) 223; Berger (1953) 477. Bauman (1974) 86 places Rufilla's case in the larger context of asylum; Romans were seeking asylum at images of the emperor, a protection previously only available at images of gods.

<sup>541</sup> Bauman (1974) 85–92.

<sup>542</sup> Tac. *Ann.* 3.36.4.

subject to criminal prosecution *extra ordinem*.<sup>543</sup> An undated *senatus consultum* addresses the particulars of this case so specifically that it may have been created at this time:

*Senatus consulto cavetur, ne quis imaginem imperatoris in invidiam alterius portaret: et qui contra fecerit, in vincula publica mittetur.*

It is provided by *senatus consultum* that no one shall carry a representation of the emperor to the odium of another, and anyone acting to the contrary will be put in public prison.<sup>544</sup>

This type of case provided a milestone in the evolution of the practical aspects of the divinity of the living emperor, and a precedent for punishing those who abused the right of asylum.

The second defendant charged with a single crime is the patrician Fabia Numantina who was accused in AD 24 of driving her ex-husband M. Plautius Silvanus insane with incantations and potions (*carminibus et veneficiis*) after he had thrown his new wife out a window to her death.<sup>545</sup> Silvanus faced murder charges in the senatorial court, but committed suicide before the verdict was rendered.<sup>546</sup> Attention then shifted to Numantina for an explanation of her ex-husband's apparently out-of-character behaviour. Nothing is known for certain, but one might speculate that the timing of their divorce was fairly recent and that possibly Numantina had said or done something to give an accuser the idea that she harboured an active grudge against her ex-husband. At any rate, her trial in the senate followed, and resulted in her acquittal.<sup>547</sup>

The third defendant on a single charge, though possibly on multiple occasions, is the notorious poisoner Lucusta. She first appears in the historical record as an expert poisoner in 54 when Agrippina allegedly sought her assistance to murder the emperor Claudius.

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<sup>543</sup> On the *actio de iniuria*, see Dig. 47.10; on *atrox iniuria*, see Paul. *Sent.* 5.4.10; Rogers (1935) 58–59.

<sup>544</sup> Dig. 47.10.38 (Scaevola); a rescript of Antoninus Pius enforces the same penalty, Dig. 48.19.28.7.

<sup>545</sup> Tac. *Ann.* 4.22.3.

<sup>546</sup> Silvanus was encouraged by his grandmother Urgulania to choose suicide; Tac. *Ann.* 4.22.2. Because Urgulania was a close friend of Livia, her opinion was taken to be a hint directly from the imperial household.

<sup>547</sup> Tac. *Ann.* 4.22.3.

According to Tacitus, she was *nuper veneficii damnata et diu inter instrumenta regni habita*; “recently convicted of poisoning and long held among the instruments of despotism.”<sup>548</sup> Nothing is known about the poisoned person or of the trial that resulted in her conviction.<sup>549</sup> Her presence in Rome reveals that her punishment could not have fallen within the ordinary range provided by the *lex Cornelia de sicariis et veneficis*, which ordered that the condemned be subjected to *relegatio ad tempus*, *exilium perpetuum*, *deportatio ad insulam*, or execution.<sup>550</sup> Even the most lenient option, *relegatio ad tempus*, would have ensured her speedy removal from Rome and environs. Two explanations suggest themselves for her continued presence in Rome: first, that she had been convicted so very recently that she had not yet departed the city, though she was about to do so. Second, and more likely, she was still in Rome because Tacitus’ phrase *diu inter instrumenta regni habita* is factual rather than rhetorical. That is to say, he is not only asserting that poisoners have long been used as tools of despotism by rulers throughout history, but that Lucusta was specifically used as a tool of this ruler, at this time. But would Claudius have commissioned poisonings, a stereotypically feminine assassination technique? Claudius’ wife Agrippina seems a more likely candidate to have had a poisoner on retainer. Lucusta’s presence in Rome, even after a conviction for poisoning, can be explained by her having Agrippina’s protection. If Claudius was, in fact, the victim of murder by poison, as Tacitus and Suetonius assert, rather than the victim of his own gluttony and ill health, or accident if he had consumed an unexpectedly toxic

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<sup>548</sup> Tac. *Ann.* 12.66.2; Dio 60 (61).34.2; Claudius’ death is recorded on 13 October 54.

<sup>549</sup> Plausibly, this trial would have been held in the regular *quaestio*. Her status (likely a freedwoman) would not have earned her senatorial notice.

<sup>550</sup> Dig. 48.8.1.5 (Marcian); 48.8.3.5 (Marcian).

mushroom, then Agrippina's protection also explains how Lucusta escaped the full weight of legal retribution.<sup>551</sup>

A few months after Claudius' death, Lucusta was being held under the detention of the praetorian guard – apparently Agrippina's protection did not extend to luxurious living conditions, merely protection from exile or execution. The sources do not specify whether her imprisonment, unusual in itself, was due to a new crime (poisoning Claudius) or continued repercussion from the conviction in 54. Nero reportedly solicited Lucusta's advice and assistance in his plot to murder his step-brother Britannicus early in 55 and even suborned the cooperation of Pollio Julius, a praetorian tribune, in order to gain access to the prisoner.<sup>552</sup> Britannicus died at the dinner table while his sisters Octavia and Antonia, step-mother Agrippina, and step-brother Nero looked on.<sup>553</sup> Nero rewarded Lucusta for her efforts with a free pardon and extensive country estates – and actually supplied her with students: *Lucustae pro navata opera impunitatem praediaque ampla, sed et discipulos dedit.*<sup>554</sup> Suetonius recognizes Nero as the source of her impunity, but does not specify if it came from a pre-emptive grant or from a reaction to an accusation or trial launched against her, or even whether there was a new charge or still fallout from the conviction in 54. She

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<sup>551</sup> Tac. *Ann.* 13.15.3–16.4; Suet. *Nero* 33.1. Modern scholars debate the details of Claudius' demise: see Barrett (1996) 140–142; Levick (1990) 77–78.

<sup>552</sup> Tac. *Ann.* 13.15.3; Tacitus' lurid narrative of this episode indicates that Nero removed Lucusta from her confinement and supervised her as she concocted and tested various poison brews until one was sufficiently fast-acting for his needs.

<sup>553</sup> Modern scholars question the ancient sources' assertions that Britannicus' death was a murder. Barrett (1996) 171 is most persuasive, saying that “the darkening of the body [recorded by Dio] points to death by tetanoid epilepsy. No known poison except strychnine, not used in the ancient world, will turn the face dark.” See also Holland (2000) 81–83, Levick (1990) 77, and Griffin (1984) 74. The question of murder or not is ultimately moot because people *believed* that Nero had done it, and were further convinced by his rewards to the infamous Lucusta. There are no questions about Lucusta's status or reputation as a poisoner, merely about the details of whether or not she actually provided poison, in the manner described, leading up to the deaths of Claudius and Britannicus.

<sup>554</sup> Suet. *Nero* 33.3. The detail about students is curious. Did Nero believe that Lucusta provided an essential service, the provision of which must be protected into a new generation? Did he believe that he would have a repeated need for the services of a skilled poisoner? Or perhaps Nero's ample rewards had simply made Lucusta famous in her field and she therefore began to attract would-be poisoners.

was now, clearly, under the emperor Nero's direct protection. The legal mechanism for such a pardon and restoration of status is called *restitutio in integrum* or *restitutio indulgentia principis*.<sup>555</sup> It is unlikely that the republican legal minds who created the mechanism for restoration of status foresaw its use by a despot to protect a poisoner.

Suetonius preserves an interesting detail. After Lucusta's first poison brew had proved too weak, Nero urged her to make the poison stronger and faster, to which she replied that she had diluted it to make the crime less obvious. Nero said: *sane legem Iuliam timeo*; "Clearly, I fear the Julian Law." Robert Graves' Penguin translation interprets this as a sarcastic statement: "So you think that I am afraid of the Julian Law?" Whether serious or sarcastic, what is the Julian Law to which he refers? The Cornelian Law directly pertained to murder and poisoning (*lex Cornelia de sicariis et veneficis*), so perhaps Suetonius merely mistook the name of the law.<sup>556</sup> There do not appear to be any manuscript problems that would have added to the confusion. Perhaps he refers to the *lex Iulia de maiestate*: surely it would be treasonous to be caught trying to kill the deified emperor's son. Success – via a strong, fast-acting poison – would obviate the risks of being caught in a failed attempt.<sup>557</sup> Ulpian, commenting on the *lex Iulia et Papia* (part of the Augustan marriage legislation), preserves the following, arranged in the Digest amongst the commentary on the *lex Cornelia de sicariis et veneficis*: *Nihil interest, occidat quis an causam mortis praebeat*; "It makes no

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<sup>555</sup> Berger (1953) 682–683; Dig. 4.1; Cod. 2.21–41.

<sup>556</sup> Bradley (1978) 199 suggests that Suetonius mistook the name of the law, or perhaps referred to the *lex Julia de vi*. Rolfé, translator of the 1914 Loeb edition of Suetonius, asserts that the Julian law mentioned here was a *lex Julia de sicariis*, a Caesarian renewal of the original Sullan law; 136 n. b. Caesar and Augustus did revise a number of Sullan laws, but there is no evidence that they ever issued a *lex Julia de sicariis*.

<sup>557</sup> Lear (1965) 14 quotes 16<sup>th</sup> century English poet and inventor John Harington: "Treason doth ne'er succeed; and what's the reason? When it succeeds, no man dares call it treason." See also Strachan-Davidson (1912) 1.18.

difference whether someone kills or provides the occasion of death.”<sup>558</sup> According to this statement, both Nero and Lucusta would have been guilty of the murder if they had been caught. Whichever law he had in mind, Nero seems to have been concerned about being discovered before the crime was complete; with Britannicus dead, there would be no rallying point for his opposition and little threat to his own position.

Still apparently unpunished for her conviction in 54, Lucusta was consulted one last time when Nero, hours before his death, was fleeing the palace; she provided him with a box of poison. Nothing else is known about Lucusta’s activities until Galba arrested her in 69 along with a group of freedmen who had risen to prominence during Nero’s reign. Any one of the deaths by poisoning attributed to her would have been sufficient as a basis for charges.<sup>559</sup> The emperor ordered that she be bound in chains and paraded through the city before being executed.<sup>560</sup> Galba’s personal orders indicate that, whatever the specific charges against Lucusta, the trial was likely an *extra ordinem* procedure.

The fourth defendant on a single charge is Pomponia Graecina, wife of Aulus Plautius, the illustrious commander of the campaign in Britain in 43. She was charged in 57 with harbouring foreign superstitions, and her case stands out as the only one in this study in which religion played an overt role. The Romans had a long history of unease with foreign religions, as demonstrated by the Bacchanalian scandal in the second century BC.<sup>561</sup> The polytheistic, ritualistic nature of Roman religion allowed for the addition of deities or rituals without unduly compromising the integrity of the traditional religion. Individual Romans

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<sup>558</sup> Dig. 48.8.15 (Ulpian); the *leges Julia et Papia* (properly two laws) were in effect by AD 9; Berger (1953) 553–554. The *lex Julia de maritandis ordinibus* was called ‘*miscella*’ by Justinian because of its various intermingled provisions; Cod. 6.40.

<sup>559</sup> Ramsland (2006) 1 claims Lucusta as history’s first recorded serial killer.

<sup>560</sup> Dio 63.3.4

<sup>561</sup> Livy 39.8–19.

worshiped Cybele, Isis, Mithras, and other eastern deities, but problems arose when, as in the case of the Bacchanals, large associations formed that were perceived as generating conflicting loyalties between the religious association and the good of the state.<sup>562</sup> Graecina was an individual, and there is no hint that she was a member of a larger association that may have posed a risk to the state. Eck discounts the possibility that she may have been Christian, suggesting instead that she may have been a devotee of another oriental cult.<sup>563</sup> We are left to ask: what could she have done to merit such attention?

A partial answer may be found in Dio, in a set speech placed in the mouth of Maecenas, addressing Augustus:

Τοὺς δὲ δὴ ξενίζοντάς τι περὶ αὐτὸ [τὸ θεῖον κατὰ τὰ πάτρια] καὶ μίσει καὶ κόλαζε, μὴ μόνον τῶν θεῶν ἕνεκα, ὧν ὁ καταφρονήσας οὐδ' ἄλλου ἂν τινοῦ προτιμήσειεν, ἀλλ' ὅτι καὶ καινὰ τινα δαιμόνια οἱ τοιοῦτοι ἀντεσφέροντες πολλοὺς ἀναπεΐθουσιν ἀλλοτριονομεῖν, κακ τούτου καὶ συνωμοσίαι καὶ συστάσεις ἑταιρείαί τε γίνονται, ἅπερ ἥκιστα μοναρχία συμφέρει.

Despise and punish those who distort in some way our traditional religion, not only for the sake of the gods (since if one turns his mind away from these, he will not honour any other being) but because such men, by bringing in new divinities in place of the old, persuade many to adopt foreign practices, from which spring up conspiracies, factions, and cabals, which bring very little good to a monarchy.<sup>564</sup>

Expressed here is not only the fear of conspiracies and religious associations that could threaten political and social stability, but also the fear that an individual who rejects the traditional gods poses a threat. Graecina's foreign superstitions, therefore, are not politically

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<sup>562</sup> In the *SC de Bacchanalibus* of 186 BC (CIL I<sup>2</sup> 581) Romans were forbidden to meet in groups of more than three women and two men, to appoint priests or priestesses, or to have communal funds. These measures were meant to discourage association rather than individual worship; see also Baudy (2006) 105. Other cults faced expulsion at various times: Isis worshipers (Ide, no. 22, and Paulina, no. 45), other Egyptian cults, and Jews were expelled; Tac. *Ann.* 2.85.4; Suet. *Tib.* 36; Jos. *AJ* 19.286–290; Dio 53.2.4; 54.6.6; 60.6.6. Claudius banned Druidism; Suet. *Claud.* 25.5; Pliny *HN* 30.13. The perceived conflicting loyalties and refusal to participate in state religion formed the basis of the problem with the Christians; Pliny *Ep.* 10.96.

<sup>563</sup> Eck (1971) 391; other senatorial women engaged in foreign cult practices, for example Paulina, no. 45, a devotee of Isis.

<sup>564</sup> Dio 52.36.2.

threatening, but morally threatening. Her actions must have surpassed a critical threshold of tolerance, convincing her accuser to register charges against her.

Although her case came to the attention of the senate, Graecina was transferred back to her husband for judgment, in the archaic manner.<sup>565</sup> There is no hint in the sources about why this course of action was deemed appropriate. Graecina's husband Plautius, in the presence of a family council (*propinquis coram*), judged his wife innocent.<sup>566</sup>

Of the four women who faced only one charge, Numantina and Graecina were acquitted, Annia Rufilla and Lucusta were convicted. There were no co-defendants. Only Numantina and Rufilla are known to have faced a full senatorial trial; Lucusta was convicted in 54 before she was solicited to poison Claudius, then condemned to death on the orders of the emperor Galba, but the trial venue is unknown in both instances. It is interesting, though not statistically significant, to note that both women of elite status were acquitted while both women of lower status were condemned.

### **Defendants on multiple charges**

Five women are recorded as having faced multiple simultaneous charges; four of the cases have in common the charge of *venenum* or *veneficia* (use of poisons or magical potions). These five cases also overlap to some degree with the discussions in other chapters, so the focus in this section will be primarily on those charges not presented elsewhere.

Aemilia Lepida faced four separate charges brought by her ex-husband Publius Quirinius: adultery, *maiestas*, poisoning, and *falsum*. The course of her trial is discussed

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<sup>565</sup> This archaic practice was partially revived by Tiberius: in the absence of a public prosecutor, matrons of ill-repute should be punished according to the decision of a council of their relatives; Suet. *Tib.* 35. For other examples of family *consilia* judging women, see Livy 39.18.6; 48 (epitome); Dion. Hal. 2.25.6.

<sup>566</sup> Tac. *Ann.* 13.32.

earlier in this chapter, but the latter two charges require mention here. Quirinius alleged that, during their marriage, Lepida had tried to poison him; his survival notwithstanding, he claimed that her intent had been to kill him. Under the *lex Cornelia de sicariis et veneficis*, intent to cause death was just as criminal as actually causing death.<sup>567</sup> Because of the adultery and treason charges, Lepida's slaves had been available for questioning, but the information wrung from them was insufficient at trial or was available too late to be used at trial. After the senate returned a guilty verdict, Tiberius announced that he had personally ascertained, from her husband's slaves, that Lepida had attempted to poison Quirinius.<sup>568</sup> The timing of his statement indicates that it was intended to override the 'court of public opinion' in which Quirinius had been excoriated, and to clarify that Lepida really was guilty and Quirinius really had been wronged.

The issue of the suppositious child remains. The adultery charge must have been closely intertwined with the *falsum* charge: if Quirinius could prove (or at least strongly suggest) adulterous conduct, then the claim of the suppositious child would gain credibility proportionately. The *lex Cornelia de falsis*, first enacted by Sulla in 81 BC, provided penalties for various offenses considered as *falsum*: fraud, forgery, and counterfeiting, although the most common offense for which redress was sought was that of testamentary forgery.<sup>569</sup> Penalties prescribed by the *lex* were various, depending on the perceived gravity

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<sup>567</sup> Dig. 48.8.15 (Ulpian).

<sup>568</sup> Although his slaves were not legally required to be subject to questioning (by torture, that is), Quirinius could have volunteered them for questioning.

<sup>569</sup> Paul. *Coll.* 8.6.1 defines *falsum* in very general terms as "that which in reality does not exist, but is asserted as true;" see also Berger (1953) 467. Criminal accusations *de falsis* must be distinguished from the civil accusations *de doli*. The basic tenets of the *lex Cornelia de falsis* continued to be expanded through the early empire first by a series of *senatus consulta* and later by imperial rescripts. The SC Libonianum of 16 and the SC Licinianum of slightly later date both dealt with types of testamentary fraud. The SC Geminianum extended the penalties of the *lex* onto persons who accepted money for false testimony; Berger (1953) 698; Green (2000) 1097.

of the crime, from *aquae et ignis interdictio* to *relegatio*, *deportatio* or execution.<sup>570</sup> The *lex Cornelia de falsis*, at its inception, dealt largely with testamentary forgery and had not yet at the time of Lepida's trial in 20 been expanded to include many other aspects of fraud known to have been included in later law.<sup>571</sup> Nonetheless, the charge of *falsum* is appropriate for two reasons. First, there is the alleged falsehood surrounding the parentage of the child.<sup>572</sup> Second, if the child was accepted by the unwitting father, it would be entitled to inherit, thus raising concerns about fraudulent inheritance.<sup>573</sup> Quirinius was elderly, very wealthy, and likely quite concerned about his legal heir.<sup>574</sup> Proving that Lepida's child was not his biological offspring, or at least raising serious legal questions, would pave the way for disherison.

The second case is that of Munatia Plancina, who was accused along with her husband Gn. Piso of treason and the murder by poisoning of Germanicus Caesar. Tacitus provides a lengthy and sensational account of the events leading up to the death of Germanicus, including a deathbed speech in which the dying prince blames Piso and Plancina for his condition.<sup>575</sup> Germanicus' house in Syria had been surrounded by evidence of ill will:

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<sup>570</sup> Berger (1953) 467; Dig. 48.10.1.13 (Marcian); 48.10.13.1 (Papinian); 48.10.21 (Paul); 48.10.31 (Callistratus); 48.10.32.2 (Modestinus); 48.10.33 (Modestinus); Cod. 9.22–24.

<sup>571</sup> Known revisions are: SC Libonianum in 16, which declared that testamentary dispositions in favour of the writer of the testament were void, Dig. 48.10; SC Messalianum in 20; SC Geminianum in 29; SC Licinianum possibly revised in 27 or 45; various imperial rescripts under Hadrian; Green (2000) 1097–1098; Bauman (1996) 103; Berger (1953) 698.

<sup>572</sup> On suppositious children, see also Dig. 48.10.19.2 (Paul) and 48.10.30.1 (Modestinus).

<sup>573</sup> Suetonius, *Nero* 7, relates an incident between the teenaged step-brothers Nero and Britannicus in which Britannicus continually addressed his brother as 'Ahenobarbus', thereby negating the adoption that made Nero a son of the emperor. In retaliation, Nero tried to convince Claudius that Britannicus was a suppositious child. On one hand, this is simply the very old tale of sibling squabbling. On the other hand, the denial of legal heredity may have been a threat that could hurt more than just feelings.

<sup>574</sup> In fact, he died less than a year after this trial, Tac. *Ann.* 3.48.1.

<sup>575</sup> Tac. *Ann.* 2.69–83, speech at 2.71: *nunc scelere Pisonis et Plancinae interceptus*.

*Et reperiabantur solo ac parietibus erutae humanorum corporum reliquiae, carmina et devotiones et nomen Germanici plumbeis tabulis insculptum, semusti cineres ac tabo obliti aliaque malefica, quis creditur animas numinibus infernis sacrari.*

And the remains of human bodies were discovered dug out from the walls and the ground, and incantations, curses, and Germanicus' name etched on lead tablets, half-burned ashes smeared with putrid matter and other malefic things by which it is believed that souls are consecrated to the infernal divinities.<sup>576</sup>

Plancina was unequivocally viewed as active in the occult activities and the administration of poison, whereas accusations of insubordination and seditious troop movements had been lodged against Piso alone.<sup>577</sup> Immediately after Germanicus' death, the accusers sprang into action. The notorious poisoner Martina was *percaram Plancinae*, "particularly dear to Plancina," and was arrested and dispatched on a ship bound for Rome.<sup>578</sup> She died at Brundisium before reaching the capital and the impending trial; poison had been concealed in a knot of her hair, Tacitus reports, but there were no indications on her body suggesting suicide.<sup>579</sup> Piso himself knew what was being said about the situation and foresaw the poisoning charges against them.<sup>580</sup>

The trial began almost immediately after Piso and Plancina's arrival at Rome. The course of the trial has received much scholarly attention in the last decade since the publication of the epigraphical text of the *Senatus Consultum de Cn. Pisone patre*; only

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<sup>576</sup> Tac. *Ann.* 2.69.3; Dio 57.18.9 also describes human remains and lead curse-tablets found in Germanicus' house while he was still alive.

<sup>577</sup> There seems to have been no mention at trial of Plancina's offensive behaviour at Rhodes: *nec Plancina se intra decora feminis tenebat, sed exercitio equitum, decursibus cohortium interesse, in Agrippinam, in Germanicum contumelias iacere*; "Nor did Plancina constrain herself within the bounds of decorous female behaviour, but was present at cavalry exercises and troop reviews, and hurled insults at Agrippina and Germanicus;" Tac. *Ann.* 2.55.6.

<sup>578</sup> Tac. *Ann.* 2.74.2.

<sup>579</sup> Tac. *Ann.* 3.7.2; the implication is that suicide by poison would have left some revealing marks on her body. Compare descriptions of Germanicus' and Britannicus' bodies: Tac. *Ann.* 2.73.4; Dio 61.7.4.

<sup>580</sup> Tac. *Ann.* 2.79.1: pressured to return to Rome to present his case, Piso replied that he would be there when the praetor who investigates poisonings had prescribed a day for defendant and accusers, that is, a trial date (*adfuturum ubi praetor qui de veneficiis quaereret reo atque accusatoribus diem praedixisset*).

Plancina's role is the focus here.<sup>581</sup> She is named in the trial narrative as having participated in causing the death of Germanicus by *devotiones et veneficia*.<sup>582</sup> Piso's defense was aggressive and seems to have disproved the accusation of poisoning.<sup>583</sup> Nonetheless, when it began to be clear that Piso's conviction was inevitable, Plancina separated her defense from his and, through Livia's intervention, was assured of pardon.<sup>584</sup> After Piso committed suicide, two days were used to conclude Plancina's trial – Tacitus says *imagine cognitionis*, “in the appearance of a trial.”<sup>585</sup> With the public support of Livia and Tiberius, Plancina's punishment was remitted (*remittique poenam Plancinae*).<sup>586</sup> She was not, therefore, technically deemed ‘not guilty’ or acquitted in the modern sense, but an exercise of imperial influence assured her impunity.<sup>587</sup>

Plancina was accused again in 33, but the sensational circumstances of the trial in 20 overshadow the trial of 33; we do not know for certain what the charges were or if there was a full trial before her suicide. Tacitus reports that she was the target of accusations by no means unfamiliar, and that she paid by her own hand a late rather than undeserved punishment (*petitaque criminibus haud ignotis sua manu sera magis quam immerita*

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<sup>581</sup> Eck, Caballos, and Fernandez (1996), Griffin (1997), Barnes (1998), a special issue of the *American Journal of Philology*, vol. 120 (1999), Rowe (2005). The volume and detail of information available makes this case vital in any discussion of criminal trial procedures in the Senate during the development of the senatorial court. Similarly, scholars have seized the opportunity to compare Tacitus' account with the epigraphical text of the *senatus consultum* and to evaluate Tacitus' historiographical methods. Both investigations are of tangential interest to this study and will be addressed only in passing.

<sup>582</sup> Tac. *Ann.* 3.13.2.

<sup>583</sup> Tac. *Ann.* 3.14.1.

<sup>584</sup> Tac. *Ann.* 3.15.1; SCPP 109–120. The fact that Plancina had time to distance herself effectively from Piso when his prospects at trial diminished poses problems in understanding the chronology of the trial; Talbert (1999) 111.

<sup>585</sup> Tac. *Ann.* 3.17.3. There must have been some hiatus in trial proceedings to allow Piso's sons to prepare their defense of their mother; Talbert (1999) 94.

<sup>586</sup> SCPP 119–120.

<sup>587</sup> Notably, the SCPP 120–124 reveals that two members of Piso's staff (Visellius Karus and Sempronius Bassus) were full partners and agents in all of his crimes and they were sentenced to *aquae et ignis interdictio* and their property was confiscated. Plancina could not, therefore, have been seen as a full partner in all of Piso's crimes, particularly those of insubordination and sedition.

*supplicia persolvit*).<sup>588</sup> The implication seems to be that the old charges were simply renewed but that, without imperial protection this time, the outcome was appropriate and final.<sup>589</sup>

In the third case involving multiple charges, Claudia Pulchra was accused in 24 of immorality, poisoning and aiming curses against the emperor Tiberius (*impudicitia, veneficia in principem et devotiones*).<sup>590</sup> The accusation of *impudicitia* seems to have been a Tacitean euphemism for *stuprum*, punishable under the Julian law on adultery.<sup>591</sup> The last two charges require comment here. This combination of *veneficium* (poisoning or magical acts) and *devotiones* (curse tablets) suggests that the goal was to bring harm or death to the person against whom they were directed.<sup>592</sup> The description is strikingly parallel to Tacitus' description of the cause of Germanicus' death only six years earlier. His widow Agrippina cannot have failed to see the similarities between the accusations against her friend and the manner of her own husband's death, yet she embarked on a passionate defense of Pulchra, thereby reinforcing the idea that Pulchra's demise was largely politically motivated. Although the intention to cause harm to the emperor is strongly implied, there is no suggestion that *maiestas* was invoked against Pulchra; certainly, Tiberius was not opposed to treason trials *per se*. She was most likely charged under the *lex Cornelia de sicariis et veneficis*. Pulchra is known to have been convicted, but because her punishment is unrecorded, it is not possible to judge how seriously her crimes were perceived, or indeed whether any of the charges were dropped prior to her conviction.<sup>593</sup>

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<sup>588</sup> Tac. *Ann.* 6.26.3.

<sup>589</sup> Livia had died in 29 and Tiberius had already withdrawn to Capri, so their protection was not available in 33.

<sup>590</sup> Tac. *Ann.* 4.52.1.

<sup>591</sup> See also chapter 2.1. Her accused lover, Furnius, was convicted with her.

<sup>592</sup> Rives (2006) 56–57.

<sup>593</sup> Tac. *Ann.* 4.52.3.

The fourth case to consider is that of Domitia Lepida, charged in 54 with attacking the princeps' spouse Agrippina with *devotiones* and disturbing the peace of Italy because she had too little control over her columns of slaves throughout Calabria.<sup>594</sup> This is the third case where poison or *devotiones* aimed at imperial family members is conspicuously not called *maiestas*. According to Claudius' inaugural oath, the charge of *maiestas* was suspended throughout his reign and suspiciously *maiestas*-like activities were simply not labelled as such.<sup>595</sup> Certainly, the employment of magical acts or curses against the life or health of an imperial person seems just as objectionable as consulting astrologers regarding the life or health of an imperial person. Within the previous five years, Lollia Paulina as well as Vibia and her son Scribonianus had been convicted because they had consulted astrologers about the imperial family.<sup>596</sup>

The implication of the second charge against Lepida, that of disturbing the peace of Italy, may have been that she was training armed bands for some kind of uprising, undoubtedly in favour of her grandson Britannicus. Poorly controlled slave gangs would also have raised fears of another great slave revolt like those that had troubled the previous century.<sup>597</sup> This crime would have fallen under the field of the *lex Julia de vi publica*, the penalty for which is recorded as *interdictio aquae et ignis*.<sup>598</sup> Lepida was convicted, partly because of her nephew Nero's testimony against her, and executed.<sup>599</sup>

In the fifth case involving a defendant on multiple charges, Junia Lepida was accused of incest and black magic (*diri sacrorum ritus*) as part of a political manoeuvre by Nero

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<sup>594</sup> Tac. *Ann.* 12.64–65; see also chapter 3, *Women pro accusatoribus*.

<sup>595</sup> Dio 60.3.6; Levick (1990) 119; Bauman (1974) 194–204.

<sup>596</sup> Lollia Paulina: Tac. *Ann.* 12.22; Vibia and son Furius Scribonianus: Tac. *Ann.* 12.52.

<sup>597</sup> For slave revolts, see Barrett (1996) 137–138.

<sup>598</sup> Dig. 48.6; on the penalty specifically, Dig. 48.6.10.2 (Ulpian); Berger (1953) 554, 768.

<sup>599</sup> Suet. *Nero* 7.1; Tac. *Ann.* 12.65.1.

against her nephew L. Junius Silanus Torquatus and husband C. Cassius Longinus.<sup>600</sup> Nero ordered the removal of both Cassius and his nephew from the senate and accused them of defection from the house of Caesar and sowing the seeds of civil war.<sup>601</sup> The senate tried Cassius and Silanus and decreed deportation for both.<sup>602</sup> Tacitus also records: ...*qui in Lepidam, Cassii uxorem, Silani amitam, incestum cum fratris filio et diros sacrorum ritus confingerent*. “They fabricated against Lepida, wife of Cassius and aunt of Silanus, [charges of] incest with her brother’s son and ominous religious rituals.”<sup>603</sup> The senate decreed that the princeps should judge her case.<sup>604</sup> Nero’s decision on Junia Lepida’s fate is not recorded. After this, Lepida disappears from the historical record. The vague charge of conducting ominous religious rituals could mean that she was suspected of some sort of divinatory inquiry or harmful magic, both of which activities aroused deep anxiety among Roman emperors.<sup>605</sup>

Three of the five cases in this section include reprisals against *devotiones* used against a member of the imperial family. This does not indicate widespread criminalization of *devotiones* in general, but rather incorporation of such activities in the newly created category of “things one should not do to the imperial family.” The actual charge of *maiestas* is not raised in connection with *devotiones*, but the trials and penalties of the foregoing four women indicate that, like consulting astrologers about the imperial family, a prudent person should abstain. Perhaps the power of *devotiones* was viewed as less threatening than the

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<sup>600</sup> Tac. *Ann.* 16.8.2; 16.9.1. This is Cassius the famous jurist and head of the Sabinian school; see Bauman (1989) ch. 4; for the trial and exile specifically, 107–113; see also Rogers (1952) 290, 304–305.

<sup>601</sup> Tac. *Ann.* 16.7.2. Nero may have been unusually paranoid – Poppaea’s funeral was in August 65, only four months after the Pisonian conspiracy was detected and thwarted in April 65; Tac. *Ann.* 15.48–74.

<sup>602</sup> That the harsher punishment of *deportatio* (including loss of citizenship and property) was meant here is illustrated by the next sentence where Tacitus describes them as *deportatus*; *Ann.* 16.9.1.

<sup>603</sup> Tac. *Ann.* 16.8.2.

<sup>604</sup> Tac. *Ann.* 16.9.1.

<sup>605</sup> Cramer (1954) 240–241; cf. Bauman (1974) 59–69.

knowledge potentially gained from the astrological consultation and there was, therefore, less urgency that such practices be curbed. In none of the cases listed were magical practices the sole indictment against a defendant, suggesting that it might have been an added charge to bolster an otherwise weak case against a defendant. There is no hint that it was viewed as a whimsical or foolish accusation, however, and Pliny the elder states that, “there is no one who does not fear to be spellbound by curse tablets.”<sup>606</sup>

### Defendants on unrecorded charges

Eight women faced trials on charges that are not defined in our sources. Mallonia is described as *rea* and proceedings against her took place in a *iudicium* some time in the reign of Tiberius, but the charges and verdict are unrecorded. She had, apparently, vehemently refused Tiberius’ lustful advances and the offended emperor ordered informers to follow her. During her trial on unspecified charges, Tiberius would not stop shouting at her, thus confirming for us his presence at the court proceedings.<sup>607</sup> She left the court and stabbed herself to death (*donec ea relicto iudicio domum se abripuit ferroque transegit*).<sup>608</sup>

Sextia was the wife of Mamercus Aemilius Scaurus and member of the prominent Sextii Africani family.<sup>609</sup> Her husband was charged with *maiestas* in 32, then with adultery and sorcery (*magorum sacra*) in 34. On the treason charges, there was either no trial at the time or a rare verdict of not guilty.<sup>610</sup> The crime of *magorum sacra* was likely dealt with under the *lex Cornelia de sicariis et veneficis*; the adultery under the Julian law.<sup>611</sup> Both

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<sup>606</sup> Pliny, *HN* 28.4.19; Gager (1992) 244, 253.

<sup>607</sup> Suet. *Tib.* 45.

<sup>608</sup> Suet. *Tib.* 45.

<sup>609</sup> *PIR*<sup>2</sup> A 404; this is the same Scaurus who was married to Aemilia Lepida, no. 3, prior to her trial in 20. On Sextia’s family, see Syme (1949) 12.

<sup>610</sup> Tac. *Ann.* 6.9.3.

<sup>611</sup> On the implications and punishment of *magorum sacra*, see Rives (2003) 320–322; also Martin (2001) 163.

Scaurus and Sextia suicided before the verdict.<sup>612</sup> It is not clear whether Sextia was a co-defendant – obviously not on the charge of adultery – although if she was not herself under indictment, it is unclear why she felt that suicide was her best option.

Calpurnia was exiled in 49, also on unrecorded charges. She was struck down (*pervertitur*) by Agrippina the younger after Claudius had praised her good looks.<sup>613</sup> No charge or trial is described, but her exile was not voluntary and so must have had its impetus in a court. She was recalled to Rome after the death of Agrippina, the timing of which emphasized Agrippina's role in initiating and maintaining her exiled status.<sup>614</sup>

An unnamed woman, the mother of Sextus Papinius, was accused in the senate after her son had committed suicide in 37.<sup>615</sup> The impetus behind his suicide was traced back to his mother: *quae pridem repudiata adsentationibus atque luxu perpulisset iuvenem ad ea, quorum effugium non nisi morte inveniret*; “who, long since rejected, had driven the young man to such a state by flatteries and luxury, from which he could find no escape other than death.”<sup>616</sup> The idea of one person driving another to excessive behaviour was also seen in the accusations against Fabia Numantina; in her case, the accusers alleged that she had used incantations and potions to drive her ex-husband insane.<sup>617</sup> The mother of Papinius is not accused of using occult means, but rather using luxuries, flatteries, and a hint of incestuous inclination.<sup>618</sup> Corruption and attempts at sexual impropriety fall under the crime of *iniuria*

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<sup>612</sup> Tac. *Ann.* 6.29.3–4; the alleged adultery was with Drusus' wife Livilla, who had been dead for more than two years.

<sup>613</sup> Tac. *Ann.* 12.22.3. See also chapter 3, Women *pro accusatoribus*.

<sup>614</sup> Tac. *Ann.* 14.12.

<sup>615</sup> Sex. Papinius: PIR<sup>2</sup> P 100.

<sup>616</sup> Tac. *Ann.* 6.49.

<sup>617</sup> Fabia Numantina, no. 21.

<sup>618</sup> The word *repudiata* is commonly used to describe a divorced woman, but can also mean simply ‘rejected;’ Woodman (2004) 192 n.142; Rogers (1935) 164.

or possibly an *extra ordinem crimen*.<sup>619</sup> There were no Roman statutes on parental child abuse.

Tacitus records, in *oratio obliqua*, a portion of speech given by the mother of Sextus Papinius during her trial in 37. While grovelling before the senators, she fell back on stereotypical pleas about the weakness of feminine courage, the common experiences of grief, and other appeals for sympathy.<sup>620</sup> These statements do not appear to have the character and tone of formal witness testimony. Unmoved, the senate found her guilty and decreed that she be exiled from Rome for ten years until her younger son should have passed through his youth and into full adulthood.

Livia Orestilla was banished by Caligula for uncertain reasons. At her wedding feast, Caligula is reported to have said to the groom, Piso, “Don’t touch my wife!” (*noli uxorem meam premere*);<sup>621</sup> he then ordered that she be carried off from her wedding to the emperor’s house. Caligula announced the next day that he had taken her as wife in the style of Romulus and Augustus, but after a few days, Suetonius reports, he repudiated her. Two years later, he banished her suspecting that she had returned to Piso in the interval. This bizarre story does not lend itself well to legal analysis. Whether or not the marriage to and subsequent divorce from Caligula were legal, the emperor would still have no standing to claim adultery two years later. By then, it appears, he was remarried to Caesonia and the new marriage would override any previous one. We are left with the bare fact that Orestilla was banished on an unrecorded charge.

A few years later in 43, Messalina was alleged to have caused the demise of Julia, daughter of Drusus and Livilla, wife of Rubellius Blandus, and mother of Rubellius

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<sup>619</sup> *De iniuria*: Dig. 47.10.9.4 (Ulpian); *extra ordinem crimen*: Dig. 47.11.1 (Paul).

<sup>620</sup> Tac. *Ann.* 6.49.2.

<sup>621</sup> Suet. *Cal.* 25.1.

Plautus.<sup>622</sup> Julia is recorded as one of the people whom Suillius prosecuted, and Suillius is known to have been Messalina's prosecutor.<sup>623</sup> She may have been accused on moral grounds, but the charges remain uncertain.<sup>624</sup> Suetonius includes Julia in a list of defendants executed on unsupported charges and without the chance to plead in self-defense.<sup>625</sup> She committed suicide in 43 (*ferro ... caesa est*).<sup>626</sup>

The charges against Junia Silana are not known to us, although the circumstances of her demise were carefully recorded. Erstwhile friend of Agrippina the younger, and seeking revenge for past slights, Silana took advantage of the fact that Agrippina had been stripped of her personal bodyguard in 55 and moved out of the imperial house.<sup>627</sup> Sensing that Agrippina was out of favour and that there was an opportunity for vengeance, she initiated legal charges against Agrippina, alleging that she was involved in plotting rebellion with Rubellius Plautus, son of the aforementioned Julia. The accusation was carefully calculated to feed into Nero's insecurities, since Plautus was a descendant of Augustus in exactly equal degree to Nero himself and therefore, with Agrippina's support, had a potentially viable claim to the throne. Furious and alarmed, Agrippina sought and received an interview with her son, in which she successfully persuaded him that the accusations were completely groundless. Attention turned to the accusers, and Silana was immediately recognized as the source of the accusation. Silana's clients, Calvisius and Iturius, through whom she had registered the charges, were relegated, presumably on charges of *calumnia* (malicious prosecution).<sup>628</sup> Silana was exiled, though she would not technically have been liable for

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<sup>622</sup> Dio 60.18.4. See also chapter 3, Women *pro accusatoribus*.

<sup>623</sup> Rutledge (2001) 148, 271.

<sup>624</sup> Sen. *Octavia* 944–946; Levick (1990) 56.

<sup>625</sup> Suet. *Claud.* 29.1.

<sup>626</sup> Sen. *Octavia* 944–946; Dio 60.18.4.

<sup>627</sup> Tac. *Ann.* 13.18.3.

<sup>628</sup> Tac. *Ann.* 13.22.2; for more on *calumnia*, see Giomaro (2003).

*calumnia* since she had not personally registered the unfounded charges. Regardless, she was known to have been the source of the attack. Agrippina successfully obtained vengeance on her accusers (*ultionem in delatores ...obtinuit*).<sup>629</sup>

The final defendant on unrecorded charges is Caedicia, wife of the senator Flavius Scaevinus, who played a leading role in the Pisonian conspiracy against Nero in 65.<sup>630</sup> She was convicted with senator Caesennius Maximus and “they were exiled from Italy, discovering only from their sentence that they had been on trial,” (*Italia prohibentur, reos fuisse se tantum poena experti*).<sup>631</sup> Family members of other conspirators in this plot were similarly banished.<sup>632</sup> There is no evidence of a deeper connection between Caedicia and Caesennius. The sub-capital penalty and simple banishment from Italy suggests that they were merely guilty by association with the conspirators. Any suggestion of actual involvement in the conspiracy would have resulted in charges of *maiestas* and much harsher penalties.

Although the women discussed above were punished without clear and detailed information about legal procedures having been recorded in our sources, their destruction is usually described using legal terminology. Even when the sources give no hint of a trial, we must not conclude that there was not one. With no trial, the punishments recorded would have been illegal. The Julio-Claudians – Tiberius in particular – were anxious not to appear dictatorial or authoritarian; a sketchy *pro forma* trial would have sufficed to meet the burden of appearances.

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<sup>629</sup> Tac. *Ann.* 13.21.6; Bauman (1992) 198. See also chapter 3, Women *pro accusatoribus*.

<sup>630</sup> Tac. *Ann.* 15.49.4; 15.53–56; 15.59.1; 15.74.2.

<sup>631</sup> Tac. *Ann.* 15.71.5; Caesennius Maximus (PIR<sup>2</sup> C 172) had been suffect consul and had been a close friend of Seneca.

<sup>632</sup> Suet. *Nero* 36; Suetonius reveals that the children of the conspirators were later starved to death or poisoned, but makes no mention of any other conspirators' wives.

### **Politically motivated charges**

Of the cases discussed above, nine women's trials could be defined as political because of their identities, the identities of their male family members, and the political circumstances: Junia Lepida, Julia, Domitia Lepida, Calpurnia, Junia Silana, Caedicia, Munatia Plancina, Claudia Pulchra, and Aemilia Lepida. One might suggest that Lucusta has been overlooked: surely poisoning Claudius, Britannicus and unnamed others must be considered 'political'. Indeed, her *crimes* were politically motivated, but her *trials* were not. She was not a political threat, nor were any male family members; she was, in essence, a tool employed by a politician. Unlike the preceding categories of adultery and *maiestas*, this third category of various other charges does not have a sustained single theme, although charges like *veneficia et devotiones* are prominent. Nonetheless, charges of different types have different political implications that must be examined individually. When considering whether political injury was a goal of these trials, we must inquire whether the intended target of harm was (a) the male family members, or (b) the women themselves.

#### **(a) Male family members as targets**

Only one case stands out as clearly targeting a woman's male family members: the case of Junia Lepida. Nero had conceived a resentment against her husband, C. Cassius, and while he engineered the famous jurist's expulsion from the senate and exile, according to Tacitus, he also induced the registration of fabricated charges against Junia Lepida.<sup>633</sup> The path of intended injury lies directly from Nero to Cassius; whatever the damage to Junia

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<sup>633</sup> Tac. *Ann.* 16.8.2.

Lepida, it was incidental. Two further cases, those against women of the extended imperial family, Julia (daughter of Tiberius' son Drusus) and Domitia Lepida, may have been motivated by an intent to harm their male family members, but the women themselves stand out as the primary targets of injury.

**(b) Women themselves as targets**

Julia's three sons, as great-grandsons of Tiberius, were potential rivals to Messalina's son Britannicus; all the boys were descended from Augustus in exactly the same degree. At the time of Julia's demise in 43, however, all the sons were very young boys, and it was by no means guaranteed that any of them would reach adulthood.<sup>634</sup> It was too early to eliminate Britannicus' rivals, although perhaps Messalina's intention was to remove Julia and prevent her birthing any more potential competitors. One must avoid the anachronism of supposing that the later Neronian fears about Julia's son Rubellius Plautus as a focus for sedition were present already in Claudian times, and thus may have presented some motive.<sup>635</sup> Julia was attacked, therefore, on her own (de)merits, without any clear intention to harm her male family members.

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<sup>634</sup> Britannicus was born three weeks after Claudius became emperor in 41 and was barely beyond infancy at the time of Julia's trial in 43; Suet. *Claud.* 27.2. There were four children (three sons) born to Julia and Blandus after their marriage in 33; Tac. *Ann.* 6.27.1; Syme (1982) 62, 78. The eldest son could have been as many as seven years older than Britannicus; nine years old at most, therefore, when his mother Julia died in 43.

<sup>635</sup> Tac. *Ann.* 14.22; 14.57–59. Contra Rutledge (2001) 148 and Levick (1990) 56, Bauman (1992) 171 conjectures that Julia was in league with praetorian prefect Catonius Justus, also destroyed by Messalina in the same year. See also chapter 3, Women *pro accusatoribus*. Bauman's speculation that Julia was hoping to replace Messalina as Claudius' wife is not persuasive. Her husband Blandus was still alive, though divorce was easily enough achieved. The proposed marriage of emperor and niece (in this case by adoption, not by blood) seems to anticipate Agrippina's ambitions. Julia, a rather younger woman, seems not to have possessed similar political savvy and force of character as her cousin Agrippina who successfully manipulated circumstances to achieve marriage to her uncle (including changes in the law to allow it) and primacy for her son. The fact that she had reported to her mother (who reported to Sejanus) her husband Nero's words and actions may be a hint of political savvy, but may also be the naïve actions of a young woman anxious to talk to her mama. Tac. *Ann.* 4.60.2; Bauman (1992) 149.

There were multi-faceted political motives in the trial against Domitia Lepida. First, the attack against Lepida was arguably intended to impact the political careers of both her grandson, Britannicus, and her nephew, Nero. Lepida was surely a powerful protectress for her grandchildren.<sup>636</sup> Removing Lepida meant removing a source of strong support from Britannicus and hindering his prospects of moving smoothly through treacherous waters and into his full imperial inheritance. There was also the issue of influence over Nero, the elder heir-presumptive, about which, Tacitus reports, Agrippina and Lepida contested fiercely.<sup>637</sup> Lepida may have wished to foster cooperation between the two boys; Agrippina was determined that her son should rule.<sup>638</sup>

Second, Agrippina's legal attack on Lepida was very much intended to harm Lepida herself. She was a dangerous rival, being Agrippina's equal in most respects – age, rank, wealth; both were shameless, infamous, and ruthless. She was also the source of a potential schism in the imperial family and the Roman populace: some would support Nero, others Britannicus. Agrippina wished to eliminate the potential schism for the benefit of her own son, and Claudius, acutely sensitive to the political instability of his own reign, may have supported, or at least ignored, a fabricated criminal case against Lepida. Moreover, the existence of fractious slave gangs, armed or not, would not have evoked Claudius' goodwill towards his former mother-in-law. Lepida was a problem of which he was well rid.<sup>639</sup>

The remaining cases were undertaken with the sole intention of causing injury to the defendants themselves. Calpurnia, for example, was eliminated by Agrippina because she

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<sup>636</sup> One must wonder what Lepida thought about the legal manoeuvres leading up to her granddaughter Octavia's betrothal to Nero in 49; Junia Calvina, no. 30.

<sup>637</sup> Tac. *Ann.* 12.64.5.

<sup>638</sup> Her sentiments are illustrated by her famous comment: *occidate, dum imperet!* "Let him kill (me), so long as he rules!" Tac. *Ann.* 14.9.3.

<sup>639</sup> The evidence may have been stronger than Tacitus records, since Lepida was executed; Tac. *Ann.* 12.65.2.

had caught Claudius' attention and he had commented on her beauty. As a rival for Claudius' interest, she was a threat to Agrippina's politically charged intention to marry the emperor. Junia Silana was also eliminated by Agrippina after her clients' lawsuit against the emperor's mother failed. Silana was immediately recognized as the source of the attack and Agrippina's retaliation fell both on the clients and their patroness. Silana's attack and Agrippina's counter-attack were politically charged, and were aimed at the women involved, with no intention of indirectly harming a male family member's political career. The clients, of course, were charged because their audacious attack on Agrippina could not be left unpunished. However, the attack on Silana was not intended to hurt them.

An added dimension to the preceding four cases is that these women (Julia, Domitia Lepida, Calpurnia, and Junia Silana) were accused by other women. Messalina and Agrippina, as political forces themselves, saw other women as political targets in their own right. This topic will be considered more fully in chapter 3 of the present study.<sup>640</sup>

Plancina's crimes were political, and the circumstances of her trial in 20 were intensely political. She was not, however, accused as an indirect means of harming someone's political career, or of advancing the accuser's. Her sons, in fact, are known to have achieved some further career success.<sup>641</sup> Most striking is the idea, expressed obliquely by Dio, that Plancina may have been *acquitted* as a means of causing harm to Germanicus' widow, Agrippina.<sup>642</sup> Tiberius and Livia protected Plancina until after Agrippina died: ἵνα μὴ καὶ ἐκείνη τῷ θανάτῳ αὐτῆς ἐφροσθῆ; "so as to prevent her from rejoicing at her

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<sup>640</sup> Baumann (1992) is an essential study on women and politics.

<sup>641</sup> Her son Lucius Piso, pardoned after his parents' trial in 20, went on to political success even after his mother's death in 33. Dio 59.20.7 records that he became proconsular governor of Africa in 39.

<sup>642</sup> Dio 63.22.5.

[Plancina's] death."<sup>643</sup> Plancina's survival until 33, then, reveals more about the relationship between Tiberius and Agrippina than it reveals about Plancina's crimes. The relationship between the emperor and his daughter-in-law had always been acrimonious and her political power had been a real threat to stability during his reign. With Agrippina dead and Tiberius' protection removed, Plancina was again susceptible to accusers.

Claudia Pulchra was accused in 26 by Cn. Domitius Afer, soon to be the leading orator of the age, partially as a means of harming Agrippina. Tacitus records an interview between Tiberius and Agrippina in which she claims that the only reason for Pulchra's destruction was that she had foolishly chosen Agrippina as a friend (*soli exitii causa sit, quod Agrippinam stulte prorsus ad cultum delegerit*).<sup>644</sup> Pulchra seems to have been affiliated with the so-called *partes Agrippinae*.<sup>645</sup> Her son Quintilius Varus was unsuccessfully prosecuted by the same Domitius Afer in the following year. The attacks on Pulchra and her son were part of a larger political move by Sejanus to eliminate support for Agrippina and her hopes that her eldest son Nero would rule. The five years between 24 and 29 saw numerous trials, including Pulchra's, leading to the downfall of Agrippina herself.<sup>646</sup>

The final two cases in the list similarly suggest no goal other than harming the defendants themselves. Aemilia Lepida faced charges brought by her ex-husband Quirinius, whose motives appear vengeful rather than political. Caedicia was convicted on the strength of the case against her husband, Flavius Scaevinus, who was a prominent member of the Pisonian conspiracy against Nero. Her husband had already been convicted and no children are known; the target of harm can only have been Caedicia herself. As a political

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<sup>643</sup> Dio 63.22.5; Livia had been instrumental in the original acquittal; she had died in 29.

<sup>644</sup> Tac. *Ann.* 4.52.2.

<sup>645</sup> Bauman (1992) 147–148.

<sup>646</sup> Bauman (1992) 145–156.

consideration, however, her exile would have precluded any risk to the emperor if she had shared or continued to pursue her husband's anti-imperial sentiments.

## Conclusion

The varied types of charges cast against the fifteen defendants in the third part of this chapter make sweeping conclusions difficult. Statistically, one must expect a certain level of criminal activity in any population, yet some of the cases examined seem to involve no criminal actions at all. Mallonia, Julia, and Calpurnia seem like innocent victims of their imperial prosecutors; our sources do not even hint at the charges lodged against them.<sup>647</sup>

Of the nine defendants in this chapter against whom the charges are known, seven faced accusations of engaging in some kind of occult practices (especially *veneficia aut devotiones*). Although strictures against magic are well-known in later law, there is very little information from the Julio-Claudian period. In none of the cases listed was magic the sole indictment against a defendant. Likely only the most flagrant casting of curses would have captured the attention of an accuser, just as the most flagrant cases of adultery. The word *maiestas* is not used in connection with any of these trials, but accusations of *veneficia et devotiones* could be considered *maiestas*-like crimes if they were aimed at the imperial family. Fabia Numantina's trial, therefore, would have had no whisper of treason attached to it, perhaps otherwise for Domitia Lepida and Plancina.

In all but one case, the women defendants themselves were the targets of injury from their indictments, though some were more politically involved than others. There is nothing to indicate that male family members were harmed indirectly by the charges against these

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<sup>647</sup> One might suggest that the lack of information is connected with the fact that these were women, but criminal charges against men were not always recorded either; for example, the charges against Clutorius Priscus are not precisely known, although he is known to have been tried and executed; Vitellia, no. 57.

women. Notably, however, the accusations against Claudia Pulchra were meant to cause indirect harm to another woman – her cousin and friend Agrippina the Elder. In fact, women were finding ways to accuse other women: Messalina accused Julia, and the younger Agrippina accused Domitia Lepida and Junia Silana; this will be the topic of the next chapter.

## CHAPTER 3

### *Women pro accusatoribus*

In this chapter it is argued that a woman openly authoring a prosecution in a politically motivated case and conducting the prosecution through an agent is both innovative and noteworthy in the Roman world during the Julio-Claudian era. Powerful and resourceful women like Messalina, Agrippina the younger, and Junia Silana found ways to bring criminal charges against their personal or political enemies through the agency of men, acting *pro accusatoribus* without actually being the prosecutor of record. The Julio-Claudian era was a time for experimentation and definition of the roles of imperial women, and, in the end, the message was clear: barely disguised exercise of legal power was not to be tolerated in an imperial woman, or indeed in any woman.

Roman law, as preserved in Justinian's compilations, states clearly that Roman citizen women were restricted in bringing charges in the *iudicia publica* (criminal courts).<sup>648</sup>

1. *Publico iudicio non habere mulieres adulterii accusationem, quamvis de matrimonio suo violato queri velint, lex Iulia declarat...*

The Julian law (on adultery) declares that women do not have the right of accusation of adultery in criminal court, though they wish to complain about the violation of their own marriage. *Cod. Just. 9.9.1.*

2. *Qui accusare possunt, intellegemus, si scierimus, qui non possunt. Itaque prohibentur accusare alii propter sexum vel aetatem, ut mulier, ut pupillus.*

We shall understand who can bring an accusation if we know those who cannot. Thus, some may be debarred from making an accusation on grounds of sex or age, for example, a woman or a ward. *Dig. 48.2.8 (Macer)*<sup>649</sup>

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<sup>648</sup> Cf. *Cod. Theod.* 9.1.3. Roman criminal law must be considered separately from civil law since the latter is less restricted than the former and female plaintiffs are widely known in civil courts; *contra* Gardner (1993) 100 who suggests that the restrictions applied equally to both criminal and civil.

Nonetheless, there were limited circumstances under which it was recognized that a woman was the appropriate person to take legal action.

3. *Non est permisum mulieri publico iudicio quemquam reum facere, nisi scilicet parentium liberorumque et patroni...exequatur.*

It is not been permitted for a woman to make someone a defendant in a criminal court unless they are avenging the death of their parents, children, or patron... *Dig. 48.2.1 (Pomponius)*

4. *Certis ex causis concessa est mulieribus publica accusatio, veluti si mortem exequantur eorum earumque, in quos ex lege testimonium publicorum invitae non dicunt.*

In certain cases, women are allowed to bring a public accusation, for instance, if they are pursuing the death of those persons, male or female, against whom, under the statute on criminal [proceedings], they do not give testimony against their will. *Dig. 48.2.2 (Papinian)*<sup>650</sup>

5. *Hi tamen omnes, si suam iniuriam exequantur mortemve propinquorum defendent, ab accusatione non excluduntur.*

All these [women], however, if they are pursuing a wrong done to themselves or are obtaining satisfaction for the death of those close to them are not excluded from lodging an accusation. *Dig. 48.2.11 (Macer)*<sup>651</sup>

Of these five references, the first can be firmly attributed to the Julio-Claudian period because of the phrase *lex Iulia declarat*, referring to Augustus' adultery law of 18 BC. The remaining four are attributed to the second-century jurists Macer, Pomponius, and Papinian, preserved in Justinian's sixth-century compilation. The essentially conservative nature of Roman law suggests that these second-century juristic sources are relevant to a discussion of first-century practice. Similarly, late republican evidence is useful. Valerius Maximus,

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<sup>649</sup> See also *Dig. 3.1.1.5 (Ulpian)*; all translations from Justinian's *Digest* are substantially based on Watson's (1985) translation of the Mommsen-Krueger text.

<sup>650</sup> Persons in this category include a woman's husband, brother and father.

<sup>651</sup> Note also the heroine in the so-called *Laudatio Turiae* who was able to assist her husband in his time of need and was later praised for doing so; CIL 6.1527 = ILS 8393. The time period for her actions was the Late Republican civil wars.

writing in the reign of Tiberius, relates an anecdote about a republican woman who acted as her own counsel in criminal court: Maesia of Sentinum, a defendant (*rea*), acted as advocate *pro se* when L. Titius was praetor.<sup>652</sup> She was acquitted of the (unknown) charges by a nearly unanimous vote (*paene cunctis sententiis liberata est*). She was not denied the option of defending herself, showing that there was no legal barrier in place at that time.

The Julio-Claudian period falls, temporally, in between these two sets of information, thus supporting the suggestion that women's prosecutorial powers may have also fallen somewhere in the middle. Women are known to have been denied the right to bring criminal charges in the limited sphere of adultery (*lex Iulia declarat*). There is insufficient evidence, however, to state categorically that women were never allowed the option of bringing any kind of criminal prosecution. A middle position is more convincing: society did not encourage women to be active in the law courts, especially the criminal courts, but when the necessity was overwhelming (for example, there was no one else to act for her or her children), she would be allowed to proceed. The second century juristic evidence quoted above supports this position.<sup>653</sup>

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<sup>652</sup> Although we have the name of L. Titius, there is no date associated with his praetorship. It was undoubtedly within the first century BC, and likely in the first half of that century, Marshall (1990b) 47. Val. Max. 8.3.1; He relates a further two examples from civil court: Val. Max. 8.3.2: C. Afrania was so active (and annoying) as a plaintiff that the praetor barred her from further court appearances. The anecdote contains reference to the consuls of that year, C. Caesar II and P. Servilius, thus securely dating the incident to 48 BC. Dig. 3.1.1.5 (Ulpian) presents her as Carfania. Val. Max. 8.3.3; Hortensia, daughter of the famous orator Q. Hortensius, spoke in front of the triumvirs on behalf of the *ordo matronarum* and spoke very well indeed – as though her father lived again and was speaking through his daughter. Hortensius died in 50 BC, so this incident would have taken place some time not long after that.

<sup>653</sup> Evidence in imperial rescripts from the third century shows that women were inquiring (and receiving serious responses) about points of criminal law, from the perspective of both prosecutor and defendant. *Cod. Just.* 1.19.1 to Firmina; 3.15.2 to Nica; 5.12.11 to Severa; 6.34.1 to Severa; 9.1.2 to Corinthia; 9.1.5 to Marcellina; 9.1.14 to Aelia; 9.22.14 to Gentiana; 9.33.9 to Nonna; 9.51.9 to Restitua. This is only a sampling of the available evidence, suggesting that further study could be fruitful.

Roman society did not encourage women to be active in the law courts, especially the criminal courts because of the strongly patriarchal organization of society.<sup>654</sup> Only a man could become *paterfamilias* and only a man could have *potestas*.<sup>655</sup> The legal restrictions of perpetual *tutela*, exclusion from politics, and the inability to sit as a judge, prosecutor or advocate, Gardner argues, are based on women's lack of *potestas*.<sup>656</sup> Only someone with *potestas* and the potential to be *paterfamilias* had the right to intervene actively in or take responsibility for the affairs of another *familia*, as one must as a judge, prosecutor, or *advocatus*.<sup>657</sup> Women were therefore excluded.

Rhetorical language mentioning propriety and women's modesty appears in the juristic texts:

*Ratio quidem prohibendi, ne contra pudicitiam sexui congruentem alienis causis se immisceant, ne virilibus officiis fungantur mulieres.*

The reason for this prohibition [on prosecution] is to prevent women from involving themselves in the cases of other people contrary to the modesty of their sex and to prevent them from performing the functions of men.<sup>658</sup>

The idea of modesty carries the implication that there is some moral impropriety in women presenting themselves in public; women who voluntarily do so deny their adherence to the chaste ideal of staying at home, away from the eyes of men. A woman must only appear in court if she has no choice. She had no choice in appearing as a defendant or a witness, but deliberately pursuing a prosecution was definitely a choice – and was therefore an intentional rejection of societal ideals of matronly honour. There was, no doubt, serious tension between

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<sup>654</sup> Gardner (1993) 85–109.

<sup>655</sup> The lack of *potestas* for women was based, in very early Roman civilization, on the simple physical reality: the biology of procreation and child-nurturing made women less suitable to lead and protect a family. Roman law, however, eventually interpreted this weakness as a mental or emotional one, thus necessitating perpetual guardianship, exclusion from political participation, and disabilities in court; Gardner (1993) 108.

<sup>656</sup> Gardner (1993) 100, 107.

<sup>657</sup> Gardner (1993) 101.

<sup>658</sup> Dig. 3.1.1.5 (Ulpian); see also Val. Max. 8.3.

the honour due to the Julio-Claudian women of such high birth and close connection to the emperor, the scandalous impropriety of these women's legal and political actions, and the reality of their actual legal and political power.

The politics of criminal law should be considered. Civil law dealt with many areas that modern society would call crimes, for example theft and property damage, but in Rome only actions that harmed the social collective were defined as crimes. Given the potential for political ramifications vis à vis 'actions that harmed the social collective,' it is possible to propose that: "There are no crimes at Rome that are not political crimes."<sup>659</sup> Roman thinking, therefore, integrated the concepts of crime and politics – anything that affected the social collective was by definition political. The purpose of the *quaestiones perpetuae* was to deal with 'political' crimes,<sup>660</sup> while the advent of the senatorial court merely provided a new venue for the trials of the most elite citizens. From this perspective, it makes good sense that women were not notably active in bringing accusations to the *iudicia publica* (criminal courts) since women were operationally excluded from political actions. At the same time, it is unsurprising that politically powerful women under the Julio-Claudians were the first to challenge their exclusion from prosecutorial capacity in criminal courts.

Although evidence for women themselves acting as formal prosecutors in the Julio-Claudian period is scarce and difficult to evaluate, there were three powerful and resourceful women who found ways to bring criminal charges through the agency of men, acting *pro accusatore* without actually being the prosecutor of record.<sup>661</sup> These women were Messalina,

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<sup>659</sup> Riggsby (1999) 14.

<sup>660</sup> Riggsby (1999) 160–161.

<sup>661</sup> Marshall (1990) 355–356, adduces four cases in which women may have acted as prosecutors in the first century AD. In each case, he finds reasons to discount the evidence suggesting that women had acted as prosecutors. He refers to Antonia Tryphaena, Apicata, Sulpicia, and allegedly joint *subscriptores* Anteia, Arria and Fannia. The latter two cases fall outside the temporal parameters of the present study.

Agrippina the younger, and Junia Silana. A fourth woman, Queen Antonia Tryphaena of Thrace, met the requirements to file charges on her own behalf and seems to have conducted the prosecution against her husband's murderer. Throughout this chapter, the term "author" will be used for the woman who formulated the charges, and the term "prosecutor" for the man who actually laid the charges in court.

The use of an agent created both advantages and disadvantages for the author of the charges. The advantages for the author were significant. Not only did she gain the opportunity to cause legal action, but she was distanced from certain legal penalties to which the prosecutor might be subjected. Because the Roman legal code contained censures for deceitful prosecutions (*calumnia*) and for uncompleted prosecutions (*tergiversatio*), the prosecutor could be liable to penalties. In criminal law, *calumnia* was committed when a person accused another in full knowledge that the accused was innocent. Such a false accusation, once proved, resulted in the imposition of various legal disabilities on the accuser: *infamia*, inability to be a prosecutor in future, and exclusion from competition for public office.<sup>662</sup> *Calumnia* had to be proved in a special proceeding held before the same *quaestio* before which the prosecutor had brought the false prosecution.<sup>663</sup> In another scenario, if the prosecutor wished to withdraw from the trial (*tergiversatio*), he also opened himself to charges of *calumnia*.<sup>664</sup> The SC Turpillianum (AD 61) fixed a fine and declared that the accuser who deserted a prosecution should suffer *infamia*.<sup>665</sup> The agent, as the prosecutor of record, risked suffering these penalties whereas the author, having no legal

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<sup>662</sup> Berger (1953) 379 *s.v. calumnia*. It is useful to note that these penalties would actually be minimally harmful to a woman since she was already ineligible for public office and was barred from pursuing a career as an orator or prosecutor. For more on *calumnia*, see Giomaro (2003).

<sup>663</sup> Dig. 3.6.

<sup>664</sup> Berger (1953) 731 *s.v. tergiversatio*; see also Dig. 48.16.

<sup>665</sup> Berger (1953) 699 *s.v. senatus consultum Turpillianum*, and 731 *s.v. tergiversatio*; see also Dig. 48.16 and Cod. 6.49.

standing in the case, was free from risk. As a disadvantage to prosecuting via an agent, the author of the charges (the woman) would have very little control over events in the course of the trial. She must trust – or control – her agent completely.

In the hands of these women, the criminal law was used only for individual purposes or as a political tool. A woman had to have a great deal of power in order to be able to prosecute via an agent, thus eliminating the vast majority of the female population, and by having the power to author charges, a woman then gained even more power. There was no great feminist call to advance the cause of womanhood. Nor was there a humanist, compassionate attitude on account of which women found ways to prosecute otherwise ignored crimes (for example, violent crimes against women or children who had no adult male family member to protect them). The purpose of this chapter is to examine the cases in which four women, Antonia Tryphaena, Messalina, Agrippina, and Junia Silana acted *pro accusatoribus* even if they cannot definitively be shown to have been the prosecutor of record.<sup>666</sup>

### **Antonia Tryphaena**

In AD 18, Queen Antonia Tryphaena played a significant role in the prosecution of her husband's murderer. She came to Rome in search of justice after her husband Cotys, king in southern Thrace, was killed by his uncle Rhescuporis, king in northern Thrace. After a lengthy narrative of events leading up to the trial, Tacitus reports:

*Accusatus in senatus ab uxore Cotyis damnatur, ut procul regno teneretur.*

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<sup>666</sup> Women could also act *pro accusatoribus* by being witnesses for the prosecution, as discussed in chapter 5 of the present study. It seems plausible that women acted as informants, though none were recorded specifically as *delatores* (Apicata is the one woman who might fall into this category).

Accused in the senate by the wife of Cotys [Antonia Tryphaena], he [Rhescuporis] was condemned to be kept far from his kingdom.<sup>667</sup>

Tacitus' words require careful examination in order to understand Tryphaena's precise role in Rhescuporis' trial. At first glance, she appears to have been the prosecutor, *accusatus ab uxore Cotyis*.<sup>668</sup> The heart of this sentence is the verb *accusare*, which means, in a general sense, "to blame or censure," and in a particular sense, "to charge with a crime."<sup>669</sup> Aside from the contentious phrase *accusatus ab uxore Cotyis*, Tacitus uses the verb *accusare* thirty-two times in the *Annales*, all in demonstrably legal contexts.

Six occurrences of *accusare* appear in legal contexts discussing charges of *repetundae*. In these instances, however, Tacitus is not using the verb in a technical legal sense: *accusante provincia* (4.15), *accusantibus Bithynis* (12.22), *Cretensibus accusantibus* (13.30), *accusante Asia* (13.33), *accusantibus Cyrenensibus* (14.18), and *accusantibus Mauris* (14.28). The verb in these six examples is referring to the context of a legal trial without being technically precise about who is formally conducting the prosecution. In these instances, Tacitus is eliding legal technicalities in order to get across his point that the provincial victims stood up in a Roman court and demanded justice. He may not have known or cared about the names of the prosecutors, especially if they were provincials whose Roman citizenship allowed them to conduct their case in Rome but were otherwise not involved in the Roman political world. There was no mechanism for a corporate prosecution,

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<sup>667</sup> Tac. *Ann.* 2.67.2; cf. Strabo 12.556. Her identity is established by epigraphical evidence: IGRR 4.144–148, 1407; AÉ (1957) no. 98; SEG 4 (1930); Sullivan (1979) 200–201, 203–204; (1980) 922–923.

<sup>668</sup> Rogers (1935) 30, 212 and Talbert (1984) 157, 161 support the view that Tryphaena formally participated in the proceedings as prosecutor.

<sup>669</sup> OLD *s.v.* *accuso*.

so a disgruntled province would appoint representatives to conduct the prosecution.<sup>670</sup> In a technically precise usage, Tacitus reports that in AD 22:

*Post auditi Cyrenenses et accusante Anchario Prisco Caesius Cordus repetundarum damnatur.*

After the Cyrenians were heard and with Ancharius Priscus accusing [i.e. conducting the prosecution], Caesius Cordus was condemned for extortion.<sup>671</sup>

The complainants from the province were heard in court as witnesses, but a designated representative or representatives, who had to hold Roman citizenship, actually conducted the prosecution.<sup>672</sup>

The verb is also used in a non-technical sense in two other passages. At 13.10, a senator and an equestrian escaped prosecution *servo accusante*; no one would argue that a slave could be the formal prosecutor. At most, this slave was an informant and a witness. At 16.10 Tacitus reports that a freedman betrayed his patron *ad accusandum*, “for the purpose of accusing him,” but the law says that a freedman could not initiate a prosecution against his patron.<sup>673</sup>

The remaining twenty-three uses, approximately seventy percent of the total of thirty-two occurrences, have the specialized meaning, in a technical legal sense, “to charge with a crime,” and therefore to act as the prosecutor of record in a formal criminal trial.<sup>674</sup> In ten passages (nearly half of the twenty-three) Tacitus identifies the accusers by name.<sup>675</sup> Every

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<sup>670</sup> Most famously, Cicero prosecuted Verres on the complaints of the Sicilians.

<sup>671</sup> Tac. *Ann.* 3.70; Caesius Cordus was also charged with *maiestas*, *Ann.* 3.38; PIR<sup>2</sup> C 193. About Ancharius Priscus, nothing else is known, PIR<sup>2</sup> A 578.

<sup>672</sup> There were local nobles in various provincial cities who held Roman citizenship. It is unclear whether they would have had sufficient education in the Roman legal system to confidently conduct a full-scale prosecution for *repetundae*. See Alexander (2002) 7–15, 45–51; Greenidge (1901) 456–476.

<sup>673</sup> Dig. 48.2.8 (Macer).

<sup>674</sup> Tac. *Ann.* 2.42; 2.71; 3.10 bis; 3.54; 3.66; 3.67; 3.70; 4.22; 4.34; 4.52; 5(6).6; 6.18; 6.19; 6.49; 11.1; 11.5; 12.9; 12.54; 12.59; 12.65; 14.46; 16.11.

<sup>675</sup> Tac. *Ann.* 3.66: *L. Cottam a Scipione Africano, Servium Galbam a Catone censorio, P. Rutilium a M. Scauro accusatos*; 3.70: *accusante Anchario Prisco*; 4.34: *accusabant Satrius Secundus et Pinarius Natta*; 4.52:

time he identifies the accuser by name, Tacitus is using the verb *accusare* in the fully technical legal sense, as in the example above in which Ancharius Priscus conducted the prosecution on behalf of the Cyrenians, and therefore also in the case of Antonia Tryphaena.

If we consider Tacitus' language alone in the key phrase *accusatus ab uxore Cotyis*, therefore, there is a strong suggestion that he means to say that Tryphaena was the actual prosecutor. In favour of the interpretation that Tryphaena was the actual prosecutor, Tacitus identifies her after the participle *accusatus*, although he does not name her. Furthermore, Tryphaena was both a Roman citizen and a client-queen and would conceivably have received special treatment because of her status. Her citizenship allowed her full access to the Roman legal system and, because she could argue that she was prosecuting on behalf of her children, whose inheritance had been stolen, she was exempt from the restriction on female prosecutors outlined at the beginning of this chapter.<sup>676</sup>

It may be objected, however, that other factors suggest that she did not actually initiate or conduct the prosecution.<sup>677</sup> First, this is the only instance in Tacitus' writings where he uses *accusare* in a manner that suggests a female prosecutor.<sup>678</sup> This is not a strong enough reason to discount her role as prosecutor: Tryphaena's circumstances were undeniably unique and she may have actually been the only woman who was a formal prosecutor. One might suggest that, given Tacitus' usage as outlined above, this sentence fits

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*accusante Domitio Afro*; 6.18: *accusante Q. Pomponio*; 11.1: *Suillium accusandis utrisque immittit*; 11.5: *saevus accusandis reis Suillius*; 12.59: *accusante Taraquitio Prisco*; 14.46: *accusatum ab eo (Tarquitius Priscus)*; 16.10: *ad accusandum ... Fortunatus libertus*. There does not seem to be any significance in the shift from the ablative absolute construction to the passive verb with an agent. The noun *accusator* is also used frequently in the *Annales*: sixty-two occurrences, of which ten passages also name the accuser(s). The feminine variant *accusatrix* does not occur at all.

<sup>676</sup> *Cod. Just.* 9.9.1; *Dig.* 48.2.8 (Macer); 48.2.1 (Pomponius).

<sup>677</sup> Marshall (1990) 355 says simply that "the limited evidence cannot securely establish this standing [i.e. as prosecutor] for her."

<sup>678</sup> When Messalina and Agrippina used the law to achieve their political goals, Tacitus makes it clear that they manipulated men to do their bidding, and so he simply uses different vocabulary.

the pattern of eliding legal technicalities in order to be clear that the victim (or in this case the victim's widow) stood up in court and demanded justice. In the six instances of the verb *accusare* adduced above, however, all are presented in the ablative absolute, whereas Tryphaena is identified by an ablative of agent, parallel to the other technically precise uses.

Second, though she was a Roman citizen, she was essentially a foreigner – apparently born, raised, married, and living far from the center of Roman political and legal power.<sup>679</sup> It would have been difficult for her to have the legal or local knowledge and skills that Messalina and Agrippina later used to such great effect as authors of prosecutions. Third, the defendant Rhescuporis was arrested and brought to Rome by Roman officials. While Tryphaena's citizenship gave her access to the Roman courts, not even her queenly status gave her the right to direct imperial *legati* to seize and conduct a man (a client-king) to Rome in chains. These orders had to have come from Tiberius. The latter two objections are countered by the fact that Tiberius had much to gain by allowing the trial and by supporting Tryphaena in its progression; his reasons were demonstrably political.<sup>680</sup> Tacitus writes that after a diplomatic settlement had been achieved in Armenia:

*...laetioire Tiberio, quia pacem sapientia firmaverat, quam si bellum per acies confecisset. Igitur Rhescuporim quoque, Thraeciae regem, astu adgreditur.*

Tiberius was happier that he had consolidated peace by diplomacy than if he had conducted a war through battles. Therefore he also approached Rhescuporis, king of Thrace, with cunning.<sup>681</sup>

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<sup>679</sup> Sullivan (1980) 921 states that Tryphaena's parents were Polemo I and Pythodoris I Philometer who ruled in Pontus; after Polemo's death, Pythodoris married Archelaus and stayed with him until his death, then ruled Pontus alone. See Strabo 12.556. Pythodoris is known to have survived Augustus; Barrett (1978) 439. There is no indication that any of these family members lived anywhere other than Pontus.

<sup>680</sup> Garnsey (1970) 26–27: the senate can be shown to have handled only murder charges which were coupled with *maiestas* charges and were themselves not far removed from *maiestas*, or were unusual because of the status or office of the victim or agent. Other cases of 'simple' homicide would have met their trial in the *quaestio*.

<sup>681</sup> Tac. *Ann.* 2.64.1–2.

Rhescuporis had shown that he was unwilling to recognize Roman overlordship when he refused to abide by the Roman-engineered settlement that had given him joint kingship with his nephew.<sup>682</sup> Tiberius could not afford to leave the rebellious Rhescuporis in power. Certainly the widow of the murdered king would have plausible reason to seek justice, but another very strong motive for this trial came from Tiberius' need for stability in that region only a decade after the major Illyrian legionary rebellion. He proved his interest and involvement in the case by ordering the arrest, achieved by means of his cunning (*astu*), and transportation of the defendant to Rome. Because Tryphaena had Tiberius' support and because she was not using the criminal law as a tool for long-term political manipulation, she did not need to have the same legal knowledge that Messalina and Agrippina had.

While Tiberius unquestionably ordered the arrest of Rhescuporis and his transport to Rome, he did not act as the prosecutor of the case. This would have gone against all Augustan precedent, and against Tiberius' own inclination to reduce the bias imposed on the courts by his presence.<sup>683</sup> Someone had to register the charges and proceed with the prosecution. Tryphaena had a survivor's right of vengeance and a mother's duty to protest the loss of her sons' inheritance; in fact, she was honour-bound to take action.<sup>684</sup> It is plausible that Tiberius was persuaded to allow Tryphaena to conduct the prosecution, perhaps giving her support in the form of legal counsel, a *subscriptor* who could assist in all aspects of the prosecution, including preparation and delivery of speeches. She provided the

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<sup>682</sup> Thrace was an independent kingdom at this time bordered on all sides by Roman provinces. For the Augustan settlement, see Tac. *Ann.* 2.64.2; for general discussion on the role of the senate in international arbitration, see Marshall (1980) esp. 641–650.

<sup>683</sup> Tac. *Ann.* 2.34; Levick (1976) 182; Talbert (1984) 166–168.

<sup>684</sup> Lendon (1997) 46; see also Pliny *Ep.* 9.13.5; 3.16; 6.24 for women who were honoured for participating in the prosecution of the man who had destroyed their late husbands.

means to solve this touchy political problem so that Tiberius could remain at a distance from the punitive reaction against a dissident client-king.<sup>685</sup>

Undoubtedly Tryphaena also provided much of the evidence in this trial. The letters sent to Tiberius from Cotys, Rhescuporis, and the Roman authorities in the area would also have been adduced as evidence.<sup>686</sup> The combined weight of the testimony from Tryphaena and other Roman authorities who had been in or near Thrace, the epistolary evidence, and Tiberius' *auctoritas* was sufficient to secure Rhescuporis' conviction.

Tryphaena was exempt from the restriction on prosecuting because she was acting on behalf of her murdered husband, she had no immediate family member to help her, and, as a parent, she was honour-bound to seek redress of her sons' stolen inheritance. Furthermore, Tacitus' language is parallel to ten other instances when the verb *accusare* was used in a technically precise way to indicate the prosecutor of a criminal trial. Her success in the prosecution was supported by Tiberius, who had his own reasons for seeing Rhescuporis punished. In a way, Tryphaena was being used by Tiberius to achieve his goal; the fact that her goals of vengeance and recouping her sons' inheritance dovetailed with Tiberius' wishes was merely convenient.

### **Messalina**

Messalina is the first recorded woman in the Julio-Claudian period to author multiple criminal charges, although she is more famous for her shameless and wild behaviour as

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<sup>685</sup> *Contra* Marshall (1990) 355 who argues that the diplomatic context of Tryphaena's case suggests "a denunciation before the senate by invitation" rather than her actual participation in the prosecution.

<sup>686</sup> *Tac. Ann.* 2.65–66.

Claudius' third wife.<sup>687</sup> There is no doubt that Julia (daughter of Augustus), Livia, Antonia, and Agrippina the Elder had been politically influential, but there is no evidence that any of them had attempted to take the law so boldly into their own power. Messalina had a keen appreciation for the realities of power politics, and her means of exercising power in political circles was through the criminal law. Nonetheless, she had a melodramatic flair, so her intrigues have the flavour of hot-headed youth and she regularly mixed sex with power politics.<sup>688</sup> It has been suggested that she acted as Claudius' Sejanus, seeking out and destroying his political enemies, and that her intrigues did a great deal to keep Claudius on the throne.<sup>689</sup> She even had a 'regular' prosecutor – P. Suillius Rufus – whose services she was widely known to have employed.<sup>690</sup>

Two important points should be noted here, about the role of the emperor in general and the role of Claudius specifically. Since the magistrate (the emperor, consul, or praetor) who initially heard the charges had the right to nullify the charges on the spot, we can infer that a woman had some political support on her side when charges actually went forward at her behest.<sup>691</sup> This is particularly noteworthy when the emperor himself allowed politically sensitive charges to stand; it might be inferred by contemporaries or subsequent generations

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<sup>687</sup> She was married to Claudius when he unexpectedly became emperor; Bauman (1992) 167–168; the marriage took place in 38 or 39 and Bauman notes that, although this was her first marriage, her age at marriage is far from certain. She may have been as young as fourteen, or as old as her late teens; it is unlikely that she was older than twenty. For a discussion of girls' age at first marriage, see Shaw (1987). On Messalina in particular, see Levick (1990) 55; Meise (1969) 152. See also Syme (1958) 437; (1986) 150, 164–165, 178–179, who argues that Messalina's father Messala Barbatus died by AD 20, thus making his daughter at least 19 when she married Claudius and suggests the possibility that this was not her first marriage. Syme's argument about the date of Messala's death is weak – that he ought to have held the consulship by AD 23 but did not, therefore he died before that date. Even if he were too ill to campaign for or hold the consulship, he could still have sired a child.

<sup>688</sup> For example, Dio 60.18.1–3.

<sup>689</sup> Bauman (1992) 171, 188; Barrett (1996) 73; for an overview of Messalina's victims, see Bauman, 168–175; see also Rutledge (2001) 270–271 for discussion of Suillius' legal career.

<sup>690</sup> Tac. *Ann.* 13.43.4: when Suillius was on trial for his crimes in 58, he defended himself by saying that he had acted under orders from Messalina.

<sup>691</sup> Talbert (1984) 481.

that he gave positive support to the charges. At the same time, the consul or praetor may have approved charges without the knowledge of the emperor which may reflect other political support for the woman, or at least her goal of the moment.

Claudius enjoyed a reputation as a conscientious judge.<sup>692</sup> He sat in court often and participated in the *consilia* of the praetor's courts. He did not always follow the letter of the law, but used his own judgement by increasing or decreasing penalties according to the circumstances of the individual case. This extensive involvement in the law courts clearly reveals that Claudius was well-informed in the law – both statute and procedure. Therefore, he must have known what both Messalina and Agrippina were about when one of them presented him with charges to be heard *in cubiculo*. Some charges were so stereotypical (and unsubstantiated) that it is tempting to discern his willing complicity in their proceeding to trial, indeed as Barrett states, “the emperor's wives should be seen more properly as his accomplices and allies rather than as hostile agents undermining a benign and generous regime, and Claudius should be seen as happy to use them to help secure his own ends.”<sup>693</sup>

Let us examine the individual cases in which Messalina is known to have been involved. Because Tacitus' account of the years 37 to 47 is missing, we must rely on the information preserved by Dio and Suetonius for the majority of Messalina's activities. Although this information is sparse and difficult to interpret conclusively, much can be gleaned about her use of the criminal law as a tool in her political manipulations.

#### *Messalina vs. Julia Livilla (AD 41)*

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<sup>692</sup> Suet. *Claud.* 14, also 12, 15, 23; Dio 60.16.3.

<sup>693</sup> Barrett (1996) 73.

The charges against Julia Livilla are the first of several arguably political accusations cloaked under the alleged motive of Messalina's feminine jealousy. She secured the banishment and subsequent death of her husband's niece Julia Livilla because she did not pay honour to Messalina or flatter her, and was extremely beautiful.<sup>694</sup> According to Dio, Messalina concocted various charges against Livilla, including adultery with Annaeus Seneca in 41.<sup>695</sup> Both were convicted and exiled, likely in a senatorial trial. Plausibly, Claudius would have wanted to avoid the inevitable criticism for exiling his niece mere months after he had recalled her, and a senatorial trial would have allowed more distance between himself and the conviction than a trial *extra ordinem* judged by the emperor himself.

Although the sources are clear in assigning Messalina's motives as mere feminine jealousy, Livilla's high birth and her presence in Rome suggests a political dimension to her demise. That is not to deny that she may have felt jealousy, but surely that jealousy would not have been a compelling enough reason to cause the banishment and death of Julia Livilla. Livilla was the wife of M. Vinicius, who had been proposed for the principate and so was a threat to Claudius.<sup>696</sup> Furthermore, Seneca was exiled at the same time and remained in exile until after Messalina's death, thus underscoring her responsibility.<sup>697</sup> If Vinicius was the threat that Messalina wished to offset, she failed. Over the next four years, Vinicius thrived in Claudius' estimation, even to the point of a second consulship in 45.<sup>698</sup> Given Claudius' subsequent promotion of Vinicius, it is very unlikely that he had known about or supported any plan to damage Vinicius' position in 41; Messalina acted alone.<sup>699</sup>

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<sup>694</sup> Dio 60.8.4–5; this Julia Livilla was sister of Julia Agrippina, Julia Drusilla, and Caligula.

<sup>695</sup> See chapter 2, part 1.

<sup>696</sup> Jos. *AJ* 19.251; Syme (1986) 181–183, 278.

<sup>697</sup> Tac. *Ann.* 12.8.2.

<sup>698</sup> Syme (1986) 183; Smallwood (1967) 3.

<sup>699</sup> Vinicius (*cos.* 30, 45; PIR<sup>1</sup> V 445), described by Dio as a distinguished man (διαπρεπής ἄνθρωπος), also allegedly perished at Messalina's behest in 46. He had offended Messalina by refusing to have sex with her,

A final possibility suggests itself. Livilla and Vinicius had no children and perhaps Messalina was determined to keep it that way. Vinicius on his own was an esteemed consular, but without Livilla's blood ties to the name of Augustus Caesar, which had near-mythical force, and a promising heir, he would have had a reduced chance at actually claiming the throne. There is no indication that Julia Agrippina, Livilla's sister and therefore her equal as a threat because of close family position, honoured or flattered Messalina, but her low profile during these years kept her out of the political spotlight at Rome and safe from Messalina's machinations.<sup>700</sup> Agrippina's young son Domitius (Nero) was perhaps not yet seen as a threat.

*Messalina vs. Appius Junius Silanus (cos 28) (AD 42)*

Another case in which political intrigue is disguised by sexual innuendo is that against Appius Junius Silanus in 42. Dio reports that Messalina and the imperial freedmen, whenever they desired someone's death, would contrive to terrify Claudius until he ordered the execution.<sup>701</sup> The first victim of these tactics was Appius Iunius Silanus. Silanus had been recalled to Rome by Claudius and married to Domitia Lepida, Messalina's mother. Silanus, Dio claims, had offended Messalina by refusing her sexual advances, but since there was no actual criminal offense, Messalina enlisted the aid of the freedman Narcissus who

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and besides, she suspected that he had killed his wife Julia, so she poisoned him; Dio 60.27.4. The motive of spurned sexual advances is at least consistent with Messalina's character as represented by the historians, however valid that characterization may be; Joshel (1995) 55–65. Her suspicions about the death of Julia, however, represent the height of irony: Messalina herself was believed to have ordered the murder of Julia Livilla while in exile on Pandateria. Although Messalina's motives are presented, there is no indication of how she actually brought about Vinicius' demise. Poisoning was exceedingly hard to prove in antiquity and could be alleged at will. Compare, for example, the allegations that Piso poisoned Germanicus (Tac. Ann. 2.73.4; 3.13.2), that Agrippina the younger poisoned Claudius and M. Silanus (Dio 61.6.4), that Livia poisoned Augustus (Dio 56.30.2), and maybe even his grandsons Gaius and Lucius (Tac. Ann. 1.3.3; Dio 55.10a.10). The evidence indicates legal action against neither Vinicius nor Messalina in this situation. Vinicius was given a public funeral and eulogies; Jos. *AJ* 19.251.

<sup>700</sup> Barrett (1996) 81, 83.

<sup>701</sup> Dio 60.14.2.

pretended that he had dreamt that he had seen Silanus murder Claudius.<sup>702</sup> Terrified by this report, Claudius ordered the execution.

This description of motives seems rather flimsy. No source claims that Messalina was dangerously psychotic in other ways – only when her sexual advances were refused did she order executions. More likely, her dangerous actions were cloaked under the trope of sexuality; there were several non-sexual reasons to have suspicions about Appius Silanus. He was of consular rank, aristocratic, member of a wealthy, influential family, and had a history of opposition to the principate. He was one of the five senators accused of *maiestas* in 32, and one of only two survivors.<sup>703</sup> There was a major conspiracy discovered later in 42 of which he may have been an early member.<sup>704</sup>

#### *Messalina vs. Julia (AD 43)*

Julia, granddaughter of Tiberius, daughter of Drusus and Livilla,<sup>705</sup> was another victim of Messalina's supposed feminine jealousy.<sup>706</sup> Dio does not describe the intervening legal procedures, stating merely that Messalina caused her to be slain (ὑπέσφαξε). It is impossible to determine to what degree the ancient sources were allowing their hostile bias toward Messalina to influence the description of events. Undoubtedly a difficult and dangerous woman, she still could not have been responsible for the death of every elite woman in Rome during her time as emperor's wife.

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<sup>702</sup> Dio 60.14.3–4; Suet. *Claud.* 37.

<sup>703</sup> Tac. *Ann.* 6.9.3. The other survivor was Sabinus Calvisius; also charged were Annius Pollio, Scaurus Mamercus and Vinicianus.

<sup>704</sup> Barrett (1996) 86–87; on the conspiracy, see Dio 60.15; see also *Ignotae*, women conspirators, no. 26.

<sup>705</sup> Sen. *Apoc.* 10.4; Suet. *Claud.* 29.1. Julia (PIR<sup>2</sup> I 636) was first married to Nero Germanicus in 20, then to Rubellius Blandus in 33, with whom she had a son, Rubellius Plautus.

<sup>706</sup> Dio 60.18.4.

Julia is known as one of the people whom Suillius prosecuted, and Suillius is known as Messalina's prosecutor, yet Suetonius and Seneca both lay Julia's death at Claudius' door.<sup>707</sup> By combining all these assertions, it is plausible that Messalina and Suillius were acting with Claudius' full, albeit not public, support.<sup>708</sup> Perhaps Messalina's jealousy was merely a diversionary excuse to detract attention from the politically sensitive destruction of yet another member of the extended imperial family. Julia's son, Rubellius Plautus, was to become a focus for fears of dissent in Nero's reign.<sup>709</sup>

#### *Messalina vs. Catonius Justus (AD 43)*

Messalina may also have used the criminal courts to eliminate a potential informer, the praetorian prefect Catonius Justus. Dio's account of AD 43 includes a description of Messalina's moral degeneration: she compelled other women to commit adultery in the imperial palace while their husbands looked on.<sup>710</sup> Psychologically, either the participants fully embraced the opportunity for adultery, or their participation was forced – with all the attendant humiliation and shame. There is no mention of any of these unnamed men or women being prosecuted for adultery, but, if this report is true, this scenario was a display of Messalina's power over those men and women. She then had the knowledge and the witnesses, not to mention the power and unscrupulousness, to submit charges of adultery

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<sup>707</sup> Sen. *Apoc.* 10.4 and Suet. *Claud.* 29.1 attribute her death to Claudius; Barrett (1996) 75; Rutledge (2001) 148, 271.

<sup>708</sup> Barrett (1996) 73; Levick (1990) 56–57.

<sup>709</sup> PIR<sup>2</sup> R 115; Julia and Rubellius Blandus were married in 33 and Plautus was born sometime after this. At the time of his mother's death in 43, therefore, Plautus was a mere child; but he was a few years older than Agrippina's son Domitius (Nero) and Messalina's son Britannicus, so in the long-term game of the politics of succession, Plautus was a real threat. Yet his mother was targeted, not him. If her time alone with Claudius was spent in extolling the virtues of her son, the only way to stop that flow of persuasion was to silence her. Claudius later showed himself to be vulnerable to the persuasive tactics of women and willing to advance his niece Agrippina's son over his own.

<sup>710</sup> Dio 60.18.1–2.

against the women and charges of *lenocinium* against their husbands, exhibiting a ruthless cunning in manipulating these people by threat of criminal reprisal.

Praetorian prefect Catonius Justus was about to inform the emperor about some of his wife's activities, but before he was able to do so, Messalina destroyed him (προδιέφθειρε).<sup>711</sup> Frustratingly, there is no hint as to the means of his destruction, whether legal or extra-legal, but the reason for his demise is clear: Messalina wanted to continue her activities without attention from her husband Claudius. Consider also the status of Justus: he was praetorian prefect, an equestrian, to be sure, but a very powerful one. His demise meant a new praetorian prefect, one who was sure to be loyal to Messalina and her children.<sup>712</sup>

#### *Messalina vs. Magnus* (AD 47)

Messalina used spurious charges to eliminate Gnaeus Pompeius Magnus, fifth-generation descendant of Pompey the Great, who was married to her step-daughter Antonia, daughter of Claudius and his second wife Aelia Patina.<sup>713</sup> Dio's account of the year 47 has survived only in epitome; Zonaras preserved the following statement:

Ἄλλους δὲ πολλοὺς διαβληθέντας ὑπὸ τῆς Μεσσαλίνης ... τὸν γαμβρὸν τὸν Μάγνον ἀπέκτεινε ... διὰ τὸ γένος καὶ τὸ κῆδος. ἐάλωσαν μέντοι ὡς ἐπ' ἄλλοις τισίν.

Among many others whom he [Claudius] put to death upon false charges brought by Messalina was his son-in-law Magnus ... on account of his birth and his relationship to the emperor. Nominally, however, they were convicted on other charges.<sup>714</sup>

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<sup>711</sup> Dio 60.18.3.

<sup>712</sup> Levick (1990) 57 suggests either Lusius Geta or Rufrius Crispinus was the new praetorian prefect. Tac. *Ann.* 12.42.1 suggests that they had a joint command. For Geta, see also *Ann.* 11.31.1, 33.1; for Crispinus, see also *Ann.* 11.1.3; he was the first husband of Poppaea Sabina (Nero's later wife), *Ann.* 13.45.4, and eventually committed suicide in 66, *Ann.* 16.17.1–2.

<sup>713</sup> Pompeius Magnus, PIR<sup>2</sup> P 630; Claudia Antonia, PIR<sup>2</sup> A 886. See PIR<sup>2</sup> P stemma 32, p. 279.

<sup>714</sup> Dio 60 (61).29.6a; compare Sen. *Apoc.* 11, where Magnus is included in the list of those whom Claudius murdered.

The charges are not recorded, nor are the ‘many others’ identified. It is clear from the historical record, however, that Messalina was believed to have engineered the destruction of Magnus and others. Another detail is preserved by Suetonius: *Pompeius in concubitu dilecti adolescentuli confossus est*; “Pompeius was stabbed while in bed with a favourite boyfriend.”<sup>715</sup> Suetonius presents no indication of the identity or political connections of the knife-wielder, nor any indication whether this moral lapse played any role in his demise. Whatever the nature of the charges, some combination of moral lapse, family identity and political threat resulted in his death.

A political dimension to Pompeius’ demise can be seen in the fact that his mother Scribonia and his father Crassus Frugi were also executed.<sup>716</sup> We do not know what the real case against Pompeius might have been. Possibly, Messalina could have been looking to the political future of her young son Britannicus and clearing out potential rivals. Pompeius’ widow Antonia married again, to Faustus Sulla, Messalina’s half-brother; perhaps Messalina hoped to have greater control over Antonia’s political associations.<sup>717</sup>

#### *Messalina vs. Valerius Asiaticus (cos 35, 46) and Poppaea Sabina (AD 47)*

Messalina’s most prominent political target was Valerius Asiaticus, distinguished senator, twice consul, a leading member of the successful conspiracy against Caligula. Messalina allegedly coveted his gardens (a motive also ascribed to Agrippina’s attack on Statilius Taurus, below) and was jealous of his new affair with Poppaea Sabina.<sup>718</sup> Messalina

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<sup>715</sup> Suet. *Claud.* 29.3.

<sup>716</sup> Sen. *Apoc.* 11.2, 5; Meise (1969) 145–146.

<sup>717</sup> Bauman (1992) 172; Suet. *Claud.* 27.2; PIR<sup>2</sup> C 1464. Barrett (1996) 88 characterizes Faustus Sulla as a “safe non-entity.” Cf. Levick (1990) 61; Meise (1969) 145–147. Sulla became consul in 52, was exiled in 58 and Tigellinus ordered him killed in 62; Tac. *Ann.* 12.52; 13.47.1–3; 14.57.3–4; Bauman (1992) 204.

<sup>718</sup> Asiaticus (PIR<sup>1</sup> V 25) was a former lover of Messalina, Tac. *Ann.* 11.1.1; Tacitus’ account resumes *in medias res* with the Asiaticus affair; this Poppaea is the mother of Nero’s second wife Poppaea Sabina.

sent in Suillius to accuse both of them (*Suillium accusandis utisque immittit*).<sup>719</sup> Suillius was joined in the accusation by Sosibius, Britannicus' tutor, and the two took their allegations – a clever blend of truth and insinuation – directly to Claudius, telling him that Asiaticus had a glorious reputation since he was the principal instigator of the assassination of Caligula, he was wealthy and influential, he had been about to depart to visit the Rhine armies and had the ready means to cause great disruption in the state.<sup>720</sup> Claudius panicked (just as his wife and freedmen expected) and sent Crispinus, the praetorian prefect, who arrested Asiaticus at Baiae and dragged him in chains back to Rome.<sup>721</sup>

Asiaticus was denied the chance of appearing before the senate. His trial was held *intra cubiculum* with Claudius as the sole judge; Suillius and Messalina were identified as present (*intra cubiculum auditur, Messalina coram, et Suillio ... obiectante*).<sup>722</sup> The official charges were corrupting the soldiers, adultery with Poppaea, and *mollitia corporis*, “softness of body,” a euphemism for passive homosexuality.<sup>723</sup> The accusation of corrupting the soldiers has treasonous connotations; although Claudius had suspended the charge of *maiestas* at the outset of his reign, there were necessarily still ways of curbing such obviously treasonous activities as corrupting the Roman army.<sup>724</sup> Adultery was the most clear-cut charge, liable to a penalty of *relegatio* and confiscation of property.<sup>725</sup> There existed no legal

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<sup>719</sup> Tac. *Ann.* 11.1.1.

<sup>720</sup> Tac. *Ann.* 11.1.2.

<sup>721</sup> Tac. *Ann.* 11.1.3.

<sup>722</sup> Tac. *Ann.* 11.2; Dio 60 (61) 29.5–6. Note Tacitus' use of the less legally precise verb *obiicio* to describe the process of prosecuting (as opposed to the more precise use of the verb *accuso* outlined above). His vocabulary underscores the *extra ordinem* nature of the proceedings against Asiaticus.

<sup>723</sup> Edwards (1993) 63–68.

<sup>724</sup> Dio 60.3.6; Levick (1990) 119; Bauman (1974) 194–204.

<sup>725</sup> See chapter 2 for a more thorough discussion of adultery as a criminal charge.

charge of *mollitia* or effeminacy; these accusations were simply meant to humiliate.<sup>726</sup> The suggestion that the charges were concocted is upheld by Dio's report that one of Suillius' witnesses for the prosecution, when asked to identify Asiaticus, pointed out a baldheaded man standing near the defendant.<sup>727</sup> Amid the laughter, acquittal seemed imminent but, while Claudius deliberated, Vitellius, acting on Messalina's orders, made an emotional statement that the prisoner had requested the choice of the manner of his death. Believing that this was tantamount to a confession, Claudius granted the request.<sup>728</sup> Asiaticus opened his veins.<sup>729</sup>

Asiaticus' trial provides the first indisputable evidence of the female author's physical presence at the trial she engineered. Messalina had the opportunity to see the course of a trial firsthand, to exercise her power more directly and to witness its effects. It was an *extra ordinem* procedure in which the defendant was accused, arrested, and tried by the authority of the emperor alone.<sup>730</sup> The evidence indicates that basic trial procedure was followed: the prosecutor Suillius and his *subscriptor* Sosibius had presented the charges to Claudius; the trial itself began when the defendant was present; Suillius presented his case, complete with witnesses; Asiaticus was allowed to speak in his own defense; Claudius, as sole adjudicator, weighed the merits of the case with advice from a *consilium* of sorts, Vitellius. Messalina is not recorded as having said or done anything during the course of the

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<sup>726</sup> Edwards (1993) 68. Asiaticus seems to have been well aware of, and well versed in, these tactics. He burst out in response: *interroga Suilli, filios tuos: virum esse me fatebuntur*; "Ask your own sons, Suillius: they will confess that I am a man!" Tac. *Ann.* 11.2.1.

<sup>727</sup> Dio 60 (61).29.6.

<sup>728</sup> Dio 60 (61).29.6; Tac. *Ann.* 11.3.1. Dio presents the request as though Vitellius was bringing it directly from Asiaticus, who would have been held in another room while Claudius deliberated on the verdict. Claudius did not confirm that Asiaticus had in fact made the request. Tacitus presents the matter a little differently: while Claudius deliberated, Vitellius wept and recalled the length of his friendship with Asiaticus and how his friend had respected the princeps' mother, and had served his country well, and therefore, he should be allowed free choice over the manner of his death. Regardless of the tactics, Vitellius gave voice to the suggestion, and both historians agree that Messalina had put him up to it.

<sup>729</sup> Tac. *Ann.* 11.3.2.

<sup>730</sup> For *extra ordinem* procedures, see Jones (1972) 91–95; Strachan-Davidson (1912) 2.157–161.

trial until proceedings adjourned for Claudius' deliberation. As she left the room, she told Vitellius (surely *sotto voce*) to make sure Asiaticus did not get away.<sup>731</sup> Even though she was present, therefore, there were already plans in place for the actions of Suillius and Vitellius; everyone knew what to do.

A lingering question is how Messalina was able to be present during the trial, which seems to have been held hurriedly and in private. Certainly women had long been present in various courts in various capacities: as defendants, as witnesses, as observers. As the instigating force of the entire prosecution, Messalina was in the unusual position of seeing her plans come to fruition, and solidifying her political power. Either Claudius knew nothing at all about his wife's intrigues, as the sources would have us believe, or he knew full well what was going on and supported her efforts. It seems inconceivable that a man of Claudius' intelligence, raised in the midst of Julio-Claudian palace intrigues, could have been genuinely ignorant of the politics of his own household. His timorous character and willingness to be persuaded by an effective speaker explains much. The combination of Claudius' character, her own ambitions, and the circumstances allowed Messalina to be not only powerful but explicitly active in using the law to meet her own political goals.

While Claudius was contemplating the fate of Asiaticus, Messalina left the task of guiding the emperor's decision-making in the capable hands of Vitellius and moved on to Poppaea.

*ad perniciem Poppaeae festinat subditis qui terrore carceris ad voluntariam mortem propellerent.*

She hastened to the destruction of Poppaea, sending in men to drive her to voluntary death by the fear of imprisonment.<sup>732</sup>

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<sup>731</sup> Tac. *Ann.* 11.2.2.

<sup>732</sup> Tac. *Ann.* 11.2.2. It is ironic that the praetorian prefect Crispinus (who had arrested Asiaticus) later married Poppaea's daughter Poppaea Sabina. Poppaea (PIR<sup>2</sup> P 850) and Crispinus (PIR<sup>2</sup> R 169) were married in 51 and

Claudius was so unaware of his wife's activities that he asked Poppaea's husband Scipio about her absence at a dinner party a few days later and was told that she had succumbed to fate.<sup>733</sup> Since Asiaticus was charged with adultery, Poppaea would also have been vulnerable to the same charges. There is no indication, however, that there was any legal action directed at her, though in the wake of Asiaticus' death the threat of prosecution would have been especially terrifying.

#### *Messalina vs. Polybius (AD 47)*

Polybius was one of Claudius' freedmen, especially honoured as the emperor's literary mentor, and was accustomed to appear in public with senior statesmen.<sup>734</sup> Messalina falsely accused him and had him executed, according to Dio, while also maintaining a love affair with him.<sup>735</sup> The charges and legal processes are unknown. This action, unsurprisingly, cost Messalina the trust and goodwill of the imperial freedmen who were then unwilling to intervene for her during the Silius affair the following year. Polybius had been the recipient of Seneca's *Consolatio*, written while in exile. It is possible that Polybius had supported Seneca's request for recall, and thus earned Messalina's ill will.<sup>736</sup>

#### *Messalina vs. fratres Petrae (AD 47)*

Suillius accused the brothers Petrae before the senate because one of them had dreamt a portent of Claudius' demise, but the real reason, Tacitus claims, was that they had provided

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had a son together by 58 when they divorced and she married M. Salvius Otho; not long afterwards, she married the emperor Nero.

<sup>733</sup> Tac. *Ann.* 11.2.2.

<sup>734</sup> Suet. *Claud.* 28.2.

<sup>735</sup> Dio 60 (61).31.2.

<sup>736</sup> Barrett (1996) 89.

their house for trysts between Mnester, the mime, and Poppaea.<sup>737</sup> Messalina is not named as the author of this accusation, but her previous relationship with Mnester and Suillius' reputation as her 'regular' prosecutor strongly suggest that Messalina was indeed the motivating force. The brothers were convicted, but their sentence is unrecorded.

No doubt the above discussion leaves some of Messalina's crimes buried. Deficiencies in the ancient sources exacerbate the difficulties of untangling fact from bias and legal process from blunt exercise of power. Tacitus states that, after the death of Poppaea, Suillius was *continuus inde et saevus accusandis reis*, "constant and savage in accusing defendants."<sup>738</sup> There is no way to know for certain how many began at Messalina's behest as no further names are recorded, including the names of those men and women known to have been destroyed in the aftermath of the conspiracy of 42.<sup>739</sup> Tacitus hints that she had attempted to injure Agrippina, saying only that she was the object of pity because of Messalina's savagery, and that Messalina was distracted from setting up charges and accusers only by her overwhelming and pernicious passion for C. Silius.<sup>740</sup> Although the sources describe Messalina's motives as very personal, the prosecutions she authored provided political benefits for herself, her husband Claudius and her son Britannicus. Only her death stopped her prosecutions, and although Messalina's power shocked conservative Rome, there was worse yet to come.

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<sup>737</sup> Tac. *Ann.* 11.4.

<sup>738</sup> Tac. *Ann.* 11.5.1.

<sup>739</sup> Dio 60.15–16.

<sup>740</sup> Tac. *Ann.* 11.12.1: *Agrippinae miseratio augebatur ob saevitiam Messalinae, quae semper infesta et tunc commotior, quo minus strueret crimina et accusatores, novo et furori proximo amore distinebatur.*

## (Julia) Agrippina the Younger

Agrippina learned about politics and the law from several predecessors, not least Messalina, but most closely from her mother. Agrippina the Elder was a politically powerful woman, who capitalized on the lingering popularity of her husband Germanicus. She was the granddaughter of Augustus himself, and was, to the mob, a shining example of an *univira matrona* who was protecting her children against a rigid and taciturn emperor, Tiberius. To Tiberius, she was dangerously unpredictable with much political potential. As a result of the putative existence of the *partes Agrippinae*,<sup>741</sup> several female friends of Agrippina were prosecuted, notably her cousin Claudia Pulchra (AD 26) and Sosia Galla (AD 24).<sup>742</sup> Agrippina the Elder was at the centre of a trial in AD 29, covertly authored by Sejanus, which resulted in her being convicted of *maiestas* and sentenced to exile on Pandateria.<sup>743</sup> Modern scholars speculate on the existence and scope of the *partes Agrippinae* and a serious conspiracy behind these charges.<sup>744</sup> The younger Agrippina undoubtedly learned much from her mother's experiences, and seeing her mother's friends destroyed in the courts must have made a deep impression on her. The obvious implication is that imperial women have enough political influence that the establishment must fear them. Less obvious is the message sent by the means of their destruction: women were coming to have a more vivid presence in the courts, and if women could be destroyed via the courts, why could a woman not author such destruction?

Agrippina inherited more than a husband from Messalina; she learned from her predecessor what to do in order to exploit the full potential of the new politics, and also what

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<sup>741</sup> Shotter (2000) 350; Tac. *Ann.* 4.17.

<sup>742</sup> Tac. *Ann.* 4.17–19 (Sosia Galla, no. 53); 4.52–53, 4.66 (Claudia Pulchra, no. 16).

<sup>743</sup> Tac. *Ann.* 5.3–5.

<sup>744</sup> Shotter (2002) 350–354; Tac. *Ann.* 4.70.7.

not to do if she wanted to enjoy the fruits of her labours. She had a keen intellect and a thorough understanding of the law. She applied these two advantages with notable success and in her hands – and through her agents – the criminal law was a highly useful political tool. She eliminated four female rivals, two men, and attempted to eliminate one other. Following is an examination of those seven cases in which Agrippina attempted to destroy her enemies, whether personal or political, using the criminal law.

*Agrippina vs. L. Junius Silanus and Junia Calvina (AD 48/9)*

The first target of Agrippina's prosecutorial energies was L. Junius Silanus. She had nearly succeeded in her plans to marry Claudius, and to further her own ambitions, she wished to betroth her son Nero to Claudius' daughter Octavia. There was an obstacle: L. Junius Silanus was already betrothed to Octavia. The Silani were a very powerful family and could boast of descent from Augustus' family.<sup>745</sup> In the uncertain political climate, Claudius may have been unwilling to offend Silanus by simply breaking the betrothal, and so Agrippina took matters into her own hands. It is also very possible that Agrippina acted without Claudius' knowledge or support.

The charge was incest between Silanus and his sister Junia Calvina. The mere existence of such a morally charged accusation was sufficient to break the betrothal between Silanus and Octavia and to break up the marriage of Junia Calvina and her husband L. Vitellius.<sup>746</sup> Taboos against incest were ancient (*veteres mores*) and likely sanctioned by sacred law as well.<sup>747</sup> The precise degrees of relationship prohibited from marriage varied

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<sup>745</sup> Barrett (1996) 98–100; see Appendix 2.1 and 2.5.

<sup>746</sup> Furneaux, (1891) 2.220 n. 8; this L. Vitellius is the brother of the future emperor; see also Koestermann (1967) 3.113–114; Treggiari (1991) 156–158.

<sup>747</sup> Berger (1953) 497 *s.v. incestus*.

over time, but brother-sister ‘marriages’ were always prohibited.<sup>748</sup> The strictures against incest were well-known; Cicero, for example, skims over them with barely a nod,<sup>749</sup> though in his list of ideal religious laws he suggests capital punishment for those guilty of *dedecus* (disgrace).<sup>750</sup> In Julio-Claudian times, *deportatio* or *relegatio* were the standard punishments for those guilty of incest.<sup>751</sup>

The veracity of the charges is questioned by all. Suetonius puts Silanus in a list of people executed on unsupported charges with no chance for self-defence. Dio does not mention charges, only that Agrippina and the freedmen persuaded Claudius to execute him. Tacitus suggests that the brother-sister relationship was merely ‘incautious love made into disgrace.’ Seneca, writing some years after the death of Agrippina, claims that the charges were false.<sup>752</sup> Claudius could have called off the marriage for no reason at all; the fact that he allowed legal prosecution to intervene means a) the Junii Silani were a powerful family whom he wished to contain for reasons of power politics, or b) the charges were true.

Silanus knew nothing about the charges, according to Tacitus, until he was suddenly expelled from the senate by an edict of the censor Vitellius, father-in-law of Junia Calvina. The censorial power was usually exercised at this time by the emperor or the senate in its judicial capacity. This edict by a single man smacks of Agrippina’s influence.<sup>753</sup> Agrippina could not take these trumped up charges to Claudius (since her selfish motive was to advance the position of her own son), nor could she control the entire senate, so she found a way, through a single man, to register charges. The fact that he was censor was an additional

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<sup>748</sup> Technically the term *incestus* applied only to marriages (Dig. 23.2.39.1) while other improper sexual relationships fell under *stuprum* or *adulterium*.

<sup>749</sup> Cic., *de Legibus* 2.41.

<sup>750</sup> Cic., *de Legibus* 2.22.

<sup>751</sup> Berger (1953) 497, *s.v. incestus*. See also chapter 2.1.

<sup>752</sup> Suet. *Claud.* 29; Tac. *Ann.* 12.4: *incustoditum amorem ad infamiam traxit*; Seneca, *Octavia* 149. Agrippina died in 59, Seneca in 65.

<sup>753</sup> On the servility of Vitellius, see Tac. *Ann.* 6.32.4, 11.34.1.

benefit, and attached to Agrippina *ingruentemque dominationum provisor*, “with an eye towards her growing power.”<sup>754</sup> It was also nicely judged in that Vitellius the censor was father-in-law of one of the accused and he would be anxious, as *paterfamilias*, to rid his son of an immoral wife.

Silanus was praetor that year (AD 48).<sup>755</sup> Charges could not be filed against a magistrate in office,<sup>756</sup> so Vitellius used his censorial power to remove Silanus from the Senate and from his magisterial office.<sup>757</sup> The minute Silanus was forced to resign from his praetorship on December 29, 48, the accusers were waiting.<sup>758</sup> The outraged father-in-law Vitellius acted quickly to force a divorce between his son and Junia Calvina, and to register the incest charges formally. All these events took place in the short time between December 29, 48 and the wedding of Agrippina and Claudius at the beginning of 49. On the day of the marriage of Claudius and Agrippina, Silanus committed suicide.<sup>759</sup> He had waited until then on the hope that he might still survive the charges, or with the intent of increasing public ill-feeling toward the imperial couple.<sup>760</sup>

The charges against Silanus had not made it all the way to trial, but he foresaw the outcome sufficiently clearly. Silanus was in a position that he could have mounted a dangerous conspiracy. However, there is no evidence that he did so, and if Agrippina or Claudius suspected it, there would have been more than enough material, fabricated or not, to

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<sup>754</sup> Tac. *Ann.* 12.4.

<sup>755</sup> Tac. *Ann.* 12.4.

<sup>756</sup> Buckland (1937) 37, following Mommsen, *Staatsrecht* i<sup>3</sup>, 705.

<sup>757</sup> Tac. *Ann.* 12.4. cf. Dio 60.15.5 where a praetor was made to resign his office to face charges authored by Messalina (AD 42).

<sup>758</sup> Suet. *Claud.* 29.1–2.

<sup>759</sup> Tac. *Ann.* 12.8; Suet. *Claud.* 29.2: *morique initio anni coactus die ipso Claudi et Agrippinae nuptiarum.*

There is some flexibility in the interpretation of Suetonius’ sentence: it could mean that the wedding took place on January 1, or simply that the wedding took place very early in the new year.

<sup>760</sup> Lendon (1997) 119–120 points out that suicide was a way of saving face. Junius Silanus committed suicide with such ostentatious timing (on the emperor’s wedding day) that it could be interpreted as an attack on the emperor’s honour, designed to maximize the scandal.

sustain more serious political charges.<sup>761</sup> The charge of *maiestas* was suspended throughout the reign of Claudius, but the charge of *perduellio* remained available.<sup>762</sup>

Although there is no explicit statement in Tacitus, Junia Calvina must have proceeded to trial in the Senate. Newly divorced, she was banished from Italy. After her departure, Claudius, as *pontifex maximus*, performed expiatory sacrifices to clear the taint of the incest.<sup>763</sup> Ten years later, after Agrippina's death in 59, Junia Calvina was allowed to return from exile.<sup>764</sup> Although Junia Calvina was the last living descendent of Augustus, she wisely avoided politics and lived out her life quietly.

#### *Agrippina vs. Lollia Paulina (AD 49)*

Lollia Paulina was a rival to Agrippina for Claudius' hand in marriage. She was notoriously wealthy and ostentatious – so much so that she caught the attention of the elder Pliny who, in describing her pearls, could not resist the snide comment that she was ready and willing to produce the bill of sale to prove how outrageously expensive her jewels had been.<sup>765</sup> She was also of a good family. The combination of good family, social standing and wealth had made her a candidate for marriage to Claudius, and therefore a direct rival to Agrippina.<sup>766</sup> For this reason, according to Tacitus, she was destroyed.<sup>767</sup>

We can place her trial in the senate because Claudius spoke at length before the senate, first expounding her noble connections, then adding that she had designs on the

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<sup>761</sup> Barrett (1996) 277 n.19 lists scholars who have suggested conspiracy.

<sup>762</sup> Bauman (1992) 183; see also Berger (1953) 626, *s.v. perduellio*.

<sup>763</sup> It is, of course, highly ironic that the charges of incest worked so well for Agrippina to clear the way for her son to marry, and yet, the incest laws had to be revised to allow for the marriage of Agrippina and Claudius. Clearly, political expediency was a much higher priority than moral correctness. For literary purposes, Tacitus made a special effort to juxtapose these two outcomes.

<sup>764</sup> Tac. *Ann.* 14.12.5.

<sup>765</sup> Pliny, *HN* 9.117–118; he claims the pearls were worth forty million sesterces.

<sup>766</sup> Tac. *Ann.* 12.1.2.

<sup>767</sup> Tac. *Ann.* 12.22.1.

state.<sup>768</sup> The charges were consulting Chaldean astrologers, magicians, and the image (i.e. oracle) of Clarian Apollo about Claudius' impending marriage.<sup>769</sup> The charges would have been much more serious if she had been believed to have consulted astrologers about Claudius' marriage *after* he and Agrippina were married.<sup>770</sup> Although *maiestas* was suspended at this time and no source uses that word in connection with these charges, similar accusations had previously been the basis for a charge of *maiestas* against others.<sup>771</sup> The sources do not record the agent who brought the charges into court. Tacitus suggests that Lollia was not allowed to speak in her own defence, describing her as an *inaudita rea*; perhaps *inaudita* refers to her having had no personal interview with Claudius. Under normal procedures, she would have been allowed to speak on her own behalf.<sup>772</sup>

The verdict was that she should leave Italy and the majority of her property should be confiscated, leaving her with five million sesterces out of her vast wealth. The punishment suggests that the charges may actually have been *maiestas* since she was sentenced to *deportatio* (exile and confiscation of property). There seems no reason at all why she should have been left with the five million sesterces. No one has suggested a simple motive of greed – since she had such enormous wealth, it is possible that Claudius and Agrippina wanted Lollia's money. Under normal circumstances, the prosecutor would receive the confiscated property of the convicted; perhaps the unnamed agent was to share the profits. Soon after Lollia was sent into exile, a tribune of the Guard was sent to her who enforced her suicide.<sup>773</sup>

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<sup>768</sup> Tac. *Ann.* 12.22.2.

<sup>769</sup> Tac. *Ann.* 12.22.2.

<sup>770</sup> Bauman (1992) 182.

<sup>771</sup> For example, Tac. *Ann.* 3.32.2 where Aemilia Lepida was charged with consulting astrologers under the heading of *maiestas*, though those charges were dropped.

<sup>772</sup> See chapter 4, *Women as Witnesses*.

<sup>773</sup> Tac. *Ann.* 12.22.3.

Agrippina's involvement in this case is reinforced by the fact that immediately after Agrippina's death in 59, Lollia's ashes were returned to Rome for burial.<sup>774</sup> Nero did this to further blacken his mother's name which in turn ameliorated his guilt for murdering her. The only way that publicly returning Lollia's ashes to Rome would have had the desired effect was if it was generally believed that Agrippina was the one who had arranged for Lollia's exile and for the tribune to be sent to enforce her suicide, as Tacitus implies.

#### *Agrippina vs. Calpurnia (AD 49)*

In a single sentence, Tacitus mentions the destruction of Calpurnia, a woman of senatorial rank.

*Et Calpurnia inlustris femina pervertitur, quia formam eius laudaverat princeps, nulla libidine, sed fortuito sermone, unde ira Agrippinae citra ultima stetit.*

And Calpurnia, an illustrious woman, was destroyed because the princeps had praised her beauty, not in lust but in a chance comment, so Agrippina's anger stopped short of the ultimate.<sup>775</sup>

There is no mention of any charges or a trial. Tacitus uses the word *perverto* – the same word he used when describing the downfall, via a proper trial, of T. Statilius Taurus (below); this may suggest that Calpurnia was actually tried in court, like Lollia in whose story she appears. Tacitus uses the word *perverto* eleven times in the *Annals* and *Histories*; of these eleven, six refer to legal and political ruin – Calpurnia's case makes seven.<sup>776</sup> In a further two instances, *perverto* is used to mean political ruin without any contextual suggestion of legal involvement.<sup>777</sup> Ten years later, immediately following the death of Agrippina,

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<sup>774</sup> Tac. *Ann.* 14.12.6.

<sup>775</sup> Tac. *Ann.* 12.22.3; see also Dio 61.33.2b.

<sup>776</sup> Tac. *Ann.* 4.71, 12.59, 13.45, 15.67; *Hist.* 2.10, 3.38.

<sup>777</sup> Tac. *Ann.* 4.12; *Hist.* 2.101.

Calpurnia was allowed to return to Rome.<sup>778</sup> Tacitus' statement leaves no doubt that Calpurnia was a victim of political intrigue. On close examination, she was likely the defendant in a criminal trial on charges authored by Agrippina, and was guilty of more than looking pretty.<sup>779</sup>

*Agrippina vs. T. Statilius Taurus (cos. 44) (AD 53)*

T. Statilius Taurus was the second male target of a prosecution authored by Agrippina.<sup>780</sup> He came from a line of elite and respected senators, and had shared the consulship in 44 with C. Passienus Crispus, Agrippina's second husband, before becoming proconsular governor of Africa. His high status makes Agrippina's boldness in targeting him quite remarkable. The charges of *repetundae*, magic, and superstitious practices were brought, at Agrippina's behest, by Tarquitius Priscus who had been Taurus' *quaestor* in Africa (*Agrippina ...pervertit accusante Tarquitio Prisco*).<sup>781</sup> Agrippina's relationship with Priscus is further demonstrated by her supporting him against a disapproving senate after the accusation.<sup>782</sup> The charge of *repetundae* was weighty and not so liable to fabrication as the accusations of magic and superstitious practices. Taurus believed that the charges were serious – he committed suicide before the trial concluded.

Tacitus claims that Agrippina ruined him because she coveted his gardens, but this reason does not stand up to close scrutiny. On one theory, Statilius' gardens were the site of a major aqueduct confluence completed in AD 52 or 53 near the Porta Maggiore, and the

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<sup>778</sup> Tac. *Ann.* 14.12.5.

<sup>779</sup> Barrett (1996) 194.

<sup>780</sup> Tac. *Ann.* 12.59.1. This man (or his brother) was the father of Statilia Messalina, who was to be Nero's lover, *Ann.* 15.68.3, Syme (1986) 240, and later his third wife, Suet. *Nero* 35.

<sup>781</sup> Tac. *Ann.* 12.59.1.

<sup>782</sup> Tac. *Ann.* 12.59.2: Priscus was driven from the senate despite the active canvassing of Agrippina, and the senate rejoiced at his disgrace because he had ignominiously accused his own proconsul. Tarquitius Priscus was later convicted on *repetundae* charges brought by the Bithynians; Tac. *Ann.* 14.46.1.

acquisition of the land following Statilius' death may have saved the imperial fiscus the costly purchase of that land.<sup>783</sup> Since he committed suicide before conviction, however, Statilius' estate would have been subject to no penalty and would have been disposed of according to his will.<sup>784</sup> In no instance would the fiscus have received his estate. Furthermore, Taurus was accused in 53, rather too late to acquire land for aqueduct construction that was completed in 52 or 53. T. Statilius Taurus was almost certainly the brother of Taurus Statilius Corvinus, consul of 45, who was associated with Asinius Gallus in a conspiracy against Claudius in 46.<sup>785</sup> With these connections and Taurus' own high status, there was good reason for the emperor to be suspicious of him, and Agrippina's flaunted desire for his gardens was an effective distraction from the underlying political threat.

#### *Agrippina vs. Domitia Lepida (AD 54)*

The attack on Domitia Lepida marks Agrippina's first criminal accusation against a member of the imperial family.<sup>786</sup> Lepida was Agrippina's erstwhile sister-in-law, Nero's aunt, the younger of two sisters of the same name.<sup>787</sup> She was also the mother of Messalina, and grandmother of Britannicus and Octavia. The charges lodged against her were twofold:

*ceterum obiecta sunt, quod coniugem principis devotionibus petivisset, quodque parum coercitis per Calabriam servorum agminibus pacem Italiae turbaret.*

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<sup>783</sup> Barrett (1996) 136.

<sup>784</sup> Dig. 48.4.11 (Ulpian): "He who dies while he is on trial dies with status unimpaired; for the indictment is extinguished by death." Cf. Tac. *Ann.* 6.29.2; see Rogers (1933) 18–22 on suicide and confiscation of property. T. Statilius Taurus had no known children; Syme (1986) 240 and stemma 9. In the unlikely event of intestacy, his brother Corvinus would have been heir, if he had survived the fallout from the conspiracy of 46. For a discussion of will-making in Roman society, see Champlin (1991).

<sup>785</sup> Suet. *Claud.* 13; Dio 60.27.5; Syme (1986) 240. His father was T. Statilius Taurus (*cos.* 11), his grandfather was M. Messalla Corvinus (*cos.* 31 BC), trusted general of Augustus, Syme (1986) 240 and stemma 9.

<sup>786</sup> Tac. *Ann.* 12.64.2–65.1.

<sup>787</sup> There were two sisters, whom Barrett (1996) 45–46, 137 calls Domitia (the elder) and Lepida (the younger); see also Balsdon (1962) 120, Syme (1939) stemma 3. Levick (1976) 76 makes no distinction.

But the accusations thrown at her were that she had attacked the princeps' spouse with incantations (curses), and that she was disrupting the peace of Italy because she had too little control over her columns of slaves throughout Calabria.<sup>788</sup>

Agrippina had some popular support, so attempts on her life would not be regarded favourably, and poorly controlled slave gangs would have raised fears of another great slave revolt like those that had troubled the previous century.<sup>789</sup> The charge of using magical incantations against the life or health of an imperial person would have raised the banner of *maiestas*, if not the actual charge.<sup>790</sup>

Tacitus' assertion that Agrippina brought charges against Lepida for feminine reasons (*muliebris causis*) is not satisfactory; there were real political motives in the struggle for influence over Nero and Britannicus.<sup>791</sup> Lepida was Agrippina's equal in most respects – age, rank, wealth; both were shameless, infamous, and ruthless.<sup>792</sup> And both sought to control Nero. Though Tacitus claimed the two women wrangled for control of Nero, the more difficult reality was that Lepida was the grandmother of Britannicus. Through her influence, Agrippina feared that she might oust Nero from the purple, or somehow foster cooperation between the two young men. There was also the lingering fear that Britannicus, as an adult, would seek revenge on those who had been involved in the death of his mother. And who better to keep the embers of vengeance smouldering than his grandmother?

But Agrippina acquired the upper hand when she decided to use her weapon: the criminal law. She authored charges with minimal substance, but which were calculated to feed into the fears of the time. She even persuaded Nero to testify against his aunt;

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<sup>788</sup> Tac. *Ann.* 12.65.1.

<sup>789</sup> Tac. *Ann.* 14.8 where crowds of people thronged the shores to see her to safety after her boat collapsed. For slave revolts, see Barrett (1996) 137–138.

<sup>790</sup> The charge of *maiestas* was suspended throughout Claudius' reign; Dio 60.3.6; Levick (1990) 119; Bauman (1974) 194–204

<sup>791</sup> Nero's aunt, the elder Domitia Lepida, had cared for him while Agrippina was in exile from 39–41; Barrett (1996) 137; Suet. *Nero* 6.

<sup>792</sup> Tac. *Ann.* 12.64.5.

Suetonius relates that he did this to please his mother because she was doing everything she could to get Domitia Lepida convicted.<sup>793</sup> Even though Narcissus objected vehemently, Lepida was sentenced to capital punishment.<sup>794</sup> The evidence must have been stronger than Tacitus records. The execution was duly carried out.

Could Claudius have known about and supported these charges? It seems very unlikely that he would have supported his former mother-in-law on personal grounds, since Messalina had been such a scandal. Lepida was, according to Tacitus' description, immoral and ruthless – perhaps not very personally engaging. She was also the source of a potential schism in the imperial family: some would support Nero, others Britannicus. Claudius was acutely sensitive to the political instability of his own reign and would not deliberately have exacerbated any instability in his succession. If he believed that Lepida would cause a conspiracy, he would not protect her. There is, however, no substantive evidence that suggests his direct involvement in the trial at all.

#### *Agrippina vs. Narcissus (AD 53)*

It is a significant statement of Agrippina's power and character that she was willing and able to tackle the emperor's right hand man. Narcissus was one of the handful of highly influential and exceedingly wealthy imperial freedmen in Claudius' household. Agrippina hated him. She was furious when the Fucine lake tunnel that he had built for the games collapsed because he had made the imperial house look foolish and Agrippina did not respond well to public humiliation.<sup>795</sup> She accused him of avarice and embezzlement:

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<sup>793</sup> Suet. *Nero* 7.

<sup>794</sup> Tac. *Ann.* 12.65.2.

<sup>795</sup> Tac. *Ann.* 12.56–57; Suet. *Claud.* 20 and 21.

*Simul Agrippina trepidatione principis usa ministrum operis Narcissum incusat cupidinis ac praedarum. nec ille reticet, impotentiam muliebrem nimiasque spes eius arguens.*

At the same time, Agrippina making use of the princeps' anxiety, accused Narcissus (who was the agent for the work) of cupidity and embezzlement. Nor did he stay silent, criticizing her womanly lack of control and her excessive hopes.<sup>796</sup>

*Praedae* were the spoils of war, and if an individual took them, he was liable to a charge of embezzling public money, punishable under Augustus' *lex peculatus*.<sup>797</sup> In this context, *praedae* must be taken figuratively to represent public money. The verb *incuso* can be used of a formal legal charge, and Tacitus uses it five times in this way.<sup>798</sup> He uses it twenty-nine times in the *Annals* to mean simply 'criticize' or 'blame'. Since the latter is the more statistically likely meaning, the conclusion might be that there was merely a shouting match rather than actual legal proceedings. But what might have been a domestic squabble in another household took on legal proportions in this case because of the great amount of money involved and because it happened in the household of the emperor. This case could be another example of a 'trial' *in cubiculo imperatoris*.<sup>799</sup> There seem to have been no immediate consequences for Narcissus, but when he fell ill approximately a year later and retired to Sinuessa to recuperate, he was imprisoned there on Agrippina's orders. After Claudius' death removed his last hope of recall, he was driven to suicide by the egregious conditions of his imprisonment.<sup>800</sup> In the end, Agrippina had succeeded in destroying him.

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<sup>796</sup> Tac. *Ann.* 12.57; cf. Dio 60 (61).33.2c.

<sup>797</sup> Berger (1953) 623–624, *s.v. peculatus*. This law was still in force in Justinian's day (Dig. 48.13.1)

<sup>798</sup> Tac. *Ann.* 2.69, 2.78, 4.21, 6.7, 14.65.

<sup>799</sup> Compare, for example, the trial of Asiaticus, Tac. *Ann.* 11.1–2 and the trial of Agrippina, Tac. *Ann.* 13.21.

<sup>800</sup> Tac. *Ann.* 13.1.4; Dio 60.34.4; he became ill in late summer or early autumn 54.

### *Agrippina vs. Valerius Capito and Licinius Gabolus*

Agrippina is also known to have caused the banishment of Valerius Capito and Licinius Gabolus, former praetors whose crimes are otherwise unknown. These men were recalled after her death.<sup>801</sup> Tacitus records that their banishment had been caused by Agrippina and their recall immediately after her death emphasizes her involvement in procuring their exile.

### **Junia Silana**

Junia Silana, our fourth woman *pro accusatoribus*, instigated a legal battle with Agrippina. When she perceived that Agrippina's power was waning in 55, she seized the opportunity of registering charges against her. Tacitus reports that the two were equal in age, beauty, and ruthlessness and had apparently been good friends until Agrippina discouraged the intentions of Silana's suitor Sextius Africanus because she hoped to inherit from her wealthy, childless friend.<sup>802</sup> Silana acted through agents: *parat accusatores ex clientibus suis*; "she procured accusers from her own clients."<sup>803</sup> The charge must have been *maiestas* or *perduellio*, alleging that Agrippina was encouraging her second cousin Rubellius Plautus to rebel, then marry her. Tacitus provides tantalizing details in his highly dramatic account: Silana suborned her agents Iturius and Calvisius who, instead of registering the charges immediately with the emperor or praetor, told Atimetus (freedman of Domitia), who told his fellow-freedman Paris, who put the charge in its most dreadful form (*crimen atrociter*

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<sup>801</sup> Tac. *Ann.* 14.12.3–4.

<sup>802</sup> Tac. *Ann.* 13.19.3.

<sup>803</sup> Tac. *Ann.* 13.19.3.

*deferre*) and presented it to Nero while the young emperor was half-drunk in the middle of the night.<sup>804</sup> The midnight timing emphasizes the *extra ordinem* nature of the proceedings.

Thoroughly terrified, Nero resolved on the destruction of Agrippina and Rubellius Plautus, and on the removal of Burrus (Agrippina's choice) from the prefecture of the Praetorian Guard. Tacitus claims that Burrus calmed Nero by pointing out that there were no formal accusers, but only one person (Paris) from the house of the enemy.<sup>805</sup> So his parent – more than anyone else – must be allowed a chance to defend herself. At daybreak, Seneca, Burrus, and several freedmen proceeded to Agrippina and revealed the charges to her along with the authors' names. In a dramatic and highly effective speech, Agrippina refuted the charges and demanded an interview with her son.<sup>806</sup> In her personal interview with Nero, Agrippina convinced him of her innocence and cleared herself of all charges. As a final result, she obtained vengeance on her accusers and rewards for her friends.<sup>807</sup>

The legal procedure of all this is more traceable than any of the previous cases and represents an example of a trial *in cubiculo imperatoris*. The rapidly moving events certainly did not allow time to convene the entire senate and hold proper hearings. Bringing the accusation to Nero constituted a proper initial registration of the charge (*postulare*). At that point, Nero decided to accept it and allow legal proceedings to go forward. Burrus, Seneca, and several freedmen presented the charge to Agrippina, along with the authors' names (*criminis delatio*). The dawn interview between Burrus and Agrippina represented the *inquisitio*. Agrippina convinced her inquisitors that she should speak to Nero; the details of

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<sup>804</sup> Tac. *Ann.* 13.19; Domitia was the surviving aunt of Nero, whose sister Lepida had been executed by Agrippina two years previously; Nero killed her just after AD 59, Suet. *Nero* 34.

<sup>805</sup> Tac. *Ann.* 13.20.4: *quippe inter Agrippinam et Domitiam infensa aemulatio exercebatur*, "since a hostile rivalry was cultivated between Agrippina and Domitia."

<sup>806</sup> Tac. *Ann.* 13.21.3–8.

<sup>807</sup> Tac. *Ann.* 13.21.9.

when and where she spoke to him are not recorded, but this would have fulfilled the *interrogatio* portion of the trial. Because she convinced Nero of her innocence, the trial was speedily closed by the power of the emperor.

Notably, Junia Silana herself was immediately recognized as the author of the charges, and there were legal consequences for the false charges laid by the plaintiffs.<sup>808</sup> Likely all three were judged guilty of *calumnia*: Iturius and Calvisius were both exiled as the accusers, and Silana was also exiled, along with her clients. All three would have suffered *infamia* as well.<sup>809</sup> Atimetus was executed, vulnerable through his low status. After the death of Agrippina, Iturius and Calvisius were recalled from exile; Silana had died of natural causes at Tarentum.<sup>810</sup>

## Conclusion

These four women, Antonia Tryphaena, Messalina, Agrippina, and Junia Silana demonstrate a range of actions *pro accusatoribus* available to powerful and determined women even though they were technically denied access to stand as prosecutors.<sup>811</sup> This was an innovative channel for feminine power, especially in the hands of the emperor's wife. While Roman law did not operate under binding principles of precedent, society recognized novelties and adapted new ideas to suit. In this way, Agrippina learned from Messalina, and Junia Silana learned from Agrippina.

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<sup>808</sup> Tac. *Ann.* 13.21.9.

<sup>809</sup> Berger (1953) 378–379, *s.v.* *calumnia*.

<sup>810</sup> Tac. *Ann.* 14.12.5; Silana had been allowed to return from her distant place of exile to Tarentum when Agrippina's power (or her anger) had waned.

<sup>811</sup> Except in carefully circumscribed situations, as discussed at the beginning of this chapter.

Women were accustomed to acting through agents, and society was accustomed to seeing women acting through agents – their guardians.<sup>812</sup> It is a comment on the nature of power politics at this time that some women had the upper hand over men who were themselves politically influential. This is also a function of monarchy, where birth and family afforded imperial women status above all men but the imperial men. The practice of prosecuting via an agent began to be more common for women in the late republic and the beginning of the principate as dynasts struggled for power and their women took very active – and public – roles in support of their men’s political goals. Women also began to be much more influential as patronesses, thus having power over men who could act as advocates.

Thrace’s Queen Antonia Tryphaena stands out as the only woman acting *pro accusatore* who was not closely connected with the imperial family, although her actions as prosecutor were for her own and her sons’ political benefit. Also, because she was only involved in a single case, there is no claim that she was using the criminal law as a tool in political games. Her situation met the requirements for a woman to conduct her own prosecution: her husband had been murdered by his own uncle and, when the latter took over the entire kingdom, her underage sons had been deprived of their patrimony. Her case was based, at least in part, on genuine injustice rather than mere politics. The only place for a client-queen to turn was to the emperor and senate of Rome, and there Tryphaena found the justice she sought.

Messalina was the most prolific female author of prosecutions in the Julio-Claudian era. In spite of the lacunae in Tacitus and Dio, Messalina’s manipulation of the legal system is clear, although many details are missing. In most of the trials authored by Messalina, the motives Tacitus gives are highly personal: she destroyed Julia Livilla because of her beauty

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<sup>812</sup> Naturally, men who were still *in patria potestate* would also have acted through agents.

and lack of deference, Silanus and Vinicius refused sexual relations with her, Asiaticus owned gardens that Messalina wanted and she was jealous of his new love affair with Poppaea, and the brothers Petrae provided their house for trysts between Messalina's former lover Mnester and Poppaea. There were more substantive reasons than feminine jealousy for all this legal activity. Her prosecutions proactively removed potential rivals for her son Britannicus and must have provided some political benefit for Claudius. Messalina's innovation, as an imperial wife, was to use the criminal law as a means of removing political rivals, both her own and those of her husband and son.

It was also politically effective for Agrippina to use the criminal law as a tool to achieve her ambitions. From her first rather clumsy accusation of incest against L. Silanus and Junia Calvina, Agrippina gained in dexterity and sophistication. She was, in turn, a precedent for other women to follow in authoring criminal charges. Junia Silana, with the assistance of Domitia, was very nearly successful in toppling Agrippina from power in 55. The repercussions from that trial show how widely recognized it was that women acted through agents – Junia Silana was immediately recognized as the author of the charges and was punished accordingly when the case failed. It has long been recognized that Agrippina represented the acme of active feminine political power in the early empire and a crucial stage in the definition of an imperial woman's political role. As a measure of her political power, Agrippina successfully caused the conviction and banishment of several men of consular or praetorian status. Her use of the criminal law was a very effective tool in her bag of tricks.

This chapter has demonstrated that although women were legally restricted from registering charges as prosecutor, several powerful women were able to use the criminal law:

Tryphaena by working within the system, Messalina, Agrippina, and Junia Silana by subversively working through agents. After Agrippina there was no politically powerful imperial woman for more than fifty years, and no one who approached the force of Agrippina's influence until the Severan women nearly a century and a half later.

### **The End: Messalina and Agrippina**

Messalina and Agrippina were very involved in legal matters, particularly as the instigators of prosecutions, all of which cases had political dimensions. These two women were arguably too powerful and too well entrenched to be removed by any means other than assassination – just as murder was the only option to remove an impossible emperor such as Caligula or Nero. Other women were the targets of criminal charges as a means of damaging their political and social standing, but Messalina and Agrippina seemed invulnerable. This section is meant to acknowledge the political circumstances and ramifications of their destruction.

Messalina's political acuity and proactive strategizing on behalf of her children between 41 and 48 render her last act – her marriage to Silius – almost completely inexplicable. Even Tacitus admits that his account seems incredible, but Meise has shown that other possible reconstructions are even less plausible.<sup>813</sup> The last days of Messalina's life are recorded in some detail. She had become desperately inflamed with love for C. Silius and spent time at his house, even moving possessions from the imperial residence to Silius' house.<sup>814</sup> When the novelty of this affair wore off, she seized the occasion of Claudius' day trip to Ostia and celebrated all the solemnities of a wedding (*cuncta nuptiarum sollemnia*

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<sup>813</sup> Tac. *Ann.* 11.27.1; Meise (1969) 122–138, 152–168.

<sup>814</sup> Tac. *Ann.* 11.12.3.

*celebrat*).<sup>815</sup> The emperor's household was stunned. A plan soon coalesced: those with whom power lay aimed *posse opprimi, damnatam ante quam ream; sed in eo discrimen verti, si defensio audiretur, utque clausae aures etiam confitenti forent*; "to be able to suppress her, condemned before she was a defendant; but to turn the crisis on this: whether her defense were heard, and whether the emperor's ears would be closed to her confession."<sup>816</sup> A favourite concubine was sent to reveal Messalina's activities to Claudius; chaos ensued. As Claudius began his journey back to Rome, Messalina and Silius parted. Messalina sent for her children Octavia and Britannicus, begged intercession from the Vestal Virgins, and set out to meet Claudius on the road, travelling humbly in a garden cart.<sup>817</sup> As she drew near her husband's conveyance, she shouted at him to listen to the mother of his children. Although her cries had no effect, the words of the Vestal Virgin Vibidia had more impact: *ne indefensa coniunx exitio daretur*; "he should not give his wife to destruction undefended."<sup>818</sup> Meanwhile, in the Praetorian camp, Silius was executed; illustrious Roman equestrians and even men of the senatorial order were also executed. Claudius returned home, had dinner, then *iri iubet nuntiarique miserae (hoc enim verbo usum ferunt) dicendam ad causam postera die adesset*; "he ordered a messenger to go to tell the wretched woman (for this is the word they maintain he used) to be present on the next day to plead her case."<sup>819</sup> Narcissus heard this and understood that Claudius' anger was waning and kinder feelings were returning. He told the centurions and the tribune who was present to go out and kill her, that this was the emperor's order. They found her cowering in the Gardens of Lucullus and killed her.

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<sup>815</sup> Tac. *Ann.* 11.26.3.

<sup>816</sup> Tac. *Ann.* 11.28.2.

<sup>817</sup> Tac. *Ann.* 11.32.2–3.

<sup>818</sup> Tac. *Ann.* 11.34.3.

<sup>819</sup> Tac. *Ann.* 11.37.2.

With the marriage to Silius, Messalina had the power and opportunity to start a civil war. Claudius' reaction to Messalina and Silius was completely appropriate for the discovery of a conspiracy. "He did not act as the cuckolded husband, but rather as any ruler would when faced with sedition. His anxiety was not so much for his own safety, but for the future of the principate."<sup>820</sup> Since Messalina had established her power and reputation by using the criminal law, her knowledge and experience would have made her a formidable opponent if she were put on trial for her own actions. Assassination was the only way around the danger of her somehow escaping conviction via a legally conducted trial, whether held in the senate or *in cubiculum* with the emperor presiding. She had great influence over the emperor and was politically very powerful in her own right.

Although the circumstances and the direct cause of Messalina's demise were scandalously unique, the underlying message sent by her death was no different than the one sent fifty years earlier upon the demise of Augustus' daughter Julia. Outrageously immoral behaviour in an imperial woman could not be hidden forever and, once revealed, would not be tolerated. Immoral behaviour that also involved a threat to the political order would result in her rapid and permanent removal.

Having personally witnessed the aftermath of Messalina's demise, and recalling her own mother's destruction, Agrippina was well aware of the dangers attendant on an imperial woman. Heeding those lessons well, she successfully managed as Claudius' wife for five years, but then revealed herself to be an overbearing and undiplomatic mother when Nero became emperor. The legal activities in Agrippina's life have been discussed under the roles of defendant and behind-the-scenes prosecutor, but there were no legal procedures involved in her death: it was outright murder.

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<sup>820</sup> Major (1993) 36.

Nero had decided that the burden of his mother's influence was too great to be borne.<sup>821</sup> He tried to make his mother's death look like an accident, first by poison, then by the famous collapsing boat. When her freedman Agerinus appeared in the emperor's audience chamber with a report of Agrippina's near-miraculous survival after the boat incident, Nero threw a sword at his feet and ordered him to be thrown into chains as though caught in the act of attempting to assassinate the emperor. He said that his mother had sent her freedman to kill Nero and, in shame at the discovery of her plans, she had chosen death of her own accord. Anicetus, author of the failed collapsing boat plot, was dispatched to Agrippina's villa at Bauli and killed her.<sup>822</sup> Agrippina had done nothing treasonous or illegal that demanded the emperor's justice. In fact, after Nero withdrew her personal bodyguard and moved her out of the palace and into her grandmother Antonia's former home, Agrippina seems to have maintained a relatively low profile, as suggested by Tacitus' silence on her activities between 55 and 59.<sup>823</sup> Her death is a testament to the deep-seated resentment of powerful and ambitious women in Roman thinking.

Further indications of Roman resentments are found in the posthumous treatment of Agrippina and Messalina. The senate decreed penalties against Messalina's memory and likenesses (so-called *damnatio memoriae*); her statues were destroyed and her name was chiseled out of inscriptions.<sup>824</sup> Agrippina's statues were also smashed and her name was chiseled out of inscriptions in public places, but there is no evidence that the senate ordered

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<sup>821</sup> Suet. *Nero* 34.1; Tac. *Ann.* 14.1.1.

<sup>822</sup> The entire dramatic narrative is found in Tac. *Ann.* 14.1–12.

<sup>823</sup> Barrett (1996) 180–182; Dio 61.10.1, 10.6, reports under the year 58 that Seneca was criticized for adultery with Agrippina, along with other unknown charges, but he escaped formal accusation. This is the same year that P. Suillius Rufus met his end and desperate mudslinging seems appropriate to his character and circumstances; he may have been the source of these imputations, though they are not among those that Tacitus attributes to him (Tac. *Ann.* 13.43.2–3). Alternatively, Dio may be echoing the accusations made in 41 about adultery between Seneca and Agrippina's sister Livilla. See also Barrett (1996) 68–69.

<sup>824</sup> Tac. *Ann.* 11.38.3; Smallwood (1967) no. 99 and 136.

these actions.<sup>825</sup> Her birthday (November 6) was classed among the *dies nefasti* and thanksgivings were celebrated for Nero's safety.<sup>826</sup>

Roman law was not bound by precedent in the same sense that we think of it, but the actions of Messalina and Agrippina – and reactions to them – formed an *exemplum* in elite Roman society. The pressure of this social *exemplum* had a much greater impact than a mere legal precedent. After Agrippina, there was no truly powerful imperial woman for a century and a half. These two Julio-Claudian empresses proved that if one failed as an inspiration, one could at least be a horrible warning.

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<sup>825</sup> Tac. *Ann.* 14.13; Dio 61.16.2a.

<sup>826</sup> Tac. *Ann.* 14.13.3; Smallwood (1967) no. 22.5–12; Talbert (1984) 388.

## CHAPTER 4

### Women as Witnesses

Another role of women in criminal trials remains to be examined: that of witness. Since it has been shown already that women acted as both defendants and behind-the-scenes prosecutors, it seems obvious that women should be involved in one of the most basic ways of participating in a trial, that of being present and reporting events or knowledge as a witness. The evidence, however, for women as witnesses is very scarce, scattered, and tenuous. Incomplete or vague references are often the only references to women's witness testimony. For this reason, and in order to orient the reader, evidence from sources as widely (culturally and temporally) disparate as the Twelve Tables, Justinian's Digest, Cicero, Tacitus, Suetonius, and Juvenal will be brought to bear. Although the evidence is poor, it is still worth the effort to attempt to discover something useful about the legal standing, activities and effect that women had as witnesses in criminal trials.

Many of the women who were defendants discussed in chapter 2 may have been witnesses in their own defense. For this discussion, however, only those women who are almost certainly known to have provided testimony in court will be included. For the purpose of this chapter, a witness is a woman who provided either written or spoken testimony in a criminal court proceeding and whose testimony was accepted by the court.

Before turning to our specific focus on female witnesses, a brief overview of witnesses in Roman legal thought will be useful to contextualize the discussion. Witnesses were an essential feature of Roman legal proceeding. The standards and procedures for

accepting witness testimony formed a part of the Roman legal consciousness from a very early period and witnesses were required for nearly all legal transactions, from contracts of sale to manumissions to marriage. As early as the Twelve Tables, the need for witnesses was codified.<sup>827</sup> Cicero's forensic oratory reveals the criminal courts' reliance on witnesses to provide evidence; there are over a hundred references to witnesses in the Verrine orations alone. The best witness was a man of good character, a citizen of some standing, and well-respected in his community.<sup>828</sup> He was someone trustworthy, someone credible, and someone with something to lose if he did not speak truthfully.<sup>829</sup> He was required to swear an oath at the outset of his testimony that he would be completely truthful or the gods would punish him and his family. Of course, a woman could fulfill most of these requirements; she could be a citizen and a respected matron with a family, but examples of female witnesses are rare. For our period of roughly seventy years there are only a handful of cases in which we can be reasonably certain that women's testimony, either written or spoken, was presented in court.

Under ideal circumstances, there would be a certain ritualistic element to giving testimony as a witness. A witness would be summoned by the lawyer, would give an oath to tell the truth, would answer questions posed first by the summoning lawyer, then by his opponent. None of our cases explicitly conform to this procedure, so we are left to infer and extrapolate based on the meager evidence for women giving testimony.

The following sketch of the history of women as witnesses illustrates the exceedingly fragmentary nature of the evidence on this topic. Vestal Virgins, during the regal period of

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<sup>827</sup> XII Tables 2.3; 8.22, 23; frag. 10, *FIRA*<sup>2</sup> p. 75.

<sup>828</sup> Dig. 22.5.2 (Modestinus); 22.5.3 (Callistratus); the *Digest* chapter 22.5 deals with witnesses.

<sup>829</sup> Quintilian describes at length ways of dealing with less than ideal witnesses, implying that an honest and respectable witness was not typical; 5.7, especially at 5.7.27.

Roman history, were expressly granted the right to give legal testimony, a privilege given to no other woman in the State.<sup>830</sup> Centuries later, Cato the Elder is reported to have expressed disapproval of having women and children in court as a means of eliciting sympathy for the defendant.<sup>831</sup> The mere presence of women excited uneasiness and criticism. Writing of the time of Tiberius, Tacitus recorded that Vestals ‘traditionally’ attended legal proceedings in the Forum to give evidence.<sup>832</sup> At some point between the regal period and the late republic, the right of giving testimony was extended to include other women. Exactly when this happened is irrecoverable; there is simply no evidence. For the purposes of this discussion, the precise dates of these changes are only marginally relevant, although the earlier in the Republic the right of giving testimony was extended to women, the more firmly entrenched this principle would be in Roman thinking. Cicero’s second Verrine oration reports a dramatic scene in which the mother and grandmother of Verres’ dead ward testified against him.<sup>833</sup> Pompeius’ mother-in-law Aurelia and sister-in-law Julia testified in court about the adultery between Caesar’s wife Pompeia and Publius Clodius.<sup>834</sup> By the time of Augustus, female witnesses in the lawcourts, including trials in the Senate, excite no particular comment. Both law and society had accepted that women could be present in court and give testimony as a witness. The jurist Paul, in his treatise on adultery composed in the mid-second century AD, comments: *ex eo, quod prohibet lex Iulia de adulteriis testimonium dicere condemnatam mulierem, colligitur etiam mulieres testimonii in iudicio dicendi ius habere*; “The fact that the *lex Julia* on adultery forbids a woman found guilty to give

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<sup>830</sup> Plut. *Publicola* 8.4; Gellius *NA* 7.7.2.

<sup>831</sup> Fronto, frag. 199, ORF<sup>3</sup> p. 80.

<sup>832</sup> Tac. *Ann.* 2.34.

<sup>833</sup> Cic. *Verr.* 2.1.37.93–94.

<sup>834</sup> Suet. *Jul.* 74.2; Cic. *Schol. Bob.*, frag. 23, Stangl (1964) 89.

evidence shows that women have the right to give evidence at a trial.”<sup>835</sup> While Paul’s comment cements the legal principle that women could give testimony, the fact that he needed to repeat it shows that there had been some challenge.

Let us now turn to the specific evidence for women’s testimony. As part of the honours bestowed upon Drusilla after her death in AD 38, it was decreed that whenever women offered testimony, they should swear by her name.<sup>836</sup> Such a brief reference indicates only the genesis of this practice, not its inevitable obsolescence.<sup>837</sup> Women’s testimony was a frequent enough occurrence that inserting Drusilla’s name into the proceedings had some meaning. There are two instances during the reign of Claudius in which women are known to have testified, but the circumstances of the cases are otherwise barely attested. A freedwoman and personal maid of Claudius’ mother was a witness before the Senate.<sup>838</sup> In another case, when Claudius was seen to be admitting into evidence the testimony of common prostitutes, the infuriated (male) defendant threw a set of wax tablets and a stylus at the emperor.<sup>839</sup> Inappropriate outburst aside, the defendant may have had a point. The *Digest* includes prostitutes, present or past, in the list of people who are barred from giving testimony against a person accused under the *lex Julia de vi*.<sup>840</sup> It seems plausible that this exclusion would apply to other types of trials as well. Nonetheless, these

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<sup>835</sup> Dig. 22.5.18 (Paul).

<sup>836</sup> Dio 59.11.3.

<sup>837</sup> It seems likely that this practice did not continue much beyond the death of Caligula. Given the public’s inclination to display anger toward the dead Caligula (through smashed portrait heads and other statuary) and Claudius’ desire to politically distance himself from his unpopular nephew, it is unlikely that anyone would have argued in favour of keeping Drusilla’s name in the witness oath for women.

<sup>838</sup> Suet. *Claud.* 40.2.

<sup>839</sup> Suet. *Claud.* 15.2. A third case, in which a woman refused to admit that she was the mother of a young man produced in court, seems most likely to have been a civil proceeding dealing with status or inheritance rather than a criminal trial.

<sup>840</sup> Dig. 22.5.3.5 (Callistratus).

examples are unequivocal: the evidence presented by these women was accepted by the senatorial court and by the emperor himself.

Women are known to have provided testimony in very serious cases heard in the senate. After the conspiracy of Scribonianus and Vinicianus had been discovered in 42, Scribonianus' wife Vibia testified at his trial.<sup>841</sup> Her testimony roused the redoubtable Arria (whose husband Caecina Paetus was also sentenced to die) to a sharp rebuke.

*Eadem apud Claudium uxori Scriboniani, cum illa profiteretur indicium, 'Ego' inquit 'te audiam, cuius in gremio Scribonianus occisus est, et vivis?'*

This same woman [Arria] said, in the presence of Claudius, to Scribonianus' wife after she voluntarily gave testimony, 'I should listen to you, in whose lap Scribonianus died, and you still live?'<sup>842</sup>

In another case heard in the senate, many women, *multae inlustres feminae*, were called to testify in the case of Clutorius Priscus. The defendant had earned Tiberius' praise for a poem lamenting the death of Germanicus, and so, thus motivated, Priscus wrote a similar poem during Drusus' serious illness in AD 21. After Drusus regained health, Priscus allegedly recited the poem to a gathering at the house of Petronius in the presence of Vitellia and many other illustrious ladies. A *delator* immediately filed charges against Priscus and terrified others into giving testimony against the poet; Vitellia alone testified that she had heard nothing.<sup>843</sup> There is no indication whether she was courageously telling the truth or defiantly lying in an effort to protect Priscus or Petronius, the host who was also her son-in-law. Either way, her testimony contradicted that of the others.

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<sup>841</sup> Vinicianus had been proposed for the throne after the death of Caligula, Dio 60.15.1. For this conspiracy, see Dio 60.15–16; Suet. *Claud* 13.2, 35.2; *Otho* 1.2. Tacitus' account of these years is missing, as they fall into the lacuna between books six and eleven.

<sup>842</sup> Pliny *Ep.* 3.16.9. Arria is famous for encouraging her vacillating husband toward suicide by her own example and with the words: *Paete, non dolet!* "Paetus, it does not hurt!" Pliny, *Ep.* 3.16.6.

<sup>843</sup> The charges against Priscus are subject to some debate. Levick (1979) 368 notes that he could not have been charged with *maiestas*, but was possibly charged with magic, or was tried on outrage alone since there was no formal charge available to address an act of this nature; cf. Bauman (1974) 63 and 185; Garnsey (1970) 34.

A witness guaranteed truthful testimony by taking an oath.<sup>844</sup> Seneca is especially blunt: *testis sine iureiurando non valeret*; “a witness has no validity without swearing an oath.”<sup>845</sup> Evidence for women swearing oaths in a legal context is very scarce. Dio preserves the detail that, from AD 38, women who gave testimony were to swear by the name of *Diva Drusilla*.<sup>846</sup> The oratorical exercises of Quintilian, Seneca, and Calpurnius Flaccus dwell at length not only on women’s crimes but also on the authors’ belief that women would lie to cover up their crimes – even under oath.<sup>847</sup> It also seems reasonable to suppose that, in a society much more segregated than our own, a great many crimes took place without the involvement of women who could later be witnesses. The Digest contains a number of references to women’s oaths in the context of civil suits, including the following: *Qui iurasse dicitur nihil refert cuius sexus aetatisve sit*; “When someone is said to have taken an oath, it does not matter what age or sex he is.”<sup>848</sup> Since a person cannot give testimony as a witness without an oath, and we know that women acted as witnesses in criminal proceedings, we must conclude that women swore the required oath and that it was accepted as valid by the Roman legal system. Therefore Vitellia and the *multae inlustres feminae* must have all sworn a witness’ oath before their testimony.

It was recognized, however, that not even oaths would always guarantee truthful testimony, so perjury and lies were a constant threat in any court.<sup>849</sup> A few words on this

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<sup>844</sup> Cic. *Pro Fonteius* 19, *Rosc. Com.* 44; Seneca *de Ira* 2.29; Quint. 5.7.32, 9.2.98.

<sup>845</sup> *de Ira* 2.29.

<sup>846</sup> Dio 59.11.3; plausibly, this applied to both civil and criminal proceedings.

<sup>847</sup> Connolly (1998) 145–146; Quint. *MD* 18; Seneca *Contr.* 6. The Roman cultural perception of women giving oaths is not clearly defined and very little scholarly work has been done on the topic. The Greeks, as expressed in drama and occasionally in legal speeches, believed that women could manipulate the wording of oaths for their own benefit. See Fletcher (2003) 30, specifically in the context of Euripides. The misgivings expressed in these Greek texts were also present in the Roman literate mind. In Plautus’ *Amphitruo*, the wife’s solemn oath about her marital fidelity (ll. 831–834) is received by her husband as deceptive; Porter (2007) forthcoming.

<sup>848</sup> Dig. 12.2.26. (Paul); see also Dig. 12.2.3.3 (Ulpian); 12.2.28.7 (Paul).

<sup>849</sup> Quint. 5.7.12–17.

difficult topic will have to suffice. Perjury was regarded primarily as an offense against the gods, since it was in a god's name that the oath had been sworn; the gods will punish the offender. Because the policy of leaving perjury to be punished – eventually, if at all – by the gods was not always satisfactory, the Roman legal system devised some means of redress within the *lex Cornelia de falsis* (Cornelian Law on Forgery). Witnesses who gave false or inconsistent testimony could be punished appropriately by the judge,<sup>850</sup> but there is no hint regarding the nature of the punishment, or how frequently it was applied. Someone who accepted money to give false testimony or to withhold evidence as part of a conspiracy to secure the conviction of an innocent person was liable.<sup>851</sup> A magistrate who presided over a criminal trial could be held liable if he arranged that someone give false evidence so that an innocent person would be condemned; the perjurer himself would also be liable.<sup>852</sup> There is, however, no anecdotal evidence from our period to support the implementation of any punishments. Juvenal is very cynical about the repercussions of perjury, and his entire thirteenth satire excoriates thieves, liars and perjurers.<sup>853</sup> We must imagine that, in practice, only the most egregious lies told against the most powerful people would have been prosecuted.<sup>854</sup>

Cicero describes further that an oath against perjury will have little meaning to someone who has no honour:

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<sup>850</sup> Dig. 22.5.16 (Paul).

<sup>851</sup> Dig. 48.10.2 (Marcian).

<sup>852</sup> Dig. 48.8.1 (Marcian); 48.10.1 (Marcian). There was apparently no problem if he arranged for false evidence against a patently guilty man.

<sup>853</sup> His cynicism peaks at lines 100–110: “The wrath of the gods [against perjurers] may be great, but so is the time-lag – and if they make it their business to punish all wrong-doers, when will they get to me? ... The same crime often produces quite different results: one man ends on the cross, but another wearing a royal crown.” On the other end of the spectrum, at lines 199–212, he tells the story of Apollo severely punishing one man for a crime merely contemplated, and another man's endless torment brought on by a guilty conscience.

<sup>854</sup> Dig. 12.3.11 (Paul) notes that it is not easy to raise questions about perjury against one who swears an oath under compulsion of law (that is, one who swears an oath to the judge(s) that his part of the case is completely true, thereby winning his case.)

*At quid interest inter periurium et mendacem? ... Nam qui semel a veritate deflexit, hic non maiore religione ad periurium quam ad mendacium perduci consuevit. Quis enim deprecatione deorum, non conscientiae fide commovetur? Propterea, quae poenae ab dis immortalibus periuro, haec eadem mendaci constituta est.*

What is the difference between a perjurer and a liar? ... For he who has once deviated from the truth has no greater scruples about being persuaded to commit perjury than to tell a lie. For who is stirred by an invocation of the gods though not by the attestation of his own conscience? Because the gods punish equally the perjurer and the liar.<sup>855</sup>

Thus the character of the witness is introduced as an additional guarantee of the trustworthiness of the testimony provided, and attacks on character were a standard means of undermining a witness' credibility.<sup>856</sup> A woman's character was judged on the basis of her social status by birth, by marriage, by procreation, and by her chastity and otherwise correct behaviour. Defects in any of these areas would undermine her honourable character, and possibly the weight of her testimony.

How many of these factors would apply to Vitellia or the *multae inlustres feminae*? All of these women were well-connected aristocrats; Vitellia was a wife and mother. Tacitus preserves no detail of the lives or characters of these women, so why would one testimony carry more weight than the other? In the end, we are again victim to Tacitus' whim: he says nothing about the possibly coerced testimony of the *multae inlustres feminae*, about Vitellia's possible perjury, or any penalty assessed against her or her son-in-law who hosted the gathering at which the crime took place.<sup>857</sup> The court was persuaded by the testimony of the majority of the witnesses and Priscus was condemned, then executed.

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<sup>855</sup> *pro Rosc. Com.* 16.46.

<sup>856</sup> Quint. 5.7.23–24; Cicero's *pro Caelio* is the classic example of character assassination intended to discredit a woman in court.

<sup>857</sup> Her son-in-law Petronius suffered no lasting repercussions; he went on to be proconsul of Asia from 29–35, and was the father-in-law of the emperor Vitellius. Woodman (2004) 107 n.112.

Women were also able to offer evidence in writing. In AD 31, Apicata sent a letter to Tiberius revealing that her ex-husband Sejanus and his *paramour* Livilla had conspired to poison Drusus.<sup>858</sup> She then promptly committed suicide. There was no other evidence to suggest poisoning, and in fact Tiberius had apparently accepted for eight years that his son had died of natural causes. The nature of the individuals involved and the particular circumstances make this case stand out as anything but ordinary. We might imagine that the letter contained some element of a witness' oath that guaranteed truthfulness. Still, how could a criminal trial begin and end on a single letter whose author was dead and unavailable for cross-examination? Corroboration was sought, therefore, in the testimony of two slaves.<sup>859</sup> Modern scholars have thrown serious doubt on the veracity of Apicata's allegations and the slaves' admissions, but Tiberius (and Tacitus) accepted them as truth. Sejanus was already dead; Livilla was condemned.<sup>860</sup>

Apicata is also a solitary example of what might be classed as a form of female *delator*. Although she made no financial or political gain from her act of informing, there was a high probability of an extra-legal agenda of seeking revenge on the woman whom her husband had preferred to her.<sup>861</sup> Her unsupported accusations fell onto fertile ground in the aftermath of Sejanus' execution. At that time, everyone was willing to believe that he was capable of, and guilty of, every evil; certainly no one was foolish enough to suggest otherwise.

The only woman whom we know was both witness and defendant is Marcia Servilia. During her father Soranus' trial in AD 66, she consulted astrologers about the outcome of his

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<sup>858</sup> Tac. *Ann.* 4.11.2; Dio 58.11.6–7.

<sup>859</sup> Eudemus, Apicata's doctor, and Lygdus, Drusus' taster; Tac. *Ann.* 4.11.2.

<sup>860</sup> Martin (1981) 235 n. 31; Seager (2005) 155–156; Levick (1976) 161–162.

<sup>861</sup> Dio 58.11.6 states that Livilla had been the cause of a quarrel that resulted in marital breakdown: κατὰ τὴν Διοσίλλην τῆς γυναικὸς αὐτοῦ, δι' ἧν περ πού καὶ αὐτὴ τῷ ἀνδρὶ προσεκεκρούκει ὥστε μηκέτι συνοικεῖν.

trial. After she was caught and (probably) charged with treason, she was summoned to and questioned at her father's trial in the senate.<sup>862</sup> Her interrogation is reported in *oratio recta* in

Tacitus' *Annales*:

*Tum interrogante accusatore, an cultus dotales, an detractum cervici monile venum dedisset, quo pecuniam faciendis magicus sacris contraheret, primum strata humi longoque fletu et silentio, post altaria et aram complexa 'nullos' inquit 'impios deos, nullas devotiones, nec aliud infelicibus precibus invocavi, quam ut hunc optimum patrem tu, Caesar, vos, patres, servaretis incolumem. Sic gemmas et vestes et dignitatis insignia dedi, quo modo si sanguinem et vitam poposcissent. Viderint isti, antehac mihi ignoti, quo nomine sint, quas artes exercent: nulla mihi principis mentio nisi inter numina fuit. Nescit tamen miserrimus pater, et si crimen est, sola deliqui.'*

Then, when the prosecutor inquired whether she had given her marriage-portion for sale or the necklace torn from her neck to accumulate money for the performance of sacred magics, she first lay prone on the ground, and lay long in silent weeping, then embraced the altar and altar-fittings and said: "I have invoked no impious gods nor curses nor anything other than that you, Caesar, and you, senators, might preserve this best of fathers unharmed. So I gave my jewels and clothing and symbols of status just as I would if they (the accusers) demanded my life's blood. They should see to it – these men who were unknown to me before this – what name they use, and what arts they exercise: I made no mention of the princeps except among the divinities. My most wretched father did not know, and if there is a crime, I alone committed it."<sup>863</sup>

Her speech is rather in the spirit of semi-hysterical outburst in defense of her father than sober and thoughtful testimony, yet Tacitus' vocabulary makes it clear that she is in fact part of the appropriate proceeding. First she was summoned (*accita*), then questioned (*interrogante accusatore*). Tacitus has prioritized dramatic presentation over detailed reportage and makes no attempt to ensure that his account resembles a courtroom-style question and answer session. Her speech, as recorded, does not even directly answer the questions posed.

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<sup>862</sup> Tac. *Ann.* 16.30.3: *igitur accita est in senatum, steteruntque diversi ante tribunal consulum.* "And so summoned into the senate, they stood separated in front of the consular tribunal."

<sup>863</sup> Tac. *Ann.* 16.31.

She is described as prostrate, as though a suppliant, and clasping the altar-fittings and the altar while she speaks. Although there is no hint of a witness oath, surely one who presents as suppliant cannot be a perjurer? This tableau is balanced by the immediately following comment on the witness against Soranus, P. Egnatius Celer, who displayed an image of honesty that hid a faithless and devious heart:

*habitu et ore ad exprimendam imaginem honesti exercitus, ceterum animo perfidiosus subdolus, avaritiam ac libidinem occultans.*

[He was] disciplined in facial expression and demeanour to display an image of honesty,<sup>864</sup> but in reality faithless and guileful at heart, concealing his avarice and lust.

This inversion of the stereotypical characteristics of male and female evokes a sense of the inversion of right and wrong that this entire case seems to embody. The defendant Soranus is not only wrongfully accused and condemned, but is an honourable and admired citizen; the female witness, Servilia, is honest and honourable while the male witness, Celer, is faithless and devious.

Even when a woman did not actually testify in court, she could cause trouble. Urgulania was summoned to the senate as a witness in an otherwise completely unknown case that Tacitus records under the year 16.

*Ceterum Urgulaniae potentia adeo nimia civitati erat, ut testis in causa quadam, quae apud senatum tractabatur, venire dedignaretur: missus est praetor, qui domi interrogaret, cum virgines Vestales in foro et iudicio audiri, quotiens testimonium dicerent, vetus mos fuerit.*

And yet, the power of Urgulania was so excessive in the state that, as a witness in a certain case that was held in the Senate, she did not deign to go: a praetor was sent to interview her at home, although it was ancient custom that Vestal Virgins be heard in the Forum and law-courts whenever they gave testimony.<sup>865</sup>

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<sup>864</sup> Tac. *Ann.* 16.32.3.

<sup>865</sup> Tac. *Ann.* 2.34.4.

Because we do not know the identity of the defendant or prosecutor in this case, we cannot even speculate whether she refused to attend because of personal *inimicitia* towards the summoners, a desire to protect the defendant, or for some other reason. It is possible that she refused to attend because of a reluctance to appear in the Senate. The Vestals were accustomed to appearing in the Forum in the standard legal venues of the Republic,<sup>866</sup> but the senate was developing and defining its role as a judiciary body at this time, so there could be no appeals to 'custom' in a senate case, since senatorial judicial procedure was really quite new. Was there a perceived difference between a woman appearing in one place or the other? Certainly the senate jealously guarded entrance privileges, and women were among the excluded. This is the earliest case that we can say with certainty that a woman was asked to appear in the Senate court. Urgulania was an elderly woman at this time, and may not have been willing to expand her horizons to include testifying in front of the assembled senate. Tacitus' disapproval, however, persuades us that there was an expectation that this woman would attend the court when called as a witness, whether she had the status of a Vestal Virgin or not. A further result of her refusal to attend is that there was no opportunity to cross-examine Urgulania's testimony in this case. Quintilian, in his *Institutio Oratoria*, discusses at some length desirable procedures for questioning and cross-examining witnesses in court,<sup>867</sup> thus demonstrating that it was common procedure.

A further category of female witnesses requires attention: the ubiquitous slaves. The testimony of slaves was accepted only if it was extracted under torture, the accepted method

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<sup>866</sup> For example, a *quaestio* or centumviral court.

<sup>867</sup> Quint. 5.7.

of interrogation for the servile class.<sup>868</sup> The jurist Ulpian further points out that slave testimony was permitted only if there was some other evidence insufficient on its own.

*Et non esse a tormentis incipiendum et divus Augustus constituit neque adeo fidem quaestioni adhibendam, sed et epistula divi Hadriani ad Sennium Sabinum continetur. Verba rescripti ita se habent: "Ad tormenta servorum ita demum veniri oportet, cum suspectus est reus et aliis argumentis ita probationi admovetur, ut sola confessio servorum deesse videatur."*

The deified Augustus laid down that one should not begin with the application of pain, and that reliance should not be placed entirely on torture, as is contained also in the deified Hadrian's letter to Sennius Sabinus. The words of the rescript are as follows: "Recourse should only be had to the infliction of pain on slaves when the criminal is suspect, and is brought so close to being proved guilty by other evidence that the confession of slaves appears to be the only thing lacking."<sup>869</sup>

The temporal references in this segment are important; this premise was initiated by Augustus and reaffirmed by Hadrian, so we can be certain that it was in effect throughout our entire period. The jurist Modestinus further affirms that a slave's answer can be relied on when there is no other means of discovering the truth.<sup>870</sup> Although slaves were generally prohibited from testifying against their masters or mistresses, the law allowed for a few carefully prescribed exceptions in cases of treason or adultery (as provided in the *lex Julia de adulteriis*).<sup>871</sup>

Female slaves were forced to testify under the same circumstances as male slaves.<sup>872</sup>

There are few examples of slave testimony, even fewer instances where we can reasonably conclude that the slaves were female, all of which supports the explanation given in the *Digest* (quoted above) that slave testimony was admitted only as a last resort. In the case of Aemilia Lepida's trial in AD 20 for adultery, treason, fraud and poisoning, her slaves – at

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<sup>868</sup> Watson (1987) 84; Watson (1983) 57; *CJ* 9.41.12, 9.41.18; Dig. 22.5.22 (Venuleius).

<sup>869</sup> Dig. 48.18.1, translation by Watson (1985). See also Watson (1987) 84.

<sup>870</sup> Dig. 22.5.7 (Modestinus): *Servi responso tunc credendum est, cum alia probatio ad eruendam veritatem non est*; translation by Watson (1985).

<sup>871</sup> Reinforced at Dig. 48.18.5 (Marcian).

<sup>872</sup> Dig. 48.5.28.6 (Ulpian); 48.18.20 (Paul); for reasons of *humanitas*, a pregnant woman could not be tortured, Dig. 48.19.3 (Sabinus).

least some of whom must have been women – revealed her crimes, which resulted in her conviction.<sup>873</sup> Since she had been charged with both adultery and treason, her case clearly demonstrates that those crimes carried the additional risk of allowing slaves' testimony against their owner. If we can trust Tacitus' presentation of the order of events, the testimony of Lepida's slaves was the last evidence provided in her trial. This is not to suggest that anyone was trying to avoid torturing the slaves, but that every other source of evidence was examined first. It seems, however, that her slaves' testimony tipped the balance toward her conviction. In another case more than thirty years later, Nero's ex-wife Octavia's slaves maintained her innocence of adultery even under torture, culminating in one slave girl's famous spirited line that Octavia's privates were more chaste than her interrogator's mouth.<sup>874</sup> Despite the unwavering defense of her mistress, the testimony of the *ancilla* did not save Octavia.

There is no comment on the reasons for the different treatment of slave and free when giving legal testimony. Since torture was recognized as an unreliable method of determining the truth, why employ it at all?<sup>875</sup> Oaths were not good enough for slaves because they were, of course, not morally sound enough to be properly bound by an oath; they had no honour. The consequences of breaking an oath would entail little risk for someone who already had nothing. Furthermore, foreign slaves would not have proper respect for the gods.<sup>876</sup>

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<sup>873</sup> Tac. *Ann.* 3.23.2; Aemilia Lepida, no. 3.

<sup>874</sup> Tac. *Ann.* 14.60.4; the interrogator was the praetorian prefect Tigellinus, under whose interrogation some of Octavia's slaves had been forced to nod assent to her crimes. Suet. *Nero* 35.

<sup>875</sup> Dig. 48.18.1.23 (Ulpian) states that reliance should not always be placed on torture since it is a chancy and risky business and one that may be deceptive.

<sup>876</sup> Crook (1967) 52 notes that a slave could be required to swear an oath as a condition of obtaining freedom that, as a freedman, he would continue to provide so many *operae* (man-hours of work); he did not need to repeat the oath as a freedman. The Digest indicates that slaves' oaths would be valid in a number of business applications: 12.2.20 (Paul), 12.2.22 (Paul), 12.2.23 (Ulpian).

*Libertae* could also be subject to torture in an attempt to get evidence to be used as testimony. The emperor Caligula once reputedly awarded 8000 gold pieces to a freedwoman who, though put to extreme torture, had not revealed her patron's guilt.<sup>877</sup> This may be the same woman described in more detail as a freedwoman and actress named Quintilia. When she was called as a witness against her lover, the senator Pomponius, she refused to cooperate and Timidius ordered that she be tortured.<sup>878</sup> Although cruelly tortured, Quintilia revealed nothing about her lover Pomponius. Caligula was moved by her bravery and her ruined appearance and released both her and Pomponius and granted her a gift of HS 800,000 as compensation for the torture she had endured.<sup>879</sup> The freedwoman Epicharis was a member of the Pisonian conspiracy of 65 and entrusted with all the details, but when she was summoned, apparently into Nero's presence, and confronted with the informant, she refuted his accusations.<sup>880</sup> She revealed none of the details when tortured in all the ways that the skills of Tigellinus, the praetorian prefect, could devise.<sup>881</sup> On the other hand, when Claudius commented about his mother's freedwoman testifying in the Senate, there is no hint of torture having been applied.<sup>882</sup>

## Conclusion

Witnesses were an integral part of Roman law, and were required for many legal proceedings, not least of which was testifying in a criminal court. By the early Imperial period, women had the legal right to act as witnesses, although their oaths were viewed with

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<sup>877</sup> Suet. *Cal.* 16. For discussion on the theme of loyal slaves, even under torture, see Parker (1998) 156–163.

<sup>878</sup> Jos. *AJ* 19.34. Pomponius was accused by a certain Timidius of slander (Jos. *AJ* 19.32) or of plotting (Dio 59.26.4) against Caligula. Josephus later states (19.35) that there was actually a conspiracy to which Quintilia was privy.

<sup>879</sup> Dio 59.26.4; Suet. *Cal.* 16.4.

<sup>880</sup> Tac. *Ann.* 15.51.4.

<sup>881</sup> Dio 62.27.3.

<sup>882</sup> Suet. *Claud.* 40.2.

some ambiguity, as demonstrated by literary evidence. In fact all testimony had the possibility of being perjury, a fact that both Cicero and Quintilian acknowledged. The persistence of fears about untruthful testimony reveals cynicism about the integrity of fellow-Romans and about the effectiveness of catching and punishing perjurers.

In the several examples adduced of women acting as witnesses, only Vitellia's sworn testimony seems to have been dismissed as useless – and likely perjured. Also useless in the end was the impassioned speech of Marcia Servilia and the testimony of Octavia's *ancillae* extracted under torture. Tryphaena's and Apicata's evidence had an impact on the outcome of the trials, and both defendants were convicted. The testimony of Aemilia Lepida's *ancillae* may have tipped the scales toward her conviction. Within the confines of the available evidence, we must conclude that evidence provided by women was not only accepted in court but was taken seriously. A complicating factor in any analysis of the evidence for women as witnesses is the fact that virtually no cases seem to offer parallel or consistent circumstances. Comparison is exceedingly difficult and each example must be evaluated individually.

## Conclusion

This dissertation has examined one aspect of the role that women played in society in the early Roman Empire. Its focus has been the area of intersection between the studies of Roman women, politics, and criminal law, an area that has previously received very little attention. There has been considerable research on the Roman legal system and on Roman law in general, though rather less pertaining directly to criminal law, and even less that investigates women's roles. Some scholarly attention has been given to individual cases where women were involved as defendants in criminal trials.<sup>883</sup> Rogers' 1935 work provided a case by case study of criminal trials for the reign of Tiberius and Marshall's 1990 article supplied an overview of women in criminal trials before the senate in the first century AD. The latter half of Bauman's 1992 *Women and Politics in Ancient Rome* addressed the political roles of women in the Julio-Claudian era, including discussion of the imperial women who were involved in criminal trials. Only a handful of non-imperial women in criminal trials are discussed, however, and these only cursorily; in total, Bauman refers to only about one third of the women who are included in this study. This dissertation thus fills a gap in our knowledge by providing an in-depth analysis of the various roles of all the women known to have been involved in criminal trials during the Julio-Claudian era and their role in the intersection between criminal law and politics. The importance of gathering *all* the evidence of women in criminal trials must be highlighted since it is only by examining

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<sup>883</sup> For example: Rogers (1932) and (1945), Townend (1962), Shotter (1966), Forsyth (1969).

the totality of the evidence in a single study that previously-held assumptions can be illuminated and, where necessary, dismissed.

The institution of the imperial system brought about a major change in the role of elite women in Roman society. During the last generation of the Republic, matrons like Fulvia (third wife of the triumvir Antony), Octavia (sister of Augustus and fourth wife of Antony) and Terentia (wife of the orator Cicero) were powerful and politically active in concert with and on behalf of their husbands. They used their own family and social connections to support the political goals of their husbands in powerfully effective ways that had not been explored by previous generations of women. Such advances progress dramatically from the time of Augustus, largely because of the phenomenon of the women of the imperial family.

The public image and role of elite women was expanded considerably in the early Empire by indomitable matrons like Livia and Antonia. They cultivated a positive image in their public roles, exhibiting traditional feminine virtues like loyalty to their husbands, maternal achievement, circumspect and demure public behaviour. Livia gracefully fulfilled the duties of her station when she gave celebratory banquets for women to complement Augustus' provision of banquets for senatorial men. She and Antonia both supervised the upbringing and education of client-kings' children who were fostered in the imperial household. On the other hand, women such as the elder Julia or Vistilia illustrate that not all women embraced the virtues traditionally assigned to them. There is an undeniable tension between the 'good' woman and the 'bad' woman in the public eye. No doubt traditionally virtuous women like Livia were aghast at the sensational publicity and salacious scandal generated by the revelation of Julia's adulteries or Vistilia's announcement that she was a

prostitute rather than an adulteress.<sup>884</sup> As the well-known modern axiom states, however, “Well-behaved women seldom make history.” Much is learned about Roman women in politics through such negative phenomena as their criminal trials.

This thesis has argued that women’s participation in proceedings of criminal law in the three different roles of defendants, prosecutors, and witnesses must be recognized as an important element in their public persona and public accountability. The instances where women were present before the senatorial court and in the public eye can no longer be dismissed as aberrations relevant only to imperial women or limited to the stereotypically feminine charges of adultery or poisoning. During the Julio-Claudian era, women were important players in criminal trial proceedings, a distinct development from the preceding republican period during which there is very little evidence for their participation in the *quaestiones perpetuae*.<sup>885</sup> This analysis of their presence before the senate – that august and deeply traditional body – wherein they participate in the procedures of the senatorial court, illuminates a new and significant measure of their roles in public and political life. This conclusion will review the major findings contained in the body of the thesis beginning with women’s active roles in criminal court proceedings and moving on to a consideration of women as defendants, first on indictments of adultery then on charges of *maiestas*.

We can deduce from the information presented in the sources that women were not merely passively subjected to the tyranny of the courts, nor invariably innocent victims of injustice or mere object-lessons of moral decadence. The sources do not imply that senatorial justice was characteristically perverted or biased against women defendants; some

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<sup>884</sup> Bauman (1992) 126 argues, for example, that Livia viewed Julia’s licentious behaviour as an affront to the proper moral standards of the elite. See Julia (no. 27) and Vistilia (no. 56).

<sup>885</sup> Marshall (1990) 361; Gruen (1968) does not list any women as principal parties in criminal trials between 149 and 78 BC.

women were believed innocent and were acquitted.<sup>886</sup> Moreover, Tacitus either states or implies that a substantial number of female defendants were truly guilty.<sup>887</sup> There is no stereotypical assumption of women's guilt or innocence. The very fact that the sources pass judgment on the individual guilt or innocence of female defendants indicates that these women were not viewed sentimentally as capable only of guilt by association.

Particularly in the context of adultery accusations, our first category of charges, sentiment played no role in the reports of a woman's trial. Augustus' moral legislation and the preoccupation with adultery found in various literary sources might lead an incautious reader to the belief that adultery was rampant and, therefore, adultery trials must be equally numerous. In fact, there are fewer than twenty known cases in Julio-Claudian times where a woman is recorded as being on trial for adultery (see Appendix 1). The extraordinarily scandalous banishment of Augustus' daughter Julia in 2 BC and of his granddaughter Julia a decade later brought into the most elite circles an awareness of the very real risks of adultery. A convicted woman would face penalties of *relegatio ad insulam* (banishment to an island), confiscation of half her property and one third of her dowry; her convicted lover would be relegated to a different island and half of his property would be confiscated. While the financial penalties involved substantial monetary value, the banishment from the heart of the political and social world of Rome was indubitably the more severe punishment for a member of the senatorial elite. The *lex Julia de adulteriis* also applied in cases where the woman's alleged offense was incest or some other form of *stuprum* rather than technically

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<sup>886</sup> Stated or implied innocent: Acutia (no. 1), Aelia Junilla and Seianianae (no. 2), *Ignota*, sister of Firmius Catus (no. 25), Junia Lepida (no. 31), Marcia Servilia (no. 39), Pompeia Macrina (no. 47), Sancia (no. 50), Vitia (no. 58), and possibly Sextia and Antistia Pollitta (no. 52). Acquitted: Fabia Numantina (no. 21), *Ignota*, sister of Firmius Catus (no. 25), Munatia Plancina, in her first trial (no. 42), and Pomponia Graecina (no. 48).

<sup>887</sup> Stated or implied guilty: Aemilia Lepida (no. 3), Aemilia Lepida (no. 4), Albucilla (no. 7), Annia Rufilla (no. 8), Domitia Lepida (no. 19), Ide (no. 22), *Ignota*, mother of Sextus Papinius (no. 24), Julia (no. 27), Julia (no. 28), Livilla (no. 35), Munatia Plancina (no. 42), Paxaea (no. 46), Sosia Galla (no. 53), and Vistilia (no. 56).

adultery. The fluidity of distinction between different kinds of sexual misconduct suggests that the law was not meant strictly to enforce the legal niceties of marriage, but to provide a legal means of controlling many kinds of sexual misbehaviour within the elite. Vistilia's open declaration that she was a prostitute rather than an adulteress inflamed the senate to such a degree that they implemented a *senatusconsultum* (known from the SC Larinum) that outlined the penalties for any similar actions taken by women in the future. Her punishment was harsher than the *relegatio* set out by the *lex Julia*, suggesting that it was not merely her violation of marriage vows but her violation of elite sensibilities that earned her exile.

Many of the adultery trials recorded by Tacitus have political overtones, where their 'political' status is derived from the elite identity of the defendant, the status of her male family members, and the particular circumstances of her trial. In order for charges to be called political, there must be some intention on the part of the accuser to derive, from the existence of the charges or the trial that followed, some financial or social advantage to aid his political career, or some financial or social detriment to harm his enemy's political career. When considering how one settles a political score through adultery charges, one must consider exactly who was the target against whom a political score must be settled, and who was the target of harm: whether the male family members, the women themselves, or their male lovers were political targets. Furthermore, the answer to the question of who was harmed by a politically motivated trial reveals who was believed to be a political threat.

While three women (Maria, Junia Calvina, and Junia Lepida) were convicted as co-defendants with or because of political manoeuvres against their male family members, no other cases reveal definitive political damages done to male family members as a result of the trial or conviction of their female family members. Manius Lepidus defended his sister

Aemilia Lepida at her trial in 20 and went on to be proconsul of Asia the following year, the same year that her ex-husband Mamercus Scaurus was suffect consul. Certainly when various imperial women faced charges (Julia Livilla, Julia Agrippina, and Octavia) there is no hint that the disgrace of their convictions had any negative political impact on their imperial menfolk. There is simply no substantive evidence to support a theory that women were charged with adultery as a means for an enemy to settle a political score with the defendant's male family members. We must, therefore, revise the insidious and long-held assumption that, politically speaking, women were merely extensions of their husbands or brothers.

Since the women's male family members can be ruled out as targets of the above-mentioned adultery charges, the women themselves may have been the targets of political harm. Theoretically, a woman could have been targeted with adultery charges for the sole purpose of causing her divorce, thus putting an eligible man back on the market for a politically advantageous new wife. The most striking examples of women who were perceived as politically threatening in their own rights were Caligula's sisters Julia Livilla and Julia Agrippina and Nero's young wife Octavia. In these cases, the defendants' closest living male relative was their accuser, which eliminates any possibility that the accusations were meant to indirectly harm her male relatives. If the associated charges of treasonous conspiracy are given credence, all three of the accused were valid targets of political harm. The very fact that these three young women were targeted by criminal accusations of adultery and conspiracy intended to harm the defendants themselves shows that they were believed to wield some degree of political power or to pose a political threat.

It was the female defendant's male lover(s) who faced the greatest risk in an adultery trial since his penalty included exile (*relegatio ad insulam*), a very serious consequence for someone pursuing a public career, and a financial penalty of confiscation of half his property. If there was a political score to be settled, the cases of Albucilla, Julia Livilla and Julia Agrippina show that the individuals who suffered the most harm were the convicted male lovers. Four of Albucilla's six senatorial co-defendants were punished as a result of her adultery trial; the remaining two escaped penalty only because Tiberius died before their cases were concluded. Livilla's and Agrippina's accused lover, M. Lepidus, was executed as a result of the charges brought against them. When considered as a whole, the evidence suggests that adultery charges were a generally poor means of settling a political score. There is no reason to believe that the defendant's male family members were politically harmed in any substantive way, and, while the convicted lovers faced severe penalties, their punishment was assessed only after the woman had been convicted and the lover's trial had resulted in conviction. If the woman was acquitted, the lover would never even face prosecution.

The cases investigated reveal a significant variation in the penalties assessed for various defendants, even when convicted of the same crime. Assessed penalties in adultery cases ranged from Appuleia Varilla's banishment beyond the 200<sup>th</sup> milestone, to the statutory penalty of *relegatio ad insulam* and partial confiscation of property, to Ide's execution. There was, therefore, some fluidity of statutory interpretation in the assessment of penalties; indeed modern scholars are rather more concerned with consistency than the Romans themselves were.<sup>888</sup> The Romans were willing to be influenced by the circumstances of

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<sup>888</sup> See, for example, Levick (1979) on the statutory penalty for *maiestas*. Mommsen's dogma of *nulla poena sine lege* is discussed but not wholly rejected by Bauman (1992) 161; generally, both Bauman (1992) and

individual cases, or the persuasive rhetoric of the advocates. The harsher and less flexible penalties in cases of treason reveal the elevated level of perceived threat brought to light by these cases.

Given the suspicions, both ancient and modern, that accusations of adultery disguised more sensitive political charges, it is surprising that so few trials involved a combination of adultery and *maiestas*. The cases of the two Julias were the earliest to mix sex and treason; treasonous implications were so thoroughly suppressed, however, that the ancient sources provide more innuendo than detail. Augustus had no wish to flaunt the possibility that a treasonous threat had taken root within his own family. The elder Julia's offenses were clearly described as adultery, and her adulterers were punished with nothing more than exile (Iullus Antonius being the notable exception because he died soon after, either by suicide or execution); Julia, her daughter, was also accused as an adulteress but her lover was merely banned from Augustus' good graces – hardly a proportionate response to a grave political threat.<sup>889</sup> Conspiracy, then, should be regarded as an unlikely factor in these two cases. Appuleia Varilla, Aemilia Lepida, Julia Agrippina and Julia Livilla are the only women who officially faced this combination of charges. Varilla and Lepida were protected from the treason accusations by Tiberius himself, though they were convicted on the adultery charges. Agrippina and Livilla were both convicted and exiled. Because slaves could be interrogated for testimony against their owners only in cases of treason or adultery, further speculation arises that adultery accusations might precede treason accusations as a means of gaining

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Robinson (2007) address recorded penal practices (along with a degree of philosophical context) rather than attempting to define statutory penalties.

<sup>889</sup> There is no information about Julia's involvement in her husband's activities, for which he was executed in AD 8.

access to information from the household of the accused. There are no cases, however, that demonstrate clearly that such a motive was ever implemented.<sup>890</sup>

The second category of charges, those of *maiestas*, studied in the body of this thesis provide strong evidence that some Roman women were viewed as politically present, powerful and threatening. If a woman was politically threatening, then she suffered the full political repercussions, including the possibility of a criminal trial. A total of twenty-four *maiestas* trials, involving more than thirty women, can be identified in Julio-Claudian times and more than three-quarters were convicted and punished by execution or some form of exile. Relatively few women were convicted, like Sosia Galla, as an accessory (*socia*) to her husband's crimes; most, like Livilla and Acutia, faced their trials with no husbands and no co-defendants. These women were perceived as having important roles in political intrigues on their own rather than merely as extensions or associates of their husbands. They now received their just desserts. The involvement of the emperor himself in some trials provides the strongest evidence that, in the eyes of the highest authority, the trials of women were no less serious a matter than those of men.

The body of this thesis illustrates that *maiestas* cases were many and varied, and not all of equal significance. One of the most important of such cases in the Julio-Claudian era was that of the elder Agrippina, because it also resulted in the destruction of her two eldest sons, Tiberius' grandsons and heirs. Sejanus had masterminded a scheme to create evidence that Agrippina and her eldest son Nero, while already under house arrest for an earlier offense, were making plans to flee to the armies in Germany or to embrace the image of *divus* Augustus in the forum and call upon the senate and people for help. While in exile on

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<sup>890</sup> Contra Bauman (1992) 170: "It is true that a charge of adultery was often simply a procedural trigger to uncover evidence of something more serious."

Pandateria after her conviction, Agrippina suffered beatings and force-feedings – the first ill-treatment recorded for an exile of the imperial family. The senatorial court had received very seriously the accusation that Agrippina was planning to exploit her connection to the German legions and launch a civil war. Her conviction is, therefore, unsurprising. But the physical abuse of Germanicus' widow and the emperor's own daughter-in-law while she was in captivity is unprecedented and reveals an anger toward her that is not demonstrated against any other convicted woman. This lingering anger can be explained by the sense of betrayal felt by the Romans because the emperor's daughter-in-law was convicted of taking action to generate a civil war, and, even more importantly, because they believed she had the power and influence to actually do it.

Some women who were convicted of involvement in conspiracies, such as the unnamed women conspirators (no. 26), suffered the additional posthumous penalties of having their bodies thrown on the Gemonian Stair. Livilla (no. 35) and Messalina (no. 41) were further disgraced by senatorial decrees against their memories, which modern scholars call *damnatio memoriae*. The sources express no horror that the guilty women were executed or subjected to additional posthumous penalties, nor do they imply that these penalties were unusual or exorbitant. The casual acceptance of heightened punishment reveals no sense that women should have been treated more gently by the courts or assessed more lenient punishments on account of their gender.

In all studies of women, no less in ancient or legal contexts, scholars must face the problem of stereotypes. Although crimes such as adultery or poisoning were considered stereotypically feminine to a Roman mind, fully half of the defendants in this study faced trials based on crimes such as *maiestas* that were not traditionally considered feminine or

domestic crimes. Adultery does not emerge as the primary offense of women during this time period. Accusations of treason, impiety, or violence could equally have been charged against male defendants. Strikingly, accusations of *maiestas* committed by women outnumber the incidence of any other single charge, and nearly half of the women charged with *maiestas* had no male co-defendant(s). Even in this most highly-politicized crime, then, women are not overwhelmingly presented as accomplices to male crime. This thesis shows that they were seen as playing an important and independent role as agents of political intrigue.

Women also played important and independent roles in the legal system on the side of the prosecution. Powerful imperial women Messalina and the younger Agrippina demonstrated a range of actions available to women *pro accusatoribus* even though they were technically denied access to stand as prosecutors. Messalina was the most prolific author of prosecutions, but her motives, if we believe the sources, were often highly personal. Agrippina, on the other hand, was motivated by her own political agenda and successfully used the criminal law to further her ambitions. Nearly every woman on trial in Neronian times is linked with Agrippina – a quirk of the sources, to be sure, but also illustrative of Agrippina’s power. When that power waned, her rivals Junia Silana and Domitia seized the opportunity to attack and when the accusations made against Agrippina were unsuccessful, Silana was immediately recognized as the author of the charges and was punished accordingly.

Whether they were acting for the prosecution, as defendants, or as witnesses, much information can be gleaned from the family connections of these women. Prosopography, the study of names and family connections, has been very useful tool for the investigation of the lives and careers of Roman men, as evidenced by the many detailed studies produced by

the late Ronald Syme.<sup>891</sup> More recently, Marie-Therèse Raepsaet-Charlier published a prosopography of Roman senatorial women.<sup>892</sup> Because the scandalous and inherently interesting nature of women's trials caught the attention of ancient writers, more information, prosopographical and otherwise, was recorded about women on trial than about most others. This thesis has used prosopographical methodology to analyze the family connections of women who were involved in criminal trials and thereby to illuminate their own political connections by their proximity to politically powerful families. A substantial portion of this thesis is devoted to a *Prosopographical Survey of Women in Criminal Trials in the Julio-Claudian Era* that presents and examines all the evidence pertaining to her participation in a criminal trial. Each woman's entry also sets out as fully as possible, given the limits of our evidence, her male and female family connections.

As has emerged from the evidence and arguments presented in the body of the thesis, one can see that there are clusters where several women in one branch of a family were all destroyed through criminal trials resulting in exile, execution, or forced suicide. As an example, the family of the Domitii Ahenobarbi was particularly unfortunate (see Appendix 2.3). Nearly all the women in that family who were younger than Antonia Minor were either criminally prosecuted (Agrippina the elder, Domitia Lepida, Domitia, and Antonia, daughter of the emperor Claudius) or were otherwise politically executed (Agrippina the younger, Valeria Messalina, and Nero's wife Claudia Octavia). Only the youngest female member of the family seems to have escaped notice: Claudia, daughter of Nero and Statilia Messalina. The frequency of trials involving women from leading families is so high that it represents a

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<sup>891</sup> Especially pertinent is his 1986 *Augustan Aristocracy*; he also published innumerable articles, collected in the *Roman Papers*, in which he used prosopographical methodologies to illuminate Roman political history.

<sup>892</sup> This is her 1987 *Prosopographie des femmes de l'ordre senatorial* (abbreviated throughout this thesis as RC). A significant weakness of this work, however, is that the author did not attempt to map out the female family connections of each senatorial woman.

pattern of risk based on status. In essence, it was the connection to the throne that was overwhelmingly risky: both Agrippinas were destroyed, as were the wives of Nero, Nero's aunts Domitia, and Valeria Messalina. Had it not been for close proximity to the imperial throne, the fortunes of the Domitii Ahenobarbi may have been strikingly different. Proximity to great political power was dangerous to them all.

Study of these trials also serves as a reminder that these prestigious families were closely interconnected. Where politics is so heavily invested in the leading families, it is significant that female members of these families were sought out and destroyed. Because of these close family connections throughout the entire Roman nobility, any time one part of the web was struck, the vibrations were felt throughout. There may have been no direct consequence, but there was surely awareness of the risks involved in a criminal trial and of the fates of the women who were convicted.

To the Romans, the exercise of power was a reality, and not necessarily a legally provided one. In many cases, the language used to describe the legal proceedings against a woman is not clearly specialized or technical. If Nero ordered that someone be banished from Rome, the person went, and did not argue or consider the constitutional validity or extra-legal nature of that demand. The emperor had real power, *coercitio*, based on his constitutional position, but also based on the fact that people accepted his position as emperor and all that it implied. Messalina and Agrippina had real power, too, although it was not legally defined. We must, therefore, be careful not to assume that the absence of technical language precludes the existence of a legal proceeding or trial. The lines were blurry even for the Romans – the criminal legal system was expanding from exclusively public court trials to include a significant number of *extra ordinem* proceedings supervised

directly by the emperor. These proceedings were not strictly acted out in accordance with a prescribed set of procedures, but paved the way ever so gradually toward the late imperial legal principle of *lex loquens*.

Finally, the chronological development of women's use of and subjection to Rome's criminal law system suggests that both roles reveal Julio-Claudian women as increasingly independent agents of political action. The use of criminal law developed over the Julio-Claudian era into a tool that was quite effective for removing political enemies or politically awkward women. Where Augustus, one might say, was finally forced to react against his daughter Julia's multiple and long-standing adulteries, Nero, on the other hand, used the criminal law proactively when he twice suborned false confessions in order to rid himself of his young wife, Octavia. He used criminal accusations against her to create distance between them both legally and in public opinion. The trials studied in the body of this dissertation show that, at the beginning of the Julio-Claudian era, the application of criminal law against women occurred in a reactive way, that is, as a response to a woman's unacceptable behaviour. By the end of the Julio-Claudian period, however, impelled in part by the innovations credited to the younger Agrippina, the criminal law was being used against women in a proactive way, that is, purely as a means of harming her or removing her from public life without, according to our sources, any criminal basis for the charges against her. The latter scenario is, throughout the dissertation, deemed to be 'political' in nature.

This thesis has shown that the changing role of women in Roman politics over the course of the Julio-Claudian era is striking, as is their increasing exposure to the most severe penalties encompassed in the criminal law system. Women were perceived as more than capable of being agents in political intrigue, a perception confirmed and reinforced by the

high-profile legal and political manoeuvres of Messalina and the younger Agrippina. It is an important development that the senate emerged as the court for such trials and that women were seen, in the Julio-Claudian period, entering the senate and speaking at trials as witnesses and defendants. These women were participating (intermittently, to be sure) in very serious senatorial proceedings, from which they had been completely banned in the Republic. Women were also called to stand in front of the emperor himself to receive judgment based on the accusations against them. This was certainly a new level of public attention, and at a high cost for those who were convicted, whether they were actually guilty of a criminal offense or merely political targets.

In conclusion, while this thesis has provided a comprehensive presentation and discussion of women in criminal trials, much work remains to be done. Comparison between the trials of men and women on similar charges, for example, would be illuminating. Comparative analysis of the types of charges, numbers of guilty verdicts, and severity of penalties would address questions of gender equality before the courts. Further investigation into Tacitus' and Suetonius' use of legal language could help to clarify their degree of precision when reporting on trials. These and other as-yet unasked questions will inspire future research on the topic of Roman women in criminal trials.

## **Prosopographical Survey:**

### **Women in Criminal Trials under the Julio-Claudians**

Each entry begins with a set of bibliographic references: primary, encyclopedic, and secondary. In this list, every attempt has been made to include only substantive references to the criminal trials involving each woman. If a reader wishes a more comprehensive bibliography as a means of investigating other questions related to these women, he or she should consult Raepsaet-Charlier's *Prosopographie des femmes de l'ordre senatorial* (RC) or the relevant entry in the *Prosopographia Imperii Romani* (PIR).

The questions considered in each entry include the timing and setting of the trial, major players, charges, verdict, and sentence. Family members are considered as a means of answering the questions about a woman's status and about the effects of her trial or conviction on other members of her family. Of necessity, many of these consequences are speculative, but fruitful nonetheless.

### Prosopographical Survey: Alphabetical Listing of Cases

1. Acutia
2. Aelia Junilla and Seianianae
3. Aemilia Lepida, elder
4. Aemilia Lepida, younger
5. (Julia) Agrippina the Younger
6. (Vipsania) Agrippina the Elder
7. Albucilla
8. Annia Rufilla
9. (Claudia) Antonia
10. Antonia Tryphaena
11. Apicata
12. Appuleia Varilla
13. Aquilia
14. Caedicia
15. Calpurnia
16. Claudia Pulchra
17. Cloatilla
18. Cornelia
19. Domitia Lepida
20. Epicharis
21. Fabia Numantina
22. Ide
23. *Ignota*
24. *Ignota*, mother of Sextus Papinius
25. *Ignota*, sister of Firmius Catus
26. *Ignotae*, women conspirators
27. Julia, daughter of Augustus
28. Julia, granddaughter of Augustus
29. Julia, daughter of Drusus and Livilla
30. Junia Calvina
31. Junia Lepida
32. Junia Silana
33. (Cornelia) Livia Orestilla
34. (Julia) Livilla
35. (Livia Julia) Livilla
36. Lollia Paulina
37. Lucusta
38. Mallonia
39. Marcia Servilia
40. (Maria)
41. Messalina
42. Munatia Plancina
43. Mutilia Prisca and her two daughters
44. (Claudia) Octavia
45. Paulina
46. Paxaea
47. Pompeia Macrina
48. Pomponia Graecina
49. Quintilia
50. Sancia (or Sancta)
51. Sextia
52. Sextia and Antistia Pollitta
53. Sosia Galla
54. Urgulania
55. Vibia
56. Vistilia
57. Vitellia
58. Vitia

## 1 Acutia AD 37

Tac. *Ann* 6.47.1.

PIR<sup>2</sup> A 102; RC 5; RE 1.1 (1893) 339 Acutius no. 4.

Marshall (1990) no. 18; Rogers (1935) 161–162, 206.

Widow of P. Vitellius; no other family is known. Her husband had been accused in 31 of complicity with Sejanus and, when conviction seemed imminent, he committed suicide.<sup>893</sup> Five years later, Acutia was indicted for *maiestas* by D. Laelis Balbus.<sup>894</sup> Nothing is recorded about the form of her crimes, but the five year interval since her husband's conviction clarifies that her crimes were not directly linked with his. She was convicted, but her sentence is unknown. Tacitus suggests that she was a victim of *delatores*, since a reward was forthcoming for her accuser until tribune Junius Otho intervened.<sup>895</sup>

## 2 Aelia Junilla and Seianiana AD 31

Tac. *Ann.* 5.9.1–3; 6.19.3–5; Suet. *Tib* 61.5; Dio 58.11.5; 58.14.1; *CIL* 14 Suppl. 1, 4533 col. 2.19 (*Fasti Ostiensis*) = EJ p. 42.

PIR<sup>2</sup> A 297; RC 14; RE S 12 (1970) Aelius 3 no. 1746.

Seager (2005) 186, 238; Marshall (1990) no. 2, 34; Syme (1986) 303, 307; Levick (1976) 178; Rogers (1935) 125–126, 205, 208.

Daughter of Apicata and L. Aelius Sejanus, praetorian prefect who was denounced by Tiberius and executed on 18 October 31; sister of Aelius Strabo and Dec. Capito Aelianus.<sup>896</sup> Junilla was indicted and convicted in a senatorial trial along with her brother Capito in late

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<sup>893</sup> Tac. *Ann.* 5.8; Vitellius was prefect of the treasury and had allegedly offered to give Sejanus access to the money within; PIR<sup>1</sup> V 502.

<sup>894</sup> Tac. *Ann.* 6.47.1; Balbus: PIR<sup>2</sup> L 48; this is the same Balbus who was accused a little later the same year along with Albucilla, no. 7. Forsyth (1969) 206 argues for Acutia's innocence based on Tacitus' description of Balbus as "ready against the innocent" (*promptum adversum insontes*), *Ann.* 48.4; see also Rutledge (2001) 242–243.

<sup>895</sup> PIR<sup>2</sup> I 789. This Otho is the son of the more famous orator of the same name, Rutledge (2001) 241–242.

<sup>896</sup> Apicata, no. 11; Sejanus (father): PIR<sup>2</sup> A 255; brothers Strabo: PIR<sup>2</sup> A 267, and Capito: PIR<sup>2</sup> C 412.

November or early December of 31; their mother Apicata had committed suicide and brother Strabo had been executed within a week after the death of their father.<sup>897</sup> Although the charges are not specified, there can be no doubt that the basis for their prosecution was *maiestas*. After her conviction, Junilla was executed by the *tresviri capitales*. Tacitus, Suetonius, and Dio all preserve the horrifying detail that she was raped before her execution because it was not acceptable to execute a virgin.<sup>898</sup> In the ensuing weeks, many more were executed: extended family members, and imprisoned associates, including women and children.<sup>899</sup> It is likely to this time period that we should attribute Suetonius' statement that as many as twenty people a day – including women and children – were executed and their bodies were thrown on the Gemonian Stairs.<sup>900</sup>

### 3 Aemilia Lepida AD 20

Tac. *Ann.* 3.22–24, 3.48; Suet. *Tib* 49.

PIR<sup>2</sup> A 420; RC 28; RE 1 (1894) Aemilius 592 no. 170.

Rutledge (2001)91–92; Woodman and Martin (1996) 210–223; Marshall (1990) no. 4; Syme (1986) 112, 115, 145, 181, 224, 262–265; Hallett (1984) 323, 330, tables v and vi; Talbert (1984) 203–204, 211–213, 467; Seager (1976) 231; Bauman (1974) 173–175; Shotter (1966) 312–317; Townend (1962) 484–493; Koestermann (1963) 1.456–458; (1955) 94–95; Cramer (1954) 103, 255–256.

Great-granddaughter of Sulla and Pompey; once betrothed to Lucius Caesar, grandson of Augustus; ex-wife of P. Sulpicius Quirinius, to whom she had borne a child;

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<sup>897</sup> EJ p. 42; a lacuna in the *fasti* leaves the precise date of their execution uncertain, though it was certainly between the ides of November and the ides of December. Rogers (1935) 147–148 confirms the location of the trial. On the last days of Sejanus and the immediate aftermath of his execution, see Seager (2005) 180–188 and Levick (1976) 177–179.

<sup>898</sup> Tac. *Ann.* 5.9.2; Suet. *Tib.* 61.5; Dio 58.11.5.

<sup>899</sup> Tac. *Ann.* 6.19.2; Dio 58.14.1.

<sup>900</sup> Suet. *Tib.* 61.4.

remarried to Mamercus Aemilius Scaurus, to whom she bore a daughter; sister of Manius Aemilius Lepidus.<sup>901</sup>

Lepida had married Quirinius soon after her fiance Lucius Caesar died in AD 2 at the age of eighteen; she was a similar age or a little younger than her imperial betrothed. It was a dramatic shift, then, in 3 or 4 to marry the much older Quirinius, friend of the emperor Tiberius. She was in her late teens; he was in his mid-fifties.<sup>902</sup> The length of their marriage is the subject of some debate. On one interpretation, the marriage was very short and the divorce took place about fifteen years before the trial, based on Suetonius' words *post vincensimum annum*.<sup>903</sup> This interpretation does not offer an explanation for the fact that the expiry of the five year statute of limitations for adultery charges had long passed, so the charge should not have been admitted. Another interpretation is that the marriage endured for more than ten years and that, after adultery had produced the first child, they divorced, then Lepida married Scaurus and had the second child. The lapse of time between adultery and trial was thus a minimum of about twenty months (the length of two pregnancies with a minimal space between) and five years (the statute of limitations set by Augustus for the prosecution of adultery).<sup>904</sup> This explanation has the significant advantage of eliminating the questions on the expired statute of limitations and on the long-lingering anger of Quirinius, which should now be understood as quite fresh.

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<sup>901</sup> Quirinius: PIR<sup>1</sup> S 732; Scaurus (husband): PIR<sup>2</sup> A 404. Lepidus (brother): PIR<sup>2</sup> A 363; according to Groag, this Lepidus is the same man whom Augustus famously assessed as capable of ruling, but would refuse to (*dixerat capacem sed aspernantem*), Tac. *Ann.* 1.13.2; Syme (1986) 129 has doubts.

<sup>902</sup> Townend (1962) 486 calculates Quirinius' age based on his consulship in 12 BC and an estimation that he did not hold that office earlier than the statutory age of 42 years, having no noble connections to accelerate his promotion, thus making him about 56 years old at the time of the marriage to Lepida, and about 70 at the time of the trial.

<sup>903</sup> Suet. *Tib.* 49; Rogers (1935) 54; Townend (1962) 486–488, who both agree that *vincensimum* is an exaggerated round number. A child of this brief marriage would have been a teenager at the time of the trial.

<sup>904</sup> Woodman and Martin (2006) 210–213.

Aemilia Lepida faced four charges brought by her ex-husband Quirinius: adultery, pretending to have borne him a child (*falsum*), poisoning, and consulting astrologers about the family of Caesar, a form of *maiestas*.<sup>905</sup> Pretending to have borne a child could either mean that Lepida acquired a child from another woman and presented it to her husband as their offspring, or that she bore a child and pretended that Quirinius was the father. The latter seems to have been the case here, since her ex-husband also accused her of adultery. These two charges were closely intertwined. Paternity in antiquity could not, of course, be established by scientific means. A man had the obligation to accept or reject any child born to his wife at its birth, based presumably on his knowledge of the course of her pregnancy and the timing of the birth. Quirinius had apparently accepted Lepida's child at birth, but later had reason to doubt its paternity, having learned something about his wife's adultery. If he could prove that she had committed adultery, then he could also make a strong argument that the child was not his, and likely prepare to disinherit it. He further claimed that, at some time during their marriage, Lepida had administered mysterious potions to him.<sup>906</sup> The final accusation, that she had consulted astrologers about the imperial household was very serious, especially given that her trial took place only four years after the sensational condemnation of Libo Drusus for similar actions.<sup>907</sup>

The trial took place in the senate in the very early autumn; both Tiberius and his son Drusus (as consul-elect) were present.<sup>908</sup> Lepida was defended by her brother M.' Aemilius

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<sup>905</sup> Tac. *Ann.* 3.22.1.

<sup>906</sup> *Venenum* referred to a potent herb, drug, or poison; Rives (2006) 49–51.

<sup>907</sup> Tac. *Ann.* 2.27–32. Quirinius was a relative of Libo Drusus and had been present at the trial: the younger man had asked him to carry his final appeals to the emperor; Tac. *Ann.* 2.30.4

<sup>908</sup> The fact that Drusus is named as consul-elect suggests that the trial took place in the latter part of 20. The trial was interrupted by the *ludi Romani*, held September 4–19, further pinpointing the timing of the trial. Talbert (1984) 203–204; Koestermann (1963) 458.

Lepidus.<sup>909</sup> As the trial began, Tiberius implored the senate not to proceed with the charges of treason (*deprecatus senatum ne maiestatis crimina tractarentur*).<sup>910</sup> He then reintroduced the treason charge, having enticed a certain M. Servilius and other witnesses to divulge what he had seemingly wished to suppress (*ad proferenda quae velut reicere voluerat*).<sup>911</sup> Tacitus gives no reason for Tiberius' vacillation, only that no one could discern the thinking of the emperor during the trial, so much did he intermingle the signs of anger and compassion (*haud facile quis dispexerit illa in cognitione mentem principis: adeo vertit ac miscuit irae et clementiae signa*).<sup>912</sup> Lepida's slaves were immediately transferred to the custody of the consuls for interrogation; slaves could only be forced to testify against their owner in cases of adultery or treason.<sup>913</sup>

The trial was then suspended for the duration of the *ludi Romani*. During the games, Lepida was free to move around the city.<sup>914</sup> She made a dramatic appearance at the theatre, surrounded by her high-ranking friends, and implored her ancestor Pompey (in whose theatre she stood) with piteous appeals and she aroused such sympathy that people burst into tears and shouted savage curses at Quirinius.<sup>915</sup> Her appeal to the crowd is unusual: it is clear that

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<sup>909</sup> The marriage between Lepida and Scaurus seems also to have been dissolved by this time, Woodman (2004) 93 n. 49. If she had been married at the time of the accusation, her accused lover should have been tried and convicted before an indictment was registered against her. If her lover had already been convicted, her trial would have been essentially *pro forma* and the other three charges would have been superfluous. It is preferable, then, to understand that she and Scaurus had divorced before the trial.

<sup>910</sup> Tac. *Ann.* 3.22.2.

<sup>911</sup> Tac. *Ann.* 3.22.2; M. Servilius was an ex-consul; the other witnesses are not identified.

<sup>912</sup> Tac. *Ann.* 3.22.2.

<sup>913</sup> Dig. 48.18.5 (Marcian); 48.18.6 (Papinian); 48.18.8.1 (Paul); 48.18.10.1 (Arcadius Charisius); 48.18.17 (Papinian); see also chapter 4, *Women as Witnesses*. The reasoning seems to have been that in cases of treason, state interests outweighed those of individuals and the right to privacy of slave owners. In cases of adultery, slaves were likely the only people to know for sure that adultery had been committed, and their testimony could help prove paternity; Dig 48.5.30 (29), 5–7 (Ulpian).

<sup>914</sup> Not all women on trial had this privilege; Albucilla was imprisoned during the course of her trial, Tac. *Ann.* 6.47–48.

<sup>915</sup> Tac. *Ann.* 3.23.1.

she solicited public support, but to what end?<sup>916</sup> The dramatic speech brings up echoes of the *contio*, a political speech addressed directly to the crowd.<sup>917</sup> There is a palpable political tone to the incident. She was surrounded by high-ranking ladies just as a senator would be surrounded by high-ranking *clientes*. She roused the crowd in her favour, hoping that their mood would have some impact on the remainder of her trial.

When the trial resumed after the games, her disgraceful acts were brought to light by the evidence gained from her slaves (*dein tormentis servorum patefacta sunt flagitia*).<sup>918</sup> The verdict: guilty. The sources do not specify what her *flagitia* were, nor on which charges she was convicted, and her sentence was reasonably consistent with a conviction for any one of the four charges. Rubellius Blandus, with the agreement of Drusus Caesar, consul-elect, proposed that she be outlawed (*aquae et ignis interdictio*).<sup>919</sup> This sentence resulted in the condemned being exiled from the city of Rome and losing property and citizenship – an unsupervised, impoverished, disenfranchised exile.<sup>920</sup> Her ex-husband Scaurus proposed and won the concession that her property not be confiscated by the state, likely so that their child would benefit from preserving her mother's property.<sup>921</sup> Lepida would also have been able to support herself while in exile.

At this point, Tacitus relates, Tiberius announced that his own examination of Quirinius' slaves had revealed that Lepida had indeed attempted their master's life by poison. The timing of the announcement is curious – the trial was over, sentence had been passed.

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<sup>916</sup> Tacitus records no similar speech or appearance made by any other female defendants.

<sup>917</sup> Millar (1998) 35, 46–47.

<sup>918</sup> Tac. *Ann.* 3.23.2.

<sup>919</sup> Blandus: PIR<sup>2</sup> R 111; he was a friend of Tiberius and married Drusus' daughter Julia in 33; Tac. *Ann.* 6.27.1; Syme (1982) 62, 72.

<sup>920</sup> Bauman (1996) 26–28; Tac. *Ann.* 3.51.1 specifies penalty for treason as *interdictio*; see also Paul. *Sent.* 5.21.3. The penalty for *falsum* under the *lex Cornelia* was *interdictio*, Dig 48.10.33 (Modestinus) but was later *deportatio*, Dig 48.10.1.13 (Marcian); Paul. *Sent.* 4.7.1, 5.25 passim.

<sup>921</sup> Tac. *Ann.* 3.23.2; if confiscated, the defendant's property was given to the accuser.

The only logical reason for the timing of Tiberius' comment is to quell some of the public's animosity about the trial. The earlier scene in the theatre showed that there was widespread ill-feeling against Quirinius because of his relentless hostility toward Lepida. Possibly in light of the volatile public mood, Tiberius had exempted his son Drusus, consul designate, from the traditional place of speaking first in order to relieve him from the delicate problem of having senators slavishly following his vote simply because he was the emperor's son; Tacitus claims that Drusus would have spoken to convict.<sup>922</sup>

The motives behind Lepida's trial seem no more complex than the vengeful pride of a cuckolded ex-husband and the target of harm was none other than the defendant herself. Her second ex-husband Mamercus Aemilius Scaurus held a suffect consulship in 21, less than a year after the conclusion of the trial. Lepida's conviction had not slowed his political career even slightly, even though he had spoken in favour of leniency during her sentencing, an opinion certainly opposite to Quirinius' and plausibly opposite to Tiberius'. Her brother Lepidus, who had defended her at trial, was similarly unaffected and was offered a proconsulship in Africa in 21 (which he declined due to ill-health) and another in Asia in 26/27.<sup>923</sup> Nothing is known about either of Lepida's children who may not have survived to adulthood. Although this trial involved highly ranked politicians and contained political elements, there do not seem to have been any political motives or politically adverse consequences. Lepida herself was required to leave Rome immediately; no further traces of her life remain in the historical record.<sup>924</sup>

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<sup>922</sup> Tac. *Ann.* 3.22.4; naturally, since Drusus had withdrawn from speaking first, people speculated about what he might have said. Some inferred that he would have spoken in favour of conviction since a speech for mercy would not have been prevented because it would have reflected well on himself and his father. On the other hand, delaying Drusus' speech may have been Tiberius' attempt to maintain judicial integrity – he and Quirinius were old friends and he may have hoped to avoid suggestions of judicial favouritism.

<sup>923</sup> Tac. *Ann.* 3.35; 4.56.

<sup>924</sup> Woodman and Martin (1996) 223 despair that this entire episode is “desperately opaque.”

#### 4 Aemilia Lepida AD 36

Tac. *Ann.* 6.40.3; Dio 58.3.8; Suet. *Claud.* 26.1.

PIR<sup>2</sup> A 421; RC 30; RE 1 (1894) 591 Aemilius no. 167.

Barrett (1996) 46, 235; Marshall (1990) no. 17; Hallett (1984) 307–308; Rogers (1935) 159.

Daughter of M. Aemilius Lepidus, *cos.* AD 6,<sup>925</sup> sister of the M. Aemilius Lepidus who married Drusilla, sister of Caligula, and became a friend and supporter of Caligula, and victim of the same emperor in 39.<sup>926</sup> She was the widow of Drusus Caesar (son of Germanicus),<sup>927</sup> granddaughter (by marriage) of the emperor Tiberius, sister-in-law of Agrippina the Younger and the emperor-to-be Caligula. Her standing was of the highest elite both by birth and by marriage.

Dio records that by AD 30 she had been seduced by Sejanus and on his behalf had brought false accusations against her husband Drusus.<sup>928</sup> Tacitus mentions that she attacked her husband with many charges, but lived with impunity despite her infamy until the death of her father.<sup>929</sup> As soon as she was unprotected, informers accused her of adultery with a slave and Lepida committed suicide with no attempt at defense. Her status as granddaughter of the emperor was not enough to save her, nor did the emperor intervene on her behalf.

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<sup>925</sup> PIR<sup>2</sup> A 369; this is the Lepidus whom Augustus describes in AD 14 as *capax imperii* (capable of ruling the empire) but lacking the desire to do so, Tac. *Ann.* 1.13.2.

<sup>926</sup> PIR<sup>2</sup> A 371; Dio 59.22.6–8. A further sign of his privileged place in Caligula's estimation is the presence of a statue base with his name on it in a statuary group of the imperial family in the *sebasteion* at Aphrodisias, SEG 30.1251; Barrett (1989) 82; Reynolds (1980) 70–84.

<sup>927</sup> Drusus Caesar died of starvation in prison in AD 33 (Tac. *Ann.* 6.23.2), a victim of Tiberius' ill will towards the family of Germanicus and Agrippina (which also affected their other children: Agrippina the younger, Drusilla, Julia Livilla, Nero Caesar [*Ann.* 4.67.4], and Gaius Caesar).

<sup>928</sup> Dio 58.3.8; Sejanus also incited charges against Drusus through the agency of men: for example, the consul of AD 30, Cassius Longinus.

<sup>929</sup> Tac. *Ann.* 6.40.3: "*Lepida ... quamquam intestabilis, tamen impunita agebat, dum superfuit pater Lepidus: post a delatoribus corripitur ob servum adulterum; nec dubitabatur de flagitio. Ergo omissa defensione finem vitae sibi posuit.*"

Adultery with a slave was a particularly shameful act, though technically, since Lepida was a widow, there could be no adultery, only *stuprum*.<sup>930</sup> Whatever the name given to the alleged crime, the charges and the threat of trial were enough to drive this persistently infamous young woman to suicide. The reasons for her immediate and complete defeat at the threat of prosecution are unknowable as it seems highly unlikely that the mere shame of being publicly charged would have been unbearable. She was no ingenue who had never dealt with gossip; she was *intestabilis* (notorious) already for some time (according to Tacitus) and seemed to have no scruple about committing adultery with Sejanus and bringing charges against her husband. It is possible that the prosecutor, whose identity is unknown, had some particularly effective leverage against her. Furthermore, there was little hope of evading or minimizing the charges since the death of her powerful father left her unprotected, and she may have decided that death was preferable to impoverished exile. Her brother was unwilling or unable to protect her.

Lepida's legal troubles seemed to have no long term negative impact on the status and career of her brother; when Caligula came to be emperor, he was a close confidante and was allowed to marry that emperor's favourite sister, Drusilla. Given his own moral proclivities, it is unsurprising that Caligula displayed no concern over the moral behaviour of his friend's families.<sup>931</sup>

An interesting side note in this case: CIL 6.9449 seems to refer to this Lepida. "*Pudens M. Lepidi l., grammaticus. Procurator eram Lepidae moresque regebam. Dum vixi, mansit Caesaris illa nurus. Philologus discipulus.*" "Pudens, freedman of M. Lepidus,

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<sup>930</sup> It is important to recall that throughout our legal texts on the *lex Iulia de adulteriis*, there was no careful separation of the offenses of *adulterium* and *stuprum*; Dig. 48.5.6.1 (Papinian, *Adulterers* 1) and Dig. 48.5.35.1 (Modestinus, *Rules* 1). There is no satisfactory means of determining whether this concatenation was intended from the inception of the law or whether it was a later corruption.

<sup>931</sup> Barrett (1989) 44.

teacher of literature. I was in charge of Lepida and I governed her character. While I lived, she remained the [proper] young wife of Caesar. Philologus, his pupil, [erected this].” This is the epitaph of one Pudens, evidently a freedman of Lepida’s father assigned as a teacher for the girl, who then followed her when she married and fulfilled the function of chaperone and guardian of her moral behaviour. This is a fascinating suggestion: that a woman’s family retained interest and some active control over her moral behaviour after marriage (other than familial or societal pressure). Women in Greek and Latin plays sometimes had an old nurse who enforced moral behaviour,<sup>932</sup> but there is precious little reference to real women having such supervision. Even more common in literature is the wife’s slave who actively helps her commit adultery or whatever other moral depravity strikes her fancy. This Pudens was male – a curious twist; we would expect the guardian of a young woman’s morals to be female.

## 5 (Julia) Agrippina the Younger (died in AD 59)

Tac. *Ann.* 2.41.4; 3.2.4; 4.53.3, 75.1; 11.12.1; 12.1–8, 22–27, 42–42, 56–68; 13.1–6, 12–20, 42.5; 14.1–13, 57.1; 15.50.4, 67.3; 16.14.3, 21.1; Suet. *Cal.* 7, 15.3, 24, 39.1, 59; *Claud.* 26.3, 29, 39, 43–44; *Nero* 5.2, 6, 7.2, 28.2, 34, 39.3, 52; *Galb.* 5.1; *Vesp.* 4.2, 9.1; *vita Passieni*; Dio 58.20.1; 59.3.3–4, 7.4, 9.2, 22.6–8, 23.8–9, 26.5; 61.2.2–3, 3.2–4, 4.5, 5.4, 6.4, 7.1–3, 8.4–6, 10.1, 11.3–4, 12.1–3, 13, 14, 16.1–2, 16.4, 17.2; 62.6.3; Pliny *HN* 7 (*pref.*), 45, 46, 71; 33.63; 35.201; Jos. *AJ* 20.135, 148, 151; *BJ* 2.249; Juv. *Sat.* 5.147–148; 6.620–624; Schol. on Juv. *Sat.* 1.155; 2.29; 4.81; 5.109; 6.124, 620, 628; Sen. *Oct.* 21, 44–45, 93–96, 102, 125–129, 141–142, 150–167, 170–171, 310–376, 593–617, 634, 953.

PIR<sup>2</sup> I 641; RC 426; RE 1 (1918) 909–915 Julius no. 556.

Ginsburg (2006) 9–54, 106–132; Holland (2000) 43–60, 72–75, 78–79, 104–114; Barrett (1996); (1989) 106–110; Leadbetter (1995) 39–55; Rudich (1993) 17–24, 35–37; Bauman (1992) 179–203; Meise (1969) 108–112; Rogers (1955) 199–202.

Daughter of Germanicus and Agrippina, sister of Caligula, Julia Livilla, and Julia Drusilla, mother of Nero. Through her maternal line, she was the great-granddaughter of

<sup>932</sup> For example, the *nutrices* in Seneca’s *Phaedra* and *Octavia*.

Augustus by blood; through her paternal line, she was the great-granddaughter of Augustus by adoption.<sup>933</sup> Born on November 6, AD 15, she was first married to Gn. Domitius Ahenobarbus at the age of thirteen in 28, but their son Nero was not born until 37.<sup>934</sup> A second marriage to Passienus Crispus followed in 41, and a third to the emperor Claudius (her paternal uncle) in 49.

Agrippina and her sister Julia Livilla were accused in 39 of conspiracy and adultery with their erstwhile brother-in-law M. Aemilius Lepidus.<sup>935</sup> The trial took place by an *extra ordinem* procedure outside of Rome, for Caligula had first accused them via letter to the senate, then reported on their conviction by a letter to the senate.<sup>936</sup> Lepidus was executed, and Agrippina was ordered to carry the urn bearing his bones back to Rome. The two sisters banished to the Pontian islands; an unknown portion of their property was confiscated and wagonloads of their possessions were auctioned off in Gaul. In the same year, Ofonius Tigellinus was banished on the charge of adultery with Agrippina.<sup>937</sup> Agrippina was already in exile at the time and no charges were presented against her. Almost immediately after the assassination of Caligula, the new emperor Claudius recalled his nieces from exile.<sup>938</sup>

Agrippina's career as a prosecutor began at the same time as her tenure as Claudius' wife. Her first goal was to remove Octavia's long-time fiancé Junius Silanus so that her son Nero could marry the emperor's young daughter. She caused him to be accused of incest with his sister Junia Calvina late in 48. Silanus committed suicide on the day of Claudius

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<sup>933</sup> See stemma of Julio-Claudians, Appendix 2.1.

<sup>934</sup> The date of Agrippina's birth is firmly established by the records of the Arval Brethren (Smallwood 19.6 and 21.5) but the year is open to some debate, Barrett (1996) 230–232. Similarly, Nero's birthday of Dec. 15 is known (Smallwood 16, 21) but there is some contradictory evidence, Barrett (1996) 234. On the marriage, see Dio 58.20.1; 61.2.3.

<sup>935</sup> Dio 59.22.6; Suet. *Cal.* 24.1–2; Lepidus had been married to Julia Drusilla.

<sup>936</sup> Dio 59.22.8–23.1.

<sup>937</sup> Dio 59.23.9.

<sup>938</sup> Dio 60.4.2.

and Agrippina's wedding; his sister was banished from Italy.<sup>939</sup> She also authored charges against other women: Lollia Paulina, Calpurnia, Domitia Lepida (her erstwhile sister-in-law) and Junia Silana. Her lawsuits against men included the consular T. Statilius Taurus, charged with extortion and magic, and two ex-praetors Valerius Capito and Licinius Gabolus, whose banishment is known only from their recall after Agrippina's death.<sup>940</sup> She may have attempted legal action against the powerful Narcissus in the aftermath of the Fucine Lake disaster.<sup>941</sup> These cases are discussed in detail in Chapter 3: Women *pro accusatoribus*.

As her power waned in the last five years of her life, Agrippina again became a target for legal accusations. Nero withdrew her personal bodyguard and removed her from his house into the house that had been her grandmother Antonia's.<sup>942</sup> Her former best friend Junia Silana caused two of her clients (Iturius and Calvisius) to accuse Agrippina of seditious plotting with Rubellius Plautus in 55.<sup>943</sup> Plautus was potentially a serious threat to the regime as he was a descendant of Augustus in the same degree as Nero.<sup>944</sup> Agrippina was saved from immediate execution only by the calm persuasion of the praetorian prefect Burrus who told Nero that a parent, above all, should be granted a defense.<sup>945</sup> A dramatic dawn interview, disguising an imperial ruling *extra ordinem*, resulted in Agrippina's safety, Silana's exile, the relegation of the two clients, and the unspecified punishment of one of the two slaves involved.<sup>946</sup> Even Nero sent people to pester his mother with lawsuits.<sup>947</sup>

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<sup>939</sup> Tac. *Ann.* 12.8.1.

<sup>940</sup> Tac. *Ann.* 14.12.3.

<sup>941</sup> Tac. *Ann.* 12.57.

<sup>942</sup> Tac. *Ann.* 13.18.3.

<sup>943</sup> Tac. *Ann.* 13.19.3; the entire incident spans 13.19.3–22.2. Silana's motive is described as anger because Agrippina had spread malicious gossip about her and ruined a marriage prospect. For Plautus, see PIR<sup>2</sup> R 115. Bauman (1992) 196; Barrett (1996) 175–180.

<sup>944</sup> See Appendix 2.1.

<sup>945</sup> Tac. *Ann.* 13.20.3.

<sup>946</sup> Tac. *Ann.* 13.22.2; the second slave, Paris, escaped penalty because he was too effective an influence on Nero's lusts to have punishment inflicted on him.

The story of Agrippina's murder is one of the most dramatic imperial death-narratives in all of Roman history. Tacitus, Suetonius, and Dio all go to some pains to relate his attempts to poison her, the details of the collapsing boat and her midnight swim to safety, and the contrived claim that her freedman Agerinus had tried to assassinate the emperor at her command.<sup>948</sup> Then Nero dropped all pretense and arranged for his freedman Anicetus to murder his mother; she was stabbed to death in her villa at Bauli.<sup>949</sup>

## 6 (Vipsania) Agrippina the Elder AD 27, 29

Tac. *Ann.* 5.3–5, 6.25; Dio 57.22.4; Suet. *Tib.* 53.2, 64; *Cal.* 10.1, 15.1; Vell. Pat. 2.130.4–5; Philo, in *Flacc.* 3.9; Pliny *HN* 8.61, 8.145; Sen. *de Ira* 3.21.5.

PIR<sup>1</sup> V 463; RC 812.

Fantham (2006) 116–123; Seager (2005) 174–179; Barrett (2002) 217, 335–336; (1996) 33–39; (1989) 21–24; Rutledge (2001) 146; Shotter (2000) 341–357; Bauman (1996) 62–63; (1992) 145–156; (1974) 122–123; Syme (1986) 133, 185; (1958) 404–406; Meise (1969) 71–76, 237–244; Rogers (1935) 98–103, 149; (1931) 141–168; Charlesworth (1922) 260–261.

Daughter of Julia and Agrippa, therefore granddaughter of Augustus; sister of Julia, Gaius Caesar, Lucius Caesar, and Agrippa Postumus; widow of Germanicus Caesar; mother of Nero, Drusus, Agrippina (mother of the future emperor Nero), Drusilla, Livilla and Gaius (the future emperor Caligula).<sup>950</sup>

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<sup>947</sup> Suet. *Nero* 34.1; Bauman (1992) 201–202.

<sup>948</sup> Tac. *Ann.* 14.1–11; Suet. *Nero* 34; Dio 61.12–14.

<sup>949</sup> Tac. *Ann.* 14.8.5; Barrett (1996) 181–195, especially at 189–190.

<sup>950</sup> See Julia, no. 27 (mother); Julia no. 28 (sister); Agrippina, no. 5 (daughter); Livilla, no. 34 (daughter). See Appendix 2.1.

Criminal proceedings against Agrippina began after Sejanus had already experienced success in removing Agrippina's friends and supporters.<sup>951</sup> Tacitus places the final attack under the year 29, immediately following Livia's death. Suetonius, on the other hand, records that Livia had cared for young Caligula after his mother was banished. Pliny implies that Agrippina's son Nero, who was tried at the same time as his mother, had been condemned before Livia's death; Velleius, too, implies that Agrippina and Nero were convicted before the death of the emperor's mother.<sup>952</sup> One way to reconcile Tacitus' account with those of Suetonius and others is to assume that Tacitus' sources were garbled and that he has produced, therefore, a corrupted account of what were really two trials: a first in 27 that resulted in conviction and house arrest, and a second and more serious one in 29 that resulted in the permanent exile and subsequent deaths by starvation of both defendants.<sup>953</sup> An incomplete account of a first trial is presented by Tacitus under his account of the year 27:

*Sejanus ... acrius turbabat non iam occultis adversum Agrippinam et Neronem insidiis. quis additus miles nuntios introitus, aperta secreta velut in annales referebat, ultroque struebantur, qui monerent perfugere ad Germaniae exercitus vel celeberrimo fori effigiem divi Augusti amplecti populumque ac senatum auxilio vocare. eaque sprete ab illis, velut pararent, obiciebantur.*

Sejanus was stirring up [the situation] more keenly with no longer secret plots against Agrippina and Nero. The soldiers assigned to them recorded, as though in annals, their messages, visits, disclosures, and secrets; and there were arranged (without their being asked) people who would warn them to flee to the armies in Germany or to embrace the image of *divus* Augustus in the throng of the forum and to call on the people or the senate for help. These measures, although spurned by them, were brought as accusations as though they had prepared them.<sup>954</sup>

<sup>951</sup> For example, Sosia Galla (no. 53), Claudia Pulchra (no. 16) and her son Quintilius Varus, Titus Sabinus. Sejanus had also fomented distrust between Tiberius and Agrippina, as illustrated by the offer of an apple at dinner – spurned because Sejanus had planted suspicions of poison, Tac. *Ann.* 4.54.

<sup>952</sup> Tac. *Ann.* 5.3.1; Suet. *Cal.* 10.1; Pliny *HN* 8.145; Vell. *Pat.* 2.130.4–5.

<sup>953</sup> This proposal was initially suggested by Meise (1969) 240, followed by Levick (1976) 167–170, Bauman (1992) 151, Barrett (1996) 36, and Seager (2005) 176–177.

<sup>954</sup> Tac. *Ann.* 4.67.3–4.

Tacitus' use of the verb *obicio* to describe the accusations against Agrippina and Nero can be interpreted as technical legal usage, further supporting the theory of a trial based on those charges.<sup>955</sup> If these actions were, indeed, the basis for charges against them, then the charges were very serious – indubitably *maiestas*, particularly considering the threat of flight to the armies in Germany.

Under the year 29, immediately after Livia's death, Tacitus records that Tiberius wrote a denunciatory letter to the senate:

*verba inerant quaesita asperitate, sed non arma, non rerum novarum studium, amores iuvenum et impudicitiam nepoti obiebat. in nulum ne id quidem confingere ausus, adrogantiam oris et contumacem animum incusavit.*

In it were words of studied sharpness, yet he charged his grandson – not with arms or revolutionary intentions – but with unchastity and love affairs with young men. Against his daughter-in-law he dared not fabricate even that, but accused her of arrogance of speech and of having a truculent spirit.<sup>956</sup>

The senate listened in severely shocked silence (*magno senatus pavore ac silentio*).<sup>957</sup> At last Cotta Messalinus, consul of 20, came forward with a frightening proposal (*cum atroci sententia*), but the cautious and confused senators, many of whom must have supported Agrippina, delayed and did nothing.<sup>958</sup> Pamphlets criticizing Sejanus were circulated in the city containing proposals allegedly made under the names of consuls, but written anonymously. Tiberius responded with violent anger that the senate and people had spurned

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<sup>955</sup> Tacitus uses the verb *obicio* in the *Annales* on twelve other occasions. Two of the examples are instances of physical hurling: 2.15; 13.38. Seven more examples illustrate the technical legal usage of laying a formal legal charge: 1.73; 3.13; 12.22; 13.21; 13.52; 14.60; 15.35. The remaining three examples show people hurling accusations at someone, but in a generic rather than a technically legal sense: 14.7; 14.52; 15.60. The statistical inclination, then, is to interpret the usage in the contentious passage above in a technical legal sense.

<sup>956</sup> Tac. *Ann.* 5.3.2. Bauman (1992) 151; Marshall (1990) 345; Rogers (1935) 101.

<sup>957</sup> Tac. *Ann.* 5.3.2.

<sup>958</sup> Tac. *Ann.* 5.3.2–3. On Agrippina's senatorial support, the so-called *partes Agrippinae*, see Bauman (1992) 130–156, esp. 154–156; Barrett (1996) 33–39; at 33, he notes that although she had “considerable backing in the senate” there is “little evidence of a coherent and orchestrated effort by her adherents to support her claims.” Rogers' (1931) argument that Agrippina was masterminding a conspiracy against Tiberius has fallen out of favour.

his instructions and insulted his agent and so, repeating the abuse against Agrippina and Nero, he would decide the matter himself.<sup>959</sup> Tiberius had the power as *paterfamilias* to punish morality within his own family, or as emperor to exercise power via *cognitio extra ordinem*.<sup>960</sup> His decision was apparently to send in his friend Avillius Flaccus to prosecute Agrippina, for which service he was made prefect of Egypt.<sup>961</sup> Although Tacitus has recorded Tiberius' invective against Agrippina, purportedly contained in the letter sent immediately after Livia's death, there were no viable legal accusations in the recorded communication. The inflammatory pamphlets, moreover, could not have been directly attributed to Agrippina or Nero as they seemed to already be under house arrest.<sup>962</sup>

More is known about Agrippina's punishment than her trial. She was exiled to Pandateria, an island off the coast near Naples. When she and Nero were moved, they travelled in closed litters under heavy guard; Nero was even declared an enemy of the state.<sup>963</sup> She was a non-compliant prisoner – perfectly in keeping with her personality – and suffered beatings and force-feedings, the first ill-treatment recorded for an exile of the imperial family. Ultimately, however, her determination to starve herself to death was successful and she died on 18 October 33, two years to the day after Sejanus died.<sup>964</sup> Although she did not suffer the additional posthumous penalty of the destruction of her

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<sup>959</sup> Tac. *Ann.* 5.4–5.

<sup>960</sup> The legality of the situation is parallel to that faced by Augustus when he dealt with his daughter Julia, no. 27. If he exercised power as *paterfamilias*, he was accountable to tradition, but if he exercised power as emperor through a *cognitio extra ordinem*, he was also at least somewhat obliged to follow the law.

<sup>961</sup> Philo in *Flacc.* 3.9. He was prefect of Egypt from around 32 until he was recalled to Rome and prosecuted under Caligula; Rutledge (2001) 201–202. Levick (1976) 206 comments on their friendship.

<sup>962</sup> Tiberius had previously refused to allow prosecution for verbal insult, but written attacks, especially anonymous ones, were taken more seriously, Bauman (1974) 78; Appuleia Varilla, no. 12. On libel, see Bauman (1974) 25–52, esp. 35–39; on Agrippina and Nero and the pamphlets, see 122–123.

<sup>963</sup> Suet. *Tib.* 54.2; 64; *Cal.* 7; Pliny *HN* 8.145.

<sup>964</sup> Tac. *Ann.* 6.25.1; Suet. *Tib.* 53.2, *Cal.* 15.1.

public images (*damnatio memoriae*), her birthday was added to the days of ill-omen.<sup>965</sup> Tiberius boasted of his clemency because he did not strangle her and throw her body on the Gemonian Stair, a traditional punishment for someone convicted of the most serious treasonous offenses.<sup>966</sup>

But problems remain. The presence of soldiers who reported their every move strongly suggests that Agrippina and Nero were under house arrest in 27. Why were they already under house arrest when they had not yet been charged? And, although scholars agree that the second attack in 29 was more serious, why does Tacitus record more serious accusations in connection with the earlier trial in 27? And why did the senate react with greatly shocked silence (*magno pavore ac silentio*) to a letter in 29 describing the moral offenses of two already imprisoned convicts – a reaction more in keeping with an initial and unexpected accusation than one that followed a conviction and two years of house arrest.<sup>967</sup> Perhaps most insoluble, why did charges (even if falsified) of *maiestas* based on a genuine connection with the restless Rhine legions result in house arrest at a grand villa in Herculaneum, but accusations of arrogant speech and truculent character resulted in exile to Pandateria, an already-notorious prison island?<sup>968</sup>

If the contents of the two trials are reversed, chronological problems and contradictory source problems, as well as Tacitus' internal inconsistencies, disappear. This is not a textual problem, but an error on Tacitus' part, perhaps a result of confused sequence

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<sup>965</sup> Suet. *Tib.* 53.2; M. Antonius' birthday was similarly decreed ill-omened (Jan. 14), EJ p. 45.

<sup>966</sup> Suet. *Tib.* 53.2; Sejanus and his followers, for example, suffered this posthumous penalty.

<sup>967</sup> Tac. *Ann.* 5.3.2.

<sup>968</sup> Agrippina's mother Julia (no. 27) had already been exiled to Pandateria in 2 BC; she died in exile. Seneca mentions that Agrippina was held in a villa at Herculaneum, but does not indicate the relevant dates, *de Ira* 3.21.5; Barrett (1996) 37. Livia's protection has been proposed as a reason for the lenient treatment of Agrippina in 27, and her death then allowed Tiberius to implement a harsher exile for his troublesome daughter-in-law – deportation to a small island. Livia's protection (if it existed at all) could only have been passive as she is known to have detested her grandson's wife: Tac. *Ann.* 1.33; 2.43; 4.12. Seager (2005) 176.

presented in his sources. While Tacitus is widely acknowledged as the overall best narrative source for the Julio-Claudian period, and is lauded for the insights and analysis not found elsewhere, his account is not infallible, particularly in regard to details of chronology.<sup>969</sup> The record of Livia's death is a temporal anchoring device in his narrative: she died, and there was a letter, followed by the final destruction of Agrippina and Nero. By late 26, however, all of Tiberius' communication with the senate and other officials in Rome was conducted by letter, so there is no obstacle to moving date of the "arrogant speech" letter two years earlier; nothing external holds this particular letter to the year 29.<sup>970</sup> Tacitus is very clear that a letter to the senate immediately followed Livia's death, but since all of Tiberius' communication with the senate was conducted by letter, this is hardly definitive proof of the contents of the letter. Suetonius, moreover, closely links the charges listed by Tacitus in the earlier trial with Agrippina's exile to Pandateria: *novissime calumniatus modo ad statuam Augusti modo ad exercitus confugere velle, Pandateriam relegavit*; "at last he relegated her to Pandateria, falsely charging that she wished to flee to the statue of *divus* Augustus or to the armies."<sup>971</sup> Suetonius' record connects the more severe penalty with the more serious charges.

Following the proposed revision: in 27 Agrippina and Nero were denounced for moral transgressions. Shocked and confused, the senate did not know what to do with the legally inactionable charges and delayed while public demonstrations claimed the letter was fraudulent. Tiberius responded sharply that he would deal with the matter himself. Agrippina and Nero were placed under house arrest with soldiers assigned to guard and spy

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<sup>969</sup> For example, Tacitus' handling of the birth of Caligula (*Ann.* 1.41.3) is confused and inferior to that of Suetonius (*Cal.* 8.1), whose account is confirmed by the *Fasti Vallenses* and *Fasti Pighiani*; Barrett (1989) 6–7 and 255 n. 9.

<sup>970</sup> Levick (1976) 167–168.

<sup>971</sup> Suet. *Tib.* 53.2.

on them; Seneca mentions that Agrippina was held under guard in a villa at Herculaneum.<sup>972</sup> The soldiers sent their reports to Sejanus, who gathered (or suborned) enough damning information about talk of flight to the German legions and appeals to the senate and people while claiming sanctuary at the statue of *divus* Augustus to launch the second attack in 29, this time on charges of *maiestas*. Agrippina and Nero were convicted; he was declared a public enemy. They were punished with *relegatio* and sent to Pandateria and Pontias, respectively, where they eventually died. When they were moved to their places of exile, they travelled in closed litters with a military escort to prevent contact with anyone they might meet on the road, a measure more in keeping with preventing traitors from contacting supporters than with protecting a jaded public from views of the morally reprehensible.

The political situation surrounding Agrippina's trials is complex and our understanding is hindered by the fragmented accounts of Tacitus and Dio for the critical years of 27-31. Sejanus' interest was in Tiberius' succession and therefore he was fomenting trouble against Agrippina and her children, of whom Nero and Drusus were directly in line to succeed Tiberius. Tiberius himself had reason to dislike Agrippina, and in fact showed no inclination to reduce her suffering after the death of Sejanus.<sup>973</sup> The fact that Agrippina's son Nero was tried and convicted at the same time as his mother precludes any suggestion that the charges against her were intended to harm her son or his political career. Charges were soon laid against her second son Drusus as well; he was declared a public enemy, as his brother Nero had been, and was detained in a dungeon under the imperial residence at Rome.

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<sup>972</sup> Sen. *de Ira* 3.21.5; Barrett (1996) 37.

<sup>973</sup> Tac. *Ann.* 6.23-24 reports a rumour that Tiberius might reconcile with Agrippina and Drusus, but his reaction shows his unabated anger: he refreshed allegations against Drusus and publicized the names of slaves whom he had employed to beat his grandson.

He too died of starvation in 33, a few months before his mother.<sup>974</sup> Agrippina's surviving children were Gaius Caligula and her three daughters Agrippina, Drusilla, and Livilla.<sup>975</sup>

## 7 Albucilla AD 37

Tac. *Ann.* 6.47–48; Suet. *Nero* 5.2; Dio 58.27.2–5.

PIR<sup>2</sup> A 487; RE 1 (1894) Albucilla 1330.

Seager (2005) 201–202; Rutledge (2001) 101–102; Barrett (1996) 49–50, 55; Bauman (1992) 116, 164; (1974) 130–134, 175–176; Marshall (1990) no. 19; Syme (1986) 173; Richlin (1981) 387–388; Levick (1976) 216–217; Forsyth (1969) 204–207; Rogers (1935) 162–165, 206.

Former wife of Satrius Secundus, an associate of Sejanus and later an informant against him.<sup>976</sup> Her other family is unknown.

Albucilla was charged with *impietas in principem* and adultery. Named as co-defendants were six senatorial men.<sup>977</sup> Denounced as *conscii et adulterii* were Cn. Domitius Ahenobarbus, Vibius Marsus, and L. Arruntius.<sup>978</sup> Tacitus implies that the charges were fabricated by Macro, the praetorian prefect, because of his well-known antagonism toward Arruntius; Tiberius likely did not even know about the accusations.<sup>979</sup> Domitius and Marsus did not react immediately, but Arruntius decided to commit suicide. Albucilla chose to

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<sup>974</sup> Tac. *Ann.* 6.23; Suet. *Tib.* 54.2; *Cal.* 7.

<sup>975</sup> Two of her three daughters would eventually face prosecutions: Agrippina, no. 5, and Livilla, no. 34.

<sup>976</sup> PIR<sup>1</sup> S 151; he informed on Sejanus' conspiracy: Tac. *Ann.* 6.47.2; he was an adherent of Sejanus: Tac. *Ann.* 4.34.1 and 6.8.5; Seneca *Dial.* 6.22.4. Bauman (1974) 132 points out that Tacitus' phraseology could possibly be stretched to mean that Secundus was the informant (and prosecutor) against the conspiracy of Albucilla and company. If this is perhaps too far, then one should note that, as Albucilla's (ex-)husband, he would have had first rights for prosecuting his wife's adultery. The date of their divorce is unknown, and plausibly occurred as a result of the adultery that led to the trial.

<sup>977</sup> The charge of *impietas in principem* was a derivative of *maiestas*; see Bauman (1974) for a full discussion, and for this case specifically, see 130–134, 175–176.

<sup>978</sup> Ahenobarbus: PIR<sup>2</sup> D 127; Marsus: PIR<sup>1</sup> V 388; Arruntius: PIR<sup>2</sup> A 1130. Bauman calls the group surrounding Albucilla an 'association of rebellious spirits meeting together to commit adultery and to sharpen their wits on the foibles of the world in general and the emperor in particular.' Bauman (1974) 132; cf. Bauman (1992) 164. He likens them to the coterie that surrounded the elder Julia before her exile, suggesting that their crimes may have been no more serious than loose talk.

<sup>979</sup> Tac. *Ann.* 6.47.3; Dio 58.27.2 concurs.

follow suit, but when her suicide attempt was unsuccessful, she was taken to prison by order of the senate and died there.<sup>980</sup> The other three senatorial co-defendants, charged as *stupratorum eius ministri*, “accomplices of her *stuprum*,” were Carsidius Sacerdos, Pontius Fregellanus and Laelius Balbus.<sup>981</sup> These three men were brought to trial immediately, likely because their crimes were liable under the Julian adultery law only. Their punishments are recorded: Sacerdos was deported to an island, Fregellanus was stripped of his senatorial rank, and Balbus was deported and demoted.<sup>982</sup> Tiberius was gravely ill at this point, so the trials of Domitius and Marsus were delayed and when the emperor died, the two escaped prosecution.<sup>983</sup>

The identities of the men charged as Albucilla’s lovers are important; they seem to have been the targets of the charges of *impietas in principem* and adultery. In his famous death-bed assessment of possible successors, Augustus described Arruntius as “*non indignum et, si casus daretur, ausurum.*”<sup>984</sup> Tacitus then comments that all but one of the men mentioned in this list were later trapped by charges set up by Tiberius, and that the emperor was suspicious of Arruntius for unspecified other reasons.<sup>985</sup> The praetorian prefect Macro, firmly in Caligula’s camp in these last few months of Tiberius’ life, was also known to be hostile to Arruntius, and Tacitus implies that he fabricated evidence because of it.<sup>986</sup> Since

<sup>980</sup> Tac. *Ann.* 6.48.4; Dio 58.27.4.

<sup>981</sup> Sacerdos: PIR<sup>2</sup> C 451; Fregellanus: PIR<sup>2</sup> P 800; Balbus: PIR<sup>2</sup> L 48. Dig. 48.5.9 (Papinian) and 48.5.10 (Ulpian) state that those who provide their house for the commission of *stuprum* are covered by the Julian law.

<sup>982</sup> Tac. *Ann.* 6.48.4.

<sup>983</sup> Dio 58.27.5; Tiberius died on March 16, 37.

<sup>984</sup> PIR<sup>2</sup> A 1130; Tac. *Ann.* 1.13.2: “L. Arruntius was not unworthy [to rule] and, if the chance were given, he would dare it.”

<sup>985</sup> The other men named in this conversation were M. Lepidus, Gallus Asinius, and maybe Gn. Piso instead of L. Arruntius. Only Lepidus was not brought up on charges. *Ann.* 1.13.2–3. *Post quae L. Arruntius haud multum discrepans a Galli oratione perinde offendit, quam<quam> Tiberio nulla vetus in Arruntium ira: sed divitem promptum, artibus egregiis et pari fama publice, suspectabat; Ann.* 1.13.1.

<sup>986</sup> ...nullaeque in eos imperatoris litterae suspicionem dabant invalido ac fortasse ignaro ficta pleraque ob inimicitias Macronis notas in Arruntium; *Ann.* 6.47.3. On the topic of the motivation behind this case, P. Forsyth (1969) 204–207 is especially useful.

Arruntius had been a potential rival for Tiberius in 14, he could still have been a dangerous rival to Caligula's succession in 37. Having assessed the situation and his chances of surviving unscathed, Arruntius opened his veins.<sup>987</sup> Arruntius' son suffered no obvious political consequences from the criminal accusations against his father and his subsequent suicide.<sup>988</sup>

Also charged was C. Vibius Marsus, who was married to Laelia, daughter of D. Laelius Balbus (see Appendix 2.2) and father-in-law to P. Plautius Pulcher (grandson of Urgulania, and brother of Plautia Urgulanilla, wife of Claudius).<sup>989</sup> He escaped prosecution when Tiberius died shortly after the adultery charges were laid. Marsus went on to be legate of Syria from approximately AD 42 to 47, a highly prestigious position in control of four legions, not a job given to someone whose loyalties or character were questionable.<sup>990</sup> The accusations brought against him in connection with Albucilla had not harmed his career or reputation in any substantive way.

The third man charged as Albucilla's lover was Gn. Domitius Ahenobarbus, *cos.* 32, husband of Agrippina the Younger (therefore grandson-by-marriage of Tiberius) and father of Nero.<sup>991</sup> Domitius also escaped prosecution when Tiberius died. The criminal accusations against him had no impact on the rapid advancement of his son Nero – advancement due

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<sup>987</sup> Tac. *Ann.* 6.48.3.

<sup>988</sup> Camillus Scribonianus had an illustrious career: after his consulship in 32 with Gn. Domitius Ahenobarbus, he was *legatus pro praetore* in Dalmatia and Illyricum under Gaius Caligula, and *legatus* of Dalmatia again under Claudius, CIL 3.9864a = ILS 5950. His career (and life) ended after an abortive rebellion against Claudius in company with Annius Vinicianus and A. Caecina Paetus. His wife Vibia, likely a daughter of Vibius Marsus, was banished. Tac. *Ann.* 12.52; *Hist.* 1.89; Pliny *Ep.* 3.16.7–9; Suet. *Claud.* 13; Dio 60.15.3. Vibia, no. 55.

<sup>989</sup> PIR<sup>2</sup> P 472; the marriage between his sister Plautia Urgulanilla and the future emperor Claudius was of relatively brief duration, ending in perhaps AD 27, PIR<sup>2</sup> P 488.

<sup>990</sup> Jos. *AJ* 19.316; 20.1; Tac. *Ann.* 11.10.1; also 4.5.2.

<sup>991</sup> PIR<sup>2</sup> D 127; Domitius and Agrippina had married in 28 (Tac. *Ann.* 4.75); Nero was born in December 37 (Suet. *Nero* 6.1); see also Barrett (1996) 234, Appendix 3.

without doubt to the relentless actions of the boy's mother, Agrippina, but not hindered or rendered impossible by taint from the father's actions.

Accused as accomplices (*stuprorum eius ministri*) were Carsidius Sacerdos, Pontius Fregellanus, and Laelius Balbus. The first two are relatively unknown. Sacerdos is mentioned only twice in the *Annales* and (probably) named as praetor *urbanus* for AD 27.<sup>992</sup> As punishment for his involvement in this case, he was deported to an island.<sup>993</sup> Even less is known about Pontius Fregellanus. He might be the same man as the Pontilius Fregellanus, consul, commemorated in *CIL* 3.8715, but he is otherwise completely absent from the historical record.<sup>994</sup> As punishment for his involvement with Albucilla, he was stripped of his senatorial rank.<sup>995</sup> There is no hint why one man was deported and another was merely demoted in rank. Laelius Balbus suffered these same punishments of demotion and exile.<sup>996</sup> He also had family links to the other members of this group: his sister Laelia was married to C. Vibius Marsus. Since Balbus' son was suffect consul in 46, we may conclude that the father's crimes had no adverse impact on the son's career.<sup>997</sup> Whatever damage was done to Balbus' career as a result of this prosecution was neither permanent nor permanently injurious to his son's political aspirations.

It seems unlikely that a Roman would have believed that a woman was the target of these charges rather than the six senatorial men. On the other hand, Albucilla was the widow of one of Sejanus' associates and likely generated ill-will all on her own. She seems to have

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<sup>992</sup> Tac. *Ann.* 6.48; and 4.13 where he was absolved from providing aid to Tacfarinas. *I.I.* 13.1.24 (p. 299) reads: [*Carsidius Sa[cerdos urbanus / Se]x Papini[us Allenius peregrinus]*].

<sup>993</sup> Tac. *Ann.* 6.48.4.

<sup>994</sup> *CIL* 3.8715 = ILS 960: *C. Pontilio Fregellano cos patrono d d publice*.

<sup>995</sup> Tac. *Ann.* 6.48.4.

<sup>996</sup> Tac. *Ann.* 6.48.4: *et eadem poenae in Laelium Balbum decernuntur*. The plural *eae poenae* presumably refers to both punishments rather than just the latter (demotion). His senatorial rank was later restored by Caligula.

<sup>997</sup> Rutledge (2001) 242; Gallivan (1978) 408–409; Smallwood p. 3.

been at the centre of a group of powerful men, of whom Arruntius and Ahenobarbus had the potential to be serious rivals to Caligula's succession.<sup>998</sup> Another theory is that this group of senior statesmen were a threat to Macro's position rather than Caligula's, that Macro's influence on the young emperor was threatened by their presence (a ready-made *concilium principis*, as it were).<sup>999</sup> The timing is critical: either as rivals to Caligula's succession or as rivals to Macro's power behind the throne, they were under accusation right at the exact moment of his ascension to the purple. There would have been significant challenges in convincing the senate and people that a man currently under indictment should rule the state, or that he should advise its ruler. It was politically expedient to attack Albucilla as a member of this worrisome political association but any damage to her seems to have been beside the point.

## 8 Annia Rufilla AD 21

Tac. *Ann* 3.36.3–4.

PIR<sup>2</sup> A 721; RE 1.2 (1894) 2316 Annus no. 126.

Marshall (1990) no. 5; Talbert (1984) 468, 471–472; Bauman (1974) 85–86; Garnsey (1970) 31–32, 34; Koestermann (1955) 95–96; Rogers (1935) 58–59.

Convicted of fraud on charges brought by senator C. Cestius Gallus, Rufilla greeted him ever after with threats and verbal abuse while clutching an image of the emperor for protection.<sup>1000</sup> Others had invoked the right of sanctuary using an image of the emperor, so Gallus feared that any charges he would bring *de iniuria* against Rufilla would be met with

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<sup>998</sup> On Arruntius in particular, see Syme (1986) 268–269. Bauman (1992) 164 points out that this group did not have the intention of killing the moribund Tiberius. It seems plausible, nonetheless, that their collective influence could have posed a challenge to Caligula's accession.

<sup>999</sup> Rutledge (2001) 102.

<sup>1000</sup> Tac. *Ann*. 3.36.3; Gallus (cos 35), PIR<sup>2</sup> C 690.

counter-charges for failing to properly respect the sanctity conferred by the image of the emperor.<sup>1001</sup> Tiberius' son Drusus, consul that year, was inundated with similar complaints from other senators until he decided that an example must be made and the harassment stopped. Drusus summoned Rufilla before the senate, tried, convicted, and sentenced her to public prison.<sup>1002</sup>

Normally, such verbal harassment fell under a civil action *de iniuria*, but because she had repeatedly threatened and abused a senator, the charge was upgraded to *atrox iniuria* and thus subject to criminal prosecution *extra ordinem*.<sup>1003</sup> An undated *senatus consultum* addresses the particulars of this case so specifically that it may have been created at this time: *senatus consulto cavetur, ne quis imaginem imperatoris in invidiam alterius portaret: et qui contra fecerit, in vincula publica mittetur*; "It is provided by *senatus consultum* that no one shall carry a representation of the emperor to the odium of another, and anyone acting to the contrary will be put in public prison."<sup>1004</sup> There is no indication of the required length of confinement. If indeed this particular case was the impetus for creating the *senatus consultum*, as is likely, then it is important to note that the senatorial decree was framed in response to the crime of a woman. The decreed punishment was upheld for a century and a half, to judge by the date of the Antonine rescript, and evidently much longer based on its inclusion in the Digest. There is nothing in either the crime or the punishment that implies special treatment of a male or female offender; this was an equal opportunity crime.

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<sup>1001</sup> Bauman (1974) 86; Tac. *Ann.* 3.36.3: *neque ipse audeat ius experiri ob effiēm imperatoris oppositam*.

<sup>1002</sup> Tac. *Ann.* 3.36.4; Marshall (1990) 343.

<sup>1003</sup> On the *actio de iniuria*, see Dig. 47.10; on *atrox iniuria*, see Paul. *Sent.* 5.4.10; Rogers (1935) 58–59.

<sup>1004</sup> Dig. 47.10.38 (Scaevola); a rescript of Antoninus Pius enforces the same penalty; Dig. 48.19.28.7

## 9 (Claudia) Antonia AD 65

Suet. *Claud.* 27.1; *Nero* 35.4; Tac. *Ann.* 12.2; 13.23.1; 15.53; Dio 60.5.7; 61.1; Jos. *AJ* 20.150; *BJ* 2.249; Sen. *Apoc.* 11.5.

PIR<sup>2</sup> A 886; RC 217; RE 1.2 (1894) 2641 Antonius no. 115.

Holland (2000) 203–204; Rudich (1993) 136–137; Griffin (1984) 193–194; Townend (1980) 237; Bradley (1977) 79–82; Rogers (1955) 192, 209–210.

Daughter of Claudius and second wife Aelia Paetina, half-sister of Octavia and Britannicus. First married to Pompeius Magnus, then to Faustus Sulla, half-brother of Messalina.<sup>1005</sup> She is known to have had one son whose name and fate are unrecorded;<sup>1006</sup> since he never appears as a rival to Nero, he may have died young.

Tacitus and Suetonius give conflicting information about the reasons for Antonia's demise. Tacitus records that Antonia was an integral part of the Pisonian conspiracy. She was to meet Piso after Nero's assassination and travel to the praetorian camp with him in order to elicit the goodwill of the public.<sup>1007</sup> Tacitus cites a lost history written by Pliny the Elder as the source of this information, but immediately questions the likelihood of its accuracy (*quamvis absurdum videretur*).<sup>1008</sup> Why would Piso have committed himself to marry Antonia when he was well known for loving his wife? Why would Antonia take such

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<sup>1005</sup> Antonia married Pompeius Magnus (PIR<sup>2</sup> P 630) in 41, Suet. *Claud.* 27.2; Dio 60.5.7. She married Faustus Sulla (PIR<sup>2</sup> C 1464) in 47, Suet. *Claud.* 27.2; Tac. *Ann.* 13.23; Dio 60 (61)29.6a; Sen. *Apoc.* 11.5. Sulla died in 62, Tac. *Ann.* 14.57.

<sup>1006</sup> Suet. *Claud.* 12.1; Dio 60 (61)30.6a. The child seems to have been a product of Antonia's second marriage, PIR<sup>2</sup> C 1464, Groag. Suetonius melded into a single sentence the (private) celebration of Octavia's wedding and the birth of Antonia's son, thus suggesting a temporal proximity as well. Octavia was married to Nero in 53, therefore suggesting that the child in question was born at approximately that time and that Sulla was his father. The fragment of Dio (Zonaras) mentioning the birth is placed by modern editors in the year 48. We may conclude, then, that the birth took place sometime between 48 and 53.

<sup>1007</sup> Tac. *Ann.* 15.53.3. An acclamation from the praetorian guard was a significant step in declaring an emperor, as in the case of Claudius. See Furneaux (1896) 304 n. 7.

<sup>1008</sup> Tac. *Ann.* 15.53.4. Woodman (2004) 254 n. 41. This is one of the rare and important occasions where Tacitus cites the source of his information. The classic study of the sources for Tacitus' *Annales* is Syme (1958) 271–304; the citation of Pliny the Elder for this particular incident is discussed on pp. 290–292.

a risk for an empty hope?<sup>1009</sup> The theory was that Piso and Antonia would travel together to the praetorian camp, he would be acclaimed emperor, they would marry and be the new imperial couple after the successful coup.

A single sentence in Suetonius reveals another motive for her fate:

*Antoniam Claudii filiam, recusantem post Poppaeae mortem nuptias suas, quasi molitricem novarum rerum [Nero] interemit.*

When Claudius' daughter Antonia refused to marry him after Poppaea's death, [Nero] had her executed on a charge of attempted rebellion.<sup>1010</sup>

As the only surviving child of Claudius, Antonia's marriage was of significant political import. Dynastically speaking, a connection between Nero and Antonia was a good one for many of the same reasons that the connection between Agrippina and Claudius had been desirable.<sup>1011</sup> She was a granddaughter of Germanicus and descendant, therefore, of Tiberius and Augustus. She was of proven fertility and young enough to bear more children. If her son mentioned above was still alive at the time of the proposal, it would have been a perfect way to keep him in the imperial fold and curb any chance of rebellion. Antonia, however, could not have forgotten that Nero had been the cause of the deaths of her husband Sulla, her brother Britannicus and her sister Octavia; the scope of her ill-will is unknowable.

To understand the situation completely, we must address the timing of the events. The Pisonian conspiracy was discovered in April of 65 during the festival of Ceres.<sup>1012</sup> Poppaea died in August 65 just after the Neronia, providing a *terminus post quem* for Nero's

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<sup>1009</sup> This is a paraphrase of parts of Tacitus' sentence at 15.53.4: *nobis quoquo modo traditum non occultare in animo fuit, quamvis absurdum videretur aut inane ad spem Antoniam nomen et periculum commodavisse, aut Pisonem notum amore uxoris alii matrimonio se obstrinxisse, nisi si cupido dominandi cunctis adfectibus flagrantior est.* See Koestermann (1968) 280–281 on the textual difficulties of this passage.

<sup>1010</sup> Suet. *Nero* 35.4; the non-political motives would have been anger, embarrassment, and the like brought on by her rejection of his marriage offer. We have no way of knowing how publicly this rejection took place (assuming that greater publicity would increase humiliation).

<sup>1011</sup> Tac. *Ann.* 12.2.3.

<sup>1012</sup> Tac. *Ann.* 15.53.1; Townend (1980) 237; Scullard (1981) 91.

marriage proposal to Antonia.<sup>1013</sup> The interval of at least four months between conspiracy and rejected marriage proposal shows two things. First, Antonia was still alive at least four months after the discovery of the conspiracy, indicating that her involvement in the conspiracy is extremely unlikely since the other conspirators were immediately executed.<sup>1014</sup> Second, the two events were not so temporally proximate that one should be confused with the other. Tacitus is, therefore, correct in suspecting the report that Antonia was involved in the conspiracy.

Since the memory of the conspiracy was still fresh, it was easy for Nero to disguise his personal motives for vengeance with the unquestionable motive of punishing anyone who might have rebellious inclinations. Suetonius' word *quasi* enforces the notion of fabricated charges. Furthermore, with the memory of the backlash after his treatment of Octavia, and the unpopular Poppaea recently deceased, Nero would understandably wish to divert attention from his marital antics. Although the Pisonian conspiracy did not provide a political basis for the particular charges against Antonia, certainly the motive for eliminating her was largely political.

## 10 Antonia Tryphaena AD 18

Tac. *Ann.* 2.67.3; cf. 2.64.3–66.3; Vell. Pat. 2.129.1; Strabo 12.556.

PIR<sup>2</sup> A 900; RE 1 (1894) 2641 Antonius no.130.

Seager (2005) 139; Marshall (1990) no. 40; Braund (1984) 41–42, 114, 166–167; Talbert (1984) 157, 161; Sullivan (1980) 920–923, stemma 938; (1979) stemma 192, 200–204; Rogers (1935) 30, 212; Macurdy (1932) 11.

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<sup>1013</sup> Tac. *Ann.* 16.6.1; Townend (1980) 237; Bradley (1977) 79.

<sup>1014</sup> Tac. *Ann.* 15.59.5, 60.1–2, 67.4, 70.1–2.

Wife of Cotys, king of Thrace (PIR<sup>2</sup> C 1554). Her uncle-in-law was Rhescuporis (PIR<sup>1</sup> R 42), joint king of Thrace. Although she is undoubtedly of foreign descent, the two elements of her name indicate that she was a Roman citizen. Macurdy, following Mommsen, identifies her as a great-granddaughter of Mark Antony and his cousin Antonia, granddaughter of Antonia Euergetis, and daughter of Pythodorus, queen of Pontus-Bosporus.<sup>1015</sup> Her father is known to have been Polemo I of Pontus who was most likely granted citizenship by Mark Antony, with whom he had a close relationship and to whom he owed his kingship.<sup>1016</sup> Regardless of its ultimate source, her citizenship gave Tryphaena the right to use the Roman legal system. In practical terms, her wealth and elite position gave her greater access to the legal system by easing her entrée to the heart of the Roman elite, the people who were also central to the legal system.

The split kingship of Thrace was an Augustan arrangement of AD 12; when the old king Rheometalces died, his son Cotys was made king of the southerly, more civilized parts of Thrace and his brother Rhescuporis became king of the remainder. Rhescuporis almost immediately began encroaching on his nephew's territory, more blatantly after the death of Augustus. Tiberius was aware of the mounting tensions and sent cautionary messages to both kings that they avoid the use of force in settling their differences. Cotys dismissed his troops and accepted Rhescuporis' invitation to a banquet to discuss a solution. Completely duped, Cotys found himself in chains. Rhescuporis immediately wrote to Tiberius that he had thwarted a plot against himself; Tiberius replied that he should hand over his nephew to the Roman authorities and come to Rome to present his case to the senate. By the time the

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<sup>1015</sup> Sullivan (1980) 920–922; Macurdy (1932) 10–11; Dessau (*Eph. Ep.* IX pp. 691 ff) argues against Mommsen's identification of Antonia Euergetis (*OGIS* 377) with Antonia, Antony's daughter, and denies that Pythodorus was his granddaughter.

<sup>1016</sup> Braund (1984) 41; Sullivan (1980) 916–918.

letter arrived, Cotys was already dead: obviously murdered, although Rhescuporis claimed it was suicide. In 18, he was lured into a Roman camp and arrested.<sup>1017</sup>

Rhescuporis was brought to Rome and was accused in the senate by Antonia Tryphaena. Our only evidence of her involvement is a single line in Tacitus: “accusatus in senatu ab uxore Cotyis damnatur, ut procul regno teneretur.” (*Ann.* 2. 67.2.) She cannot have acted as the formal prosecutor. Not only were women banned from acting alone as prosecutors,<sup>1018</sup> but she was most likely raised in a foreign land and would probably not, therefore, have had the working knowledge of the Roman legal system needed for an effective prosecution. Given Tiberius’ apparent lack of sympathy toward Rhescuporis, it is likely that he made provisions for her to receive legal support from a qualified orator in Rome. Since, therefore, Tryphaena was not actually the prosecutor, she can only have been a witness in the case against Rhescuporis. There is no mention of any other witness brought from Thrace as a part of the prosecution; her testimony, in addition to the evidence in the letters sent from Thrace to Tiberius, was sufficiently weighty to secure a conviction. Rhescuporis was exiled. Tryphaena returned to Thrace and ex-praetor Trebellenus Rufus was appointed regent for her three underage sons.<sup>1019</sup>

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<sup>1017</sup> Tac. *Ann.* 2.64.3–66.3; Seager (2005) 139.

<sup>1018</sup> Dig. 48.2.1 (Pomponius): *Non est permissum mulieri publico iudicio quemquam reum facere, nisi scilicet parentum liberorumque et patroni et patronae et eorum filii filiae nepotis neptis mortem exequatur.* (A woman is not permitted to charge someone in criminal proceedings unless, indeed, she is pursuing the death of her parents or children, her patron or patroness, or their son or daughter or grandson or granddaughter. Dig. 48.2.8 (Macer): *itaque prohibentur accusare alii propter sexum vel aetatem, ut mulier, ut pupillus.* (And so, some may be debarred from making an accusation on grounds of sex or age, for example, a woman or a pupil.)

<sup>1019</sup> Tac. *Ann.* 2.67.2; the sons are named by Sullivan (1980) 925 and stemma 938; Barrett (1978) 437 further notes that these three sons were boyhood friends of the emperor Gaius (*IGRR* 4.145 = Smallwood, *Documents* 401).

## 11 Apicata AD 31

Tac. *Ann.* 4.11.2; Dio 58.11.6–7; cf. Suet. *Tib.* 62.1.

PIR<sup>2</sup> A 913; RE 1 (1894) 2801.

Seager (2005) 155–157, 186–188; Marshall (1990) no. 41; Martin and Woodman (1989) 128–129; Syme (1986) 171; Martin (1981) 131; Levick (1976) 161, 201; Cramer (1954) 258; Rogers (1935) 119, 212.

Ex-wife of Sejanus, the notorious and wealthy equestrian who had been appointed joint prefect of the praetorian guard with his father Seius Strabo in 14, then continued to hold the post alone when Strabo became prefect of Egypt in 15.<sup>1020</sup> Sejanus had divorced her in 23 in order to further pursue his plans to marry Livilla, the widow of Drusus, and thus gain membership in the imperial family. Sejanus was *consul ordinarius* in 31, but by the fall of that year, Tiberius had become very suspicious of his growing power and arranged that on a single, carefully orchestrated day, an explosive letter of denouncement be read in the senate, that he be arrested and imprisoned, and that a new praetorian prefect take office.<sup>1021</sup> The senate met that afternoon and condemned Sejanus to death.<sup>1022</sup>

In the aftermath of her ex-husband's death on 18 October 31, and just two days after their eldest son had been executed, Apicata sent a letter to Tiberius giving details about the death of Drusus, as planned by Sejanus and Livilla. She committed suicide immediately after sending the letter.<sup>1023</sup> The evidence provided by her was taken very seriously, even though she was obviously not available for cross-examination.<sup>1024</sup> In the aftermath of his dramatic fall from grace, Sejanus was believed capable of – and indeed guilty of – every evil.

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<sup>1020</sup> Seager (2005) 151.

<sup>1021</sup> Dio 58.9.2–11.7; Suet. *Tib.* 65. The precise date of Sejanus' demise was Oct. 18, and Apicata's suicide, Oct. 26; *Inscriptiones Italiae* 13.1.186f, *Fasti Ostiensis* = EJ p. 42.

<sup>1022</sup> Dio 58.11.5.

<sup>1023</sup> EJ p. 42, *Fasti Ostiensis*.

<sup>1024</sup> Compare Urgulania's case where her inavailability for cross-examination was criticized.

Corroborating evidence was provided by two slaves who were allegedly involved: Eudemus, Livilla's doctor, allegedly privy to all plots, and Lygdus, a eunuch, probably Drusus' taster.

Tiberius and Tacitus took Apicata at her word, but modern scholars are convinced that she did not give an accurate account.<sup>1025</sup> How did she, divorced eight years earlier, know the details about what her ex-husband and Livilla had done – presumably in strictest secrecy? Nor were the 'proofs' acquired from the torture of Eudemus and Lygdus unassailable,<sup>1026</sup> as close associates of Sejanus, their fate was already sealed and they could only hope to bring Livilla down with them. Seager raises the possibility that Apicata had manufactured, in whole or in part, the story about Drusus' poisoning in an attempt to injure Livilla.<sup>1027</sup> He points out that it is striking, in a poison-conscious age, that there had never existed the slightest suspicion that Drusus had not died a natural death.<sup>1028</sup> He did not claim during his final illness that he believed himself poisoned, and Tiberius was convinced for eight years that his son had died of ill-health and excessive self-indulgence. Furthermore, if there actually had been a poisoning, it seems highly unlikely that Sejanus would have kept alive the slaves who had helped to perpetrate it. At any rate, Apicata's allegations destroyed not only Livilla but also left Tiberius with a lingering tendency toward paranoia.<sup>1029</sup>

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<sup>1025</sup> Seager (2005) 155–156; Martin (1981) 235 n. 31; Levick (1976) 161–162.

<sup>1026</sup> Martin and Woodman (1989) 129. Modern opinion holds that evidence obtained under torture is highly unreliable; the Romans had a rather mixed opinion, see Dig. 48.18.1.23 (Ulpian): *Quaestioni fidem non semper nec tamen numquam habendam constitutionibus declaratur: etenim res est fragilis et periculosa et quae veritatem fallat*. "It is declared in imperial rescripts that not always, but also not never, should trust be given to torture. For it is a delicate and dangerous business and one that may be deceptive." See Watson (1983) 57–59.

<sup>1027</sup> Seager (2005) 155–156.

<sup>1028</sup> Compare Tac. *Ann.* 2.71ff. on the death of Germanicus who believed that he was dying from poison.

<sup>1029</sup> Seager (2005) 188.

## 12 Appuleia Varilla AD 17

Tac. *Ann.* 2.50; Dio 57.19.1; Suet. *Tib* 35.1; Pliny *HN* 7.122.

PIR<sup>2</sup> A 968; RC 85; RE 2 (1895) 269 Appuleius no. 33.

Barrett (2002) 167–8; Marshall (1990) no. 1; Syme (1986) 126, 317, 327; Talbert (1984) 479, 483; Goodyear (1981) 344–46; Bauman (1974) 77–79, (1967) 232–234; Rogers (1935) 27, 190, 202.

Daughter of Sex. Appuleius (*cos.* 29 BC),<sup>1030</sup> sister of Sex. Appuleius (*cos.* 14),<sup>1031</sup> granddaughter of Octavia the Elder (half-sister of Augustus), and niece of Quintilius Varus and Claudia Pulchra.<sup>1032</sup> She seems to have been unmarried at the time of the trials.

Appuleia Varilla was denounced by a *delator* on charges of *maiestas* and adultery, but Tiberius demanded that the two charges be kept separate and that she not be condemned for any irreverent comments about him or his mother.<sup>1033</sup> Accusations regarding irreligious talk about *divus* Augustus, on the other hand, would be allowed to stand. On the next day that the senate met, Appuleia's case proceeded; then *liberavit Appuleiam lege maiestatis*, "He [Tiberius] freed Appuleia from the law of treason."<sup>1034</sup> She was convicted on the charge of adultery alone and Tiberius requested that her punishment be mitigated from the *relegatio* demanded by the *lex Julia*, so she was removed by her relatives beyond the two-hundredth milestone.<sup>1035</sup> The trial of her lover Manlius followed and resulted in conviction; he was forbidden to reside in Italy or Africa.

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<sup>1030</sup> PIR<sup>2</sup> A 961; Syme (1986) 317.

<sup>1031</sup> Tac. *Ann.* 1.7.2; PIR<sup>2</sup> A 962.

<sup>1032</sup> Syme (1986) 317.

<sup>1033</sup> Tac. *Ann.* 2.50.

<sup>1034</sup> Tac. *Ann.* 2.50.3. The verb *liberavit* causes some consternation. Does it mean that the charge was dropped or that she was tried and acquitted? Neither TLL nor OLD (*s.v. libero*) completely clarify. Furneaux does not address; Woodman's 2004 translation skirts the issue and translates as "he freed Appuleia," as above. At any rate, it is clear that she was not convicted.

<sup>1035</sup> Tac. *Ann.* 2.50.3; Pliny *HN* 7.122 reports that Appuleia's husband M. Lepidus died of a broken heart after their divorce and her conviction.

### 13 Aquilia AD 25

Tac. *Ann.* 4.42.3.

PIR<sup>2</sup> A 1006; RE 2 (1896) 331 Aquilius no. 36.

Marshall (1990) no. 8; Rogers (1935) 91.

Nothing is known about the status of Aquilia or her family, but the apparent presence of Tiberius at her trial, which was presided over by the consul-elect, strongly suggests that she was of senatorial status.

The charges against Aquilia were adultery with Varius Ligus.<sup>1036</sup> Having presided over the trial, consul designate Lentulus Gaetulicus condemned her under the Julian law, with a statutory sentence of *relegatio* (banishment without loss of property).<sup>1037</sup> Tiberius, however, intervened and amended her penalty to *exilium*, a more severe penalty that included loss of property.<sup>1038</sup> Tacitus reveals no hint of the aggravating factor that induced Tiberius to increase the severity of her sentence, but we may speculate that she was involved somehow, or perceived to have been involved, with the *partes Agrippinae* that later caused so much trouble. On the other hand, since Tacitus has not recorded the details of the case, we cannot tell if there was some other attendant circumstance that exacerbated her guilt so as to merit a harsher punishment, or that hit a sensitive spot in Tiberius that made him want to set an example of her. Tacitus notes that Tiberius was “embracing all the more persistently the mercilessness towards defendants that was imputed to him.”<sup>1039</sup> She was very likely tried in

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<sup>1036</sup> Tac. *Ann.* 4.42.3; Varius Ligus was possibly the son of a praetorian prefect under Augustus, Martin and Woodman (1989) 201.

<sup>1037</sup> Cn. Lentulus Gaetulicus (PIR<sup>2</sup> C 1390) was the brother of Cornelius Cossus, consul of the present year (PIR<sup>2</sup> C 1381). According to Talbert (1986) 204, there was no regular timetable for consular elections at this time; the presence of a consul designate at this trial, however, allows us to date the proceedings to the last quarter of the year 25.

<sup>1038</sup> Martin and Woodman (1989) 201; Rogers (1935) 91.

<sup>1039</sup> *Caesar, obiectam sibi adversus roes inclementiam eo pervicacius amplexus...* Tac. *Ann.* 4.42.3.

the senate since Tiberius amended the sentence – an act that required his presence at the sentencing portion of the trial, at least.

#### 14 Caedicia AD 65

Tac. *Ann.* 15.71.5

PIR<sup>2</sup> C 116; RC 161; RE 3.1 (1897) 1246 Caedicius no. 11.

Rudich (1993)123, 291.

Wife of Flavius Scaevinus, a senator who played a leading role in the Pisonian conspiracy against Nero in 65.<sup>1040</sup> Caedicia was convicted with Caesennius Maximus and exiled from Italy, discovering only from the punishment that they had been on trial (*Italia prohibentur, reos fuisse se tantum poena experti*).<sup>1041</sup> No charges are known, and obviously some very loose trial procedures were followed. Their trial occurred in the midst of the backlash upon the discovery of the Pisonian conspiracy against Nero.<sup>1042</sup> The sub-capital penalty and simple banishment from Italy rather than to an island indicates that they were not believed to have collaborated closely with the conspirators; families of other conspirators were similarly banished.<sup>1043</sup> The roles of Caedicia and Caesennius in the Pisonian conspiracy are unknown and likely merely guilt by association. Although women were said to have joined the conspiracy willingly (*certatim nomina dederant ... feminae etiam*), and Epicharis was arrested and tortured, Caedicia seems not to have been involved except by association

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<sup>1040</sup> PIR<sup>2</sup> F 357; Tac. *Ann.* 15.49.4, 53.2, 54.1, 55, 56.3, 59.1, 74.2.

<sup>1041</sup> Tac. *Ann.* 15.71.5; Caesennius Maximus: PIR<sup>2</sup> C 172. He had been suffect consul and, as a close friend of Seneca, may have accompanied him into exile in 41, Mart. 7.44.10; he lived in exile in Sicily, Mart. 7.45.

<sup>1042</sup> For the full account, see Tac. *Ann.* 15.48–74; Suet. *Nero* 36; Dio 62.24–28.

<sup>1043</sup> Suet. *Nero* 36; he goes on to state that the children of the conspirators were later starved to death or poisoned.

with her husband.<sup>1044</sup> Caesennius was a friend of Seneca, who was executed in connection with the conspiracy, and he may have been guilty of nothing more. Seneca's wife Paulina, even though she had opened her veins with the intention of dying with her husband, was given medical treatment and allowed to live because Nero did not wish resentment for his cruelty to increase.<sup>1045</sup> In this context, the relatively lenient punishment for Caedicia makes sense.

### 15 Calpurnia AD 49

Tac. *Ann.* 12.22.3; cf. 14.12; Dio 60 (61).33.2b.

PIR<sup>2</sup> C 325; RC 174; RE 3.1 (1897) 1407 Calpurnius no. 129.

Barrett (1996) 108.

An elite woman (*inlustris femina*) of uncertain relation to the influential senatorial Calpurnius family.<sup>1046</sup> She was struck down (*pervertitur*) by Agrippina (the younger) after Claudius had, in a chance comment, praised her good looks. No charge or trial is mentioned, but Calpurnia was demonstrably driven into exile. After the death of Agrippina a decade later, when Nero was anxious to blacken her reputation, Calpurnia was recalled from exile.<sup>1047</sup> The timing of her recall emphasizes Agrippina's role in initiating and maintaining her exiled status.

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<sup>1044</sup> On Epicharis, see no. 20.

<sup>1045</sup> Tac. *Ann.* 15.64.

<sup>1046</sup> This Calpurnia is not to be confused with the concubine Calpurnia mentioned in Tac. *Ann.* 11.30.1. Syme (1986) 161 does not comment on her lineage. Other famous Calpurniae include the wife of Julius Caesar, wife of Messalla Corvina; there were also many consular Calpurnii Pisones; see Syme (1986) 477–478.

<sup>1047</sup> Tac. *Ann.* 14.12.

## 16 Claudia Pulchra AD 26

Tac. *Ann.* 4.52; 4.66.1; Suet. *Tib* 53.1; Dio 59.19.1.

PIR<sup>2</sup> C 1116; RE 3 (1899) 2898–2899 Claudius no. 434.

Rutledge (2001) 142–144, 221; Barrett (1996) 34–35, 36, 78; Bauman (1992) 147–49; Gager (1992) 254; Marshall (1990) no. 9; Martin and Woodman (1989) 215–217; Syme (1986) 147, 149, 15, 327; Cramer (1954) 105, 256–257; Rogers (1952) 299–300; (1935) 92–93, 193; (1931) 153–154.

Widow of P. Quintilius Varus,<sup>1048</sup> whose career included the offices of *consul ordinarius* for 13 BC, proconsul of Africa from 8–7 BC, and *legatus Augusti pro praetore* in Syria from 7/6 to 5/4 BC. She was daughter of M. Valerius Messala Barbata Appianus (*cos.* 12 BC) and Claudia Marcella the Younger (niece of Augustus). She was aunt of Valeria Messalina (Claudius' third wife), and cousin of Agrippina the Elder (granddaughter of Augustus). This list shows her impressively close connections to the imperial family and makes her accusation and conviction all the more shocking and significant. Her close ties to the imperial family also give credence to the theory that hers was a politically motivated trial, a theory discussed more fully in the context of Agrippina the Elder.

During the 20s AD, Sejanus was in the height of his power and many important personages were eliminated by his ambitious and ruthless manoeuvres. In AD 26, Tacitus reports that Claudia Pulchra was accused as part of Sejanus' machinations that were intended to lead to the extermination of Agrippina.<sup>1049</sup> Her actual accuser was one Domitius Afer, called a *delator* (informer).<sup>1050</sup> The charges were *impudicitia* (Furnius was named as her

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<sup>1048</sup> PIR<sup>2</sup> Q 30; this is the famous Quintilius Varus who died with three legions in the Teutoberg forest in Germany in AD 9. Their son, also Quintilius Varus (PIR<sup>2</sup> Q 29), was an orator but not, it seems, a politician; he was betrothed to Julia Livilla, no. 34, sister of Caligula. There is no word in PIR as to whether they actually married. See also Bauman (1992) 147 on the family of Claudia Pulchra.

<sup>1049</sup> *Ann.* 4.52.1; see also Bauman (1992) 147.

<sup>1050</sup> PIR<sup>2</sup> D 126; Rutledge (2001) 220–223. Afer had been praetor the year before, and went on to become consul in 39. He prosecuted Pulchra's son in the following year (*Ann.* 66.1). He was widely regarded as one of

lover<sup>1051</sup>), poisoning, and aiming curses at the princeps. Before the trial began, Agrippina – inflamed by the danger to her friend and relative – approached Tiberius and railed at the unfairness of the attack on Pulchra, whose only error was in being a friend to her.<sup>1052</sup> Tacitus is at pains to relate this tale in some detail, fulfilling his own narrative purposes in showing the actions and intentions of Sejanus, and foreshadowing the downfall of both Agrippina and Sejanus himself. Agrippina’s passionate (and private) defense of her friend was unhelpful and both Pulchra and Furnius were condemned.<sup>1053</sup> Their specific punishment is not mentioned; likely it was *relegatio* (exile and confiscation of property).<sup>1054</sup>

The vague accusation of *impudicitia* seems to be a Tacitean euphemism for a charge of *stuprum*, which falls into the same category of sexual misconduct as the more common charge of adultery.<sup>1055</sup> Pulchra, of course, could not be charged with adultery because she was a widow, but clearly there was some impact involved in a charge of sexual misconduct.

The other charges of *veneficia in principem et devotiones* (poisoning and curses at the emperor) seem to have generated rather less concern than one might have expected. If Tiberius had seriously believed that Pulchra had attempted to poison him, the charges against her would likely have been inflated to treason. The frequency of treason trials during his reign shows that Tiberius had no aversion to treason trials, and there is no reason to believe

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the most successful orators of his generation, though while Quintillian praised his humourous wit (5.3.72), Tacitus questioned his morality (*Ann.* 4.52.4 and 14.19).

<sup>1051</sup> PIR<sup>2</sup> F 589; Furnius is otherwise unknown.

<sup>1052</sup> Tac. *Ann.* 4.52.2–3; Rogers (1935) 193; on the topic of the *partes Agrippinae*, see Bauman (1992) 144–149 and 153–156 and elsewhere in this work under Agrippina the Elder, Sosia Galla and Aquilia.

<sup>1053</sup> Tac. *Ann.* 4.52.3.

<sup>1054</sup> Bauman (1992) 148; see Bauman (1996) 32–35 on *relegatio* as the standard punishment for adultery.

<sup>1055</sup> Alternatively, the word *impudicitia* may have been used by Afer himself and Tacitus merely prolonged the euphemism. Either way, there is no formal charge of *impudicitia*, so the official charge must have been *stuprum*, so Bauman (1992) 147. Dig. 48.5.6.1 confirms that the *lex Julia de adulteriis* refers to adultery and *stuprum* indiscriminately, and that both are punishable under this law.

that he would have held back because Pulchra was a relative (in fact, he had not protected Aemilia Lepida AD 20 or Appuleia Varilla AD 17).

On a larger political scale, the ramifications of this trial are found in the ongoing battle between Sejanus and Agrippina.

### 17 Cloatilla AD 42

Quint. *Or.* 8.5.16; cf. 9.2.20, 9.3.66, 9.4.31.

PIR<sup>2</sup> C 1149.

Rutledge (2001) 165, 222; Marshall (1993) 17–27; Rogers (1945) 264–270.

Wife of a convicted member of the conspiracy of Scribonianus against Claudius in 42. She was charged with burying her husband's body, an action for which permission would have been required.<sup>1056</sup> She had either failed to ask permission or defied its refusal and so had incurred indictment. The precise charge against her is likely to have been *maiestas*.<sup>1057</sup> The closest comparanda is the case of Vitia in 32, accused of mourning for her son who had been convicted of *maiestas*; she was executed.<sup>1058</sup> Cloatilla, however, was pardoned by Claudius (*Cloatillam ... remiserat Claudius*), whether as an actual trial verdict or an exercise of imperial clemency is unknown.<sup>1059</sup>

### 18 Cornelia AD 39

Dio 59.18.4; Tac. *Hist.* 1.48.8; Plut. *Galba* 12.1.

PIR<sup>2</sup> C 1479; RC 273; RE 4.1 (1901) 1598 Cornelius no. 424.

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<sup>1056</sup> Quint. 8.5.16; Tac. *Ann.* 6.23.1; Dig. 48.24.1 (Ulpian); Rogers (1945) 266.

<sup>1057</sup> Marshall (1993) 26–27 suggests that a charge of unlawful burial could have been appended to a *maiestas* charge.

<sup>1058</sup> Vitia, no. 58.

<sup>1059</sup> Quint. 8.5.15.

Rutledge (2001) 353 n. 100; Marshall (1990) no. 27; (1984–1986) 172; Barrett (1989) 100–101; Syme (1986) 298; Rogers (1935) 138–140.

Wife of Gaius Calvisius Sabinus (cos 26), who had barely escaped the post-Sejanian reprisals.<sup>1060</sup> She had travelled with her husband to his proconsular governor's post in Pannonia in 36 and both Tacitus and Dio record that Cornelia conducted herself inappropriately in the army camps, making the rounds of the sentries and inspecting the troops.<sup>1061</sup> This description would undoubtedly remind the reader of the actions of Agrippina in Germany and Plancina in Syria, both of whom came to bad ends.<sup>1062</sup> But Cornelia allegedly went further than her predecessors: "she dared to commit *stuprum* right in the legionary headquarters;" (*in ipsis principiis stuprum ausa*).<sup>1063</sup> Titus Vinius was charged as a participant in this crime and was, by Caligula's direct orders, loaded with chains. There is no reason given for the unusual punishment, but after the death of Caligula, he was restored to favour and enjoyed notable career advancement under Claudius.<sup>1064</sup> There is no record that Cornelia faced formal charges of adultery, and she was still married to Sabinus when they returned to Rome in the summer of 39 and faced a new indictment. The accusation against them seems to have been *maiestas*.<sup>1065</sup> If the earlier tale of sexual misconduct was intended to distract attention from an underlying political offense, then her presence in the legionary headquarters may be interpreted as participation in an attempt to suborn the Pannonian

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<sup>1060</sup> Sabinus (husband): PIR<sup>2</sup> S 354; he had been indicted for *maiestas* in 32, but the case seems to have been dismissed, Tac. *Ann.* 6.9; Rutledge (2001) 98–99.

<sup>1061</sup> Tac. *Hist.* 1.48; Dio 59.18.4. Tacitus adds the detail that she had actually disguised herself as a soldier.

<sup>1062</sup> Agrippina, no. 6, Tac. *Ann.* 1.69; Plancina, no. 42, Tac. *Ann.* 2.55.6.

<sup>1063</sup> Tac. *Hist.* 1.48.2.

<sup>1064</sup> Tac. *Hist.* 1.48.3: held the praetorship, commanded a legion, then was proconsular governor of Gallia Narbonensis and a close friend of Galba, with whom he was murdered in 69.

<sup>1065</sup> So Rutledge (2001) 353 n. 100, Rogers (1935) 148; Talbert (1984) includes Sabinus in a list of governors who faced *repetundae* charges, but admits that the accusation is uncertain in this case.

legions.<sup>1066</sup> Sabinus' offenses are not recorded. Both Cornelia and Sabinus committed suicide before the trial began.<sup>1067</sup>

### 19 Domitia Lepida AD 54

Tac. *Ann.* 12.64–65; Suet. *Nero* 7.1.

PIR<sup>2</sup> D 180; RC 326; RE 5.1 (1903) 1511–1513 Domitius no. 102.

Holland (2000) 58–59; Barrett (1996) 45–46, 50, 104, 137–138; Bauman (1992) 185–186; Gager (1992) 255; Marshall (1990) no. 37.

Daughter of L. Domitius Ahenobarbus and Antonia the Elder, and thus granddaughter of Augustus' sister Octavia; wife of Messala Barbatus, to whom she bore Valeria Messalina who was destined to become the wife of Claudius and mother of Britannicus and Octavia; later, wife of Faustus Cornelius Sulla, to whom she bore a son of the same name.<sup>1068</sup> Her third husband, consular C. Appius Junius Silanus had been acquitted on *maiestas* charges in 32, and went on to be governor of Hispania Citerior before being assassinated in 42.<sup>1069</sup>

The charges against Lepida were twofold, and well known to have been laid at the behest of Agrippina.

*ceterum obiecta sunt, quod coniugem principis devotionibus petivisset, quodque parum coercitis per Calabriam servorum agminibus pacem Italiae turbaret.*

But the accusations thrown at her were that she had attacked the princeps' spouse [Agrippina] with incantations (curses), and that she was disrupting the peace of Italy because she had too little control over her columns of slaves throughout Calabria.<sup>1070</sup>

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<sup>1066</sup> Barrett (1989) 101; Simpson (1980) 358 suggests that the crime may have been limited to lowering the morale of the Pannonian legions and allowing discipline to grow lax. This in itself is a serious charge given the Pannonian mutinies twenty years previously.

<sup>1067</sup> Dio 59.18.4.

<sup>1068</sup> Barrett (1996) 233.; Ahenobarbus, PIR<sup>2</sup> D 128; Antonia, PIR<sup>2</sup> A 884; Barbatus, PIR<sup>1</sup> V 88; Sulla, PIR<sup>2</sup> C 1459.

<sup>1069</sup> PIR<sup>2</sup> I 822; Tac. *Ann.* 6.9.3; 11.29.1; imperial freedman Narcissus, Tacitus claims, engineered Silanus' murder.

<sup>1070</sup> Tac. *Ann.* 12.65.1.

Poorly controlled slave gangs would have raised fears of another great slave revolt like those that had troubled the previous century.<sup>1071</sup> The charge of using magical incantations against the life or health of an imperial person would have raised the spectre of *maiestas*, if not the actual charge.<sup>1072</sup> Tacitus' assertion that Agrippina brought charges against Lepida for feminine reasons (*muliebris causis*) can only be a partial explanation; there were real political motives in the struggle for influence over Nero and Britannicus.<sup>1073</sup> Though the two women vied for control of Nero, the more difficult reality was that Lepida was the grandmother of Britannicus. Through her influence, Agrippina feared that Nero's chances of ruling would be compromised, or that cooperation between the two young men would reduce Nero's power. There was also the lingering fear that Britannicus, as an adult, would seek revenge on those who had been involved in the death of his mother. The only male family member to whom overt harm was done in this case was Britannicus. The death of his grandmother removed a powerful protector within the imperial house. The very fact, however, that Lepida was a powerful protector was reason enough for her to be targeted in her own right.

Agrippina authored charges with minimal substance that were calculated to feed into the fears of the time. She even persuaded Nero to testify against his aunt; Suetonius relates that he did this to please his mother because she was doing everything she could to get

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<sup>1071</sup> Barrett (1996) 137–138.

<sup>1072</sup> The charge of *maiestas* was suspended throughout Claudius' reign; Dio 60.3.6; Levick (1990) 119; Bauman (1974) 194–204

<sup>1073</sup> Nero's aunt, the elder Domitia Lepida, had cared for him while Agrippina was in exile from 39–41; Barrett (1996) 137; Suet. *Nero* 6.

Lepida convicted.<sup>1074</sup> Even though Narcissus objected vehemently, Lepida was sentenced to capital punishment.<sup>1075</sup> The execution was duly carried out.

## 20 Epicharis AD 65

Tac. *Ann.* 15.51; 15.57; Dio 62.27.3.

PIR<sup>2</sup> E 72; RE 6.1 (1907) 34.

Rutledge (2001) 167–168; Holland (2000) 184–187, 191–192, 194; Griffin (1984) 166–167;

Freedwoman and member of the Pisonian conspiracy against Nero. She seems to have been fully aware of the conspiracy's members and their plan to remove the emperor. She unsuccessfully tried to recruit Volusius Proculus, the prefect of the fleet at Misenum, and he promptly took the tale to Nero. She had carefully refrained from mentioning any conspirator's names, so when Nero questioned her, she denied his claims.

*accita quippe Epicharis et cum indice composita nullis testibus innisum facile confutavit. sed ipsa in custodia retenta est, suspectante Nerone haud falsa esse etiam quae vera non probabantur.*

So when Epicharis was summoned and confronted with the informer, she easily refuted his statements because they were supported by no witnesses. But she was kept in custody since Nero suspected that the allegations were not false even if they could not be proved true.<sup>1076</sup>

The language suggests a legal proceeding: Epicharis was summoned (*accita*), and her denials were plausible because the informer (*index*) had no witnesses (*nullis testibus innisum*). The circumstances suggest an extra ordinem procedure, in modern parlance, a hearing rather than a trial, perhaps barely differing from an audience with the emperor. Epicharis' imprisonment following the interview implies that investigation into the matter

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<sup>1074</sup> Suet. *Nero* 7.

<sup>1075</sup> Tac. *Ann.* 12.65.2.

<sup>1076</sup> Tac. *Ann.* 15.51.4.

was ongoing and a trial was a possibility, for which her testimony might be relevant. Indeed, soon enough more information about the conspiracy began to surface and more arrests were made.<sup>1077</sup> Nero then ordered that Epicharis be tortured to elicit more evidence. Dio records that praetorian prefect Tigellinus was given this task.<sup>1078</sup> She maintained her denials through the first day of torture and, on the second day, contrived to commit suicide by hanging herself before the torture began again.<sup>1079</sup> Her testimony, though much sought after, was useless in detecting or prosecuting any members of the Pisonian conspiracy.

## 21 Fabia Numantina AD 24

*Tac. Ann.* 4.22.3.

PIR<sup>2</sup> F 78; RC 353; RE 6.2 (1909) 1886–1887 Fabius no. 180.

Dickie (2001) 146–147; Marshall (1990) no. 32; Syme (1986) 417–418; Talbert (1984) 465; Brunt (1972) 166–170; Jones (1972) 134 n. 26; Garnsey (1970) 26; Rogers (1935) 80–81.

Daughter of Paullus Fabius Maximus (cos 11 BC); sister of Paullus Fabius Persicus (cos 34); wife of M. Plautius Silvanus, then of Sextus Appuleius to whom she bore a son of the same name.<sup>1080</sup>

Numantina was charged with driving her ex-husband Silvanus insane by incantations and potions after he threw his second wife Apronia out their bedroom window to her death on the cobbles below.<sup>1081</sup> Silvanus, praetor at the time, was dragged in front of the emperor by his father-in-law L. Apronius and claimed that his wife had leapt from the window of her

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<sup>1077</sup> *Tac. Ann.* 15.52–56.

<sup>1078</sup> Dio 62.27.3; for more on the role of torture in eliciting witness testimony, see chapter 4, *Women as Witnesses*.

<sup>1079</sup> *Tac. Ann.* 15.52.57; Dio 62.27.3.

<sup>1080</sup> Maximus (father): PIR<sup>2</sup> F 47; Persicus (brother): PIR<sup>2</sup> F 51; Plautius (husband): PIR<sup>2</sup> P 479; Appuleius (second husband): PIR<sup>2</sup> A 962; Appuleius (son): PIR<sup>2</sup> A 963.

<sup>1081</sup> *Tac. Ann.* 4.22.

own will. After Tiberius personally determined that her death had been homicide, the case was referred to the senate and Silvanus was charged with murder. When the outcome of the trial was clear, and urged on by his grandmother Urgulania, Silvanus committed suicide.<sup>1082</sup> Numantina's trial followed and resulted in her acquittal.

## 22 Ide AD 19

Tac. *Ann.* 2.85.5; Suet. *Tib.* 36; Dio 57.18.5a; Jos. *AJ* 18.69–71; 18.79.

PIR<sup>2</sup> I 18; RE 9.1 (1914) 880 Ide no. 3.

Marshall (1990) no. 31; Brunt (1972) 166–170; Rogers (1935) 36, 208.

Freedwoman of *eques* Decius Mundus and co-defendant with her patron Mundus and an unknown number of priests of Isis on charges of being accomplices to *stuprum* in connection with Paulina's case.<sup>1083</sup> When Decius Mundus had conceived a passion for the respectable matron Paulina, Ide engineered a deception that allowed Mundus to tryst with Paulina in a temple of Isis in the guise of the Egyptian god Anubis. Upon discovery of the deception, Paulina's senatorial husband, Sentius Saturninus, brought the matter to the attention of the emperor Tiberius. According to Josephus, Tiberius interrogated the priests personally, then ordered crucifixion for both them and Ide.<sup>1084</sup> Mundus' sentence was exile.<sup>1085</sup> The senatorial rank of Paulina and her husband Saturninus, and Tiberius' personal involvement, suggests a senatorial trial over which the emperor presided.<sup>1086</sup>

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<sup>1082</sup> Tac. *Ann.* 4.22.2; Urgulania was a friend of Livia and her opinion was thus taken to be a hint directly from the imperial household; Urgulania, no. 54.

<sup>1083</sup> Paulina, no. 45; Decius Mundus, PIR<sup>2</sup> D 26.

<sup>1084</sup> Jos. *AJ* 18.79

<sup>1085</sup> Jos. *AJ* 18.80.

<sup>1086</sup> Legally, there remains the possibility of an *extra ordinem* proceeding, but the dearth of evidence for such actions in the reign of Tiberius makes this a very slim possibility.

### 23 *Ignota* (Claudian date)

Suet. *Claud.* 43.1.

Suetonius records the verdict of a certain woman found guilty of adultery by Claudius. The context indicates that Claudius personally supervised the trial, which suggests that the woman may have been of rather high status. The trial venue is unknown.

### 24 *Ignota*, mother of Sextus Papinius AD 37

Tac. *Ann.* 6.49.

RC 859; RE 18.3 (1949) Papinius 980 no. 4.

Martin (2001) 189; Marshall (1990) no. 20; (1989) 53; Hallett (1984) 252; Rogers (1935) 164–165.

Wife of Sextus Papinius Allenius (*cos.* 36), mother of Sextus Papinius and another son, possibly bearing the same name.<sup>1087</sup> After her son Sextus committed suicide, the blame was assigned to her because she had coaxed him into extreme luxuriousness and had driven him to the sort of activities from which death was his only escape.<sup>1088</sup> Her trial was held in the senate (*accusata in senatu*) and she was exiled for ten years (*urbe in decem annos prohibita est*).<sup>1089</sup> Although the charges are unrecorded, viable options are *de iniuria*, *atrox iniuria* or an *extraordinem crimen*.<sup>1090</sup> Tacitus records, in *oratio obliqua*, a brief speech by the defendant in the senate. She groveled at the fathers' knees and referred to a parent's grief, a woman's weaker mind under such circumstances, and made other pitiful pleas for

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<sup>1087</sup> Sex. Papinius Allenius (father): PIR<sup>2</sup> P 102; Sex. Papinius (son): PIR<sup>2</sup> P 100; Sex. Papinius (brother): PIR<sup>2</sup> P 101; see Syme (1958) 543 with n. 6 on the family.

<sup>1088</sup> Tac. *Ann.* 6.49.1.

<sup>1089</sup> Tac. *Ann.* 6.49.2.

<sup>1090</sup> Rogers (1935) 164–165, referring to Dig. 47.10.9.4 (Ulpian) and Dig. 47.11.1 (Paul) = Paul 5.4.5 and 14.

sympathy.<sup>1091</sup> The tone and character of this speech does not indicate that it was formal witness testimony.<sup>1092</sup>

## 25 *Ignota*, sister of Firmius Catus AD 24

Tac. *Ann.* 4.31.7

RC p. 16 n. 4; see RE 6.2 (1909) 2380 Firmius no. 2.

Marshall (1990) no. 7; Rogers (1935) 84.

Sister of Firmius Catus and of senatorial rank, she was accused of *maiestas* by her own brother. Catus had established a reputation as an informer when he, along with a number of other disreputable informers, initiated charges against Scribonius Libo Drusus in 16.<sup>1093</sup> The charges concerned consulting astrologers and revolutionary intentions (*moliri res novas*), likely including an imperial assassination plot.<sup>1094</sup> After his conviction, Libo's property was divided amongst the accusers and Tiberius was so grateful to have evaded the threat that Catus was rewarded with a praetorship.<sup>1095</sup> Eight years later, when he accused his own sister of *maiestas*, the clear lack of evidence resulted in charges of *calumnia* (malicious prosecution) against Catus.<sup>1096</sup> He was convicted, expelled from the senate and exiled.<sup>1097</sup> Tiberius objected to the exile, but did not override the senate's decision. Catus' sister, exonerated and free, disappears again from the historical record.

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<sup>1091</sup> Tac. *Ann.* 6.49.2.

<sup>1092</sup> See also chapter 4, *Women as Witnesses*.

<sup>1093</sup> PIR<sup>2</sup> F 158; Rutledge (2001) 232; Rogers (1935) 13–20. Libo's other accusers were L. (or C.?) Fulcinus Trio, Fonteius Agrippa, C.(?) Vibius Serenus and unnamed others.

<sup>1094</sup> Rutledge (2001) 158–160; Rogers (1935) 14–19.

<sup>1095</sup> Tac. *Ann.* 2.32.1; extraordinary praetorships were also given to the other accusers who were of senatorial status.

<sup>1096</sup> On *calumnia*, see Berger (1953) 378–379

<sup>1097</sup> Tac. *Ann.* 4.31.4.

## 26 *Ignotae*, women conspirators AD 42

Dio 60.16.1–3.

Marshall (1990) no. 21.

Some women were tried in the senate before Claudius, convicted and executed in the aftermath of the conspiracy headed by Annus Vinicianus and L. Arruntius Camillus Scribonianus.<sup>1098</sup>

μέλλουσαι τε ἀποθνήσκειν, ἐπὶ βῆμα καὶ αὐταὶ ἀνήγοντο δεδεμέναι ὥσπερ αἰχμάλωτοι, καὶ τὰ σώματα καὶ ἐκείνων ἐς τοὺς ἀναβασμοὺς ἐρριπτέιτο.

The women who were about to die were led in chains upon a platform just like captives, and the bodies of these women were thrown out on the Stairway.<sup>1099</sup>

The unknown women's roles in the conspiracy are not stated, but the fact that their bodies were thrown on the Gemonian Stair suggests that they had been convicted of *maiestas*, or possibly even *perduellio*.<sup>1100</sup> Vibia, no. 55, was also punished in the aftermath of this conspiracy.

## 27 Julia, daughter of Augustus 2 BC

Tac. *Ann.* 1.10.4, 1.53, 3.24, 4.44.3; Suet. *Aug.* 19.2, 65, 101.3; *Tib.* 11.4, 50.1; Dio 55.10.12–16, 55.13.1a, 56.32.4; Vell. Pat. 2.100.3–5; Pliny *HN* 7.149, 21.9; Sen. *Clem.* 1.9.6, 1.10.3; *Ben.* 6.32.1–2; *Brev.* 4.6.

PIR<sup>2</sup> I 634; RC 421; RE 10 (1919) Julius 896–906 no. 550.

Fantham (2006) 85–91, 124–146; Barrett (2002) 49–51; Bauman (1992) 108–119; (1974) 13–17; (1967) 198–245; Marshall (1990) no. 30; Raaflaub (1990) 428–430; Syme (1986) 91–92; (1978) 192–198; (1974) 912–936; Lacey (1980) 127–142; Raditsa (1980) 290–295; Levick (1976a) 301–339; (1972) 779–813; Corbett (1974) 91–92; Shotter (1971) 1120–1121; Meise (1969) 3–34; Rogers (1967) 383–390.

<sup>1098</sup> Dio 60.16.3; Vinicianus had been proposed for the throne after Caligula's death and he recruited Scribonianus, then governor of Dalmatia and in command of a large body of troops; see also Suet. *Claud.* 13.2; 35.2; *Otho* 1.2.

<sup>1099</sup> Dio 60.16.1.

<sup>1100</sup> For example, Sejanus and many of his followers and family had been thrown on the Gemonian Stair, Levick (1990) 60; Suet. *Tib.* 61.

Daughter of Augustus and Scribonia; wife of Marcellus, Augustus' nephew; then wife of Agrippa, to whom she bore five children: Gaius, Lucius, Julia, Agrippina, and Agrippa Postumus; then wife of her step-brother Tiberius, who would later be emperor; step-mother to Germanicus and Drusus Caesar.<sup>1101</sup>

The autumn of 2 BC saw the discovery of Julia's many adulteries and her subsequent banishment. The facts known about the events are relatively few. Augustus discovered Julia's adulteries and reacted with fury, even refusing to see visitors for some time.<sup>1102</sup> He notified the senate about her by a letter that was read out by a quaestor. When Julia's freedwoman Phoebe hanged herself, he is reported to have expressed that he would rather have been her father.<sup>1103</sup> He sent a notice of divorce to Tiberius at Rhodes, who in turn petitioned his father-in-law to relent against his daughter and allow her to keep gifts given to her – presumably a reference to her dowry.<sup>1104</sup> He allowed the relegated woman to consume no wine at all, nor any other delicacy, and severely restricted her visitors. After five years and a number of public demonstrations on her behalf, she was moved from the island of Pandateria to a slightly more lenient imprisonment at Regium on the mainland where she stayed until her death in 14.<sup>1105</sup>

The names of five adulterers were recorded by Velleius, the only contemporary source: Iullus Antonius, Quinctius Crispinus, Appius Claudius, Sempronius Gracchus, and Scipio, in addition to other less prominent men of both orders.<sup>1106</sup> These men, he reports, “paid the penalty that men would pay for violating any man's wife, although they had

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<sup>1101</sup> Julia, no. 28; Agrippina, no. 6.

<sup>1102</sup> Suet. *Aug.* 65.2.

<sup>1103</sup> Suet. *Aug.* 65.2; Dio 55.10.16.

<sup>1104</sup> Suet. *Tib.* 11.4.

<sup>1105</sup> Suet. *Aug.* 65.3; *Tib.* 50; Tac. *Ann.* 1.53.1.

<sup>1106</sup> Vell. Pat. 2.100; Macrobius *Sat.* 1.11.7 records that a certain Demosthenes, about whom nothing else is known, was another of Julia's adulterers.

violated Caesar's daughter and Tiberius Nero's wife;" *quas cuiuslibet uxore violata poenas pependissent, pependere, cum Caesaris filiam et Neronis violassent coniugem.*"<sup>1107</sup> Iullus Antonius was the son of M. Antonius and Fulvia and was married to Augustus' niece, Marcella; he held the consulship in 10 BC and was proconsular governor of Asia.<sup>1108</sup> He was quite plausibly a political threat, as Seneca quips: *iterum timenda cum Antonio mulier*; "once again [there was] the threat of a woman allied with an Antonius."<sup>1109</sup> No trial is described or even mentioned, but Iullus died as a result of the events of 2 BC, either suicide (according to Velleius) or execution (according to Tacitus and Dio).<sup>1110</sup> Sempronius Gracchus was a *pervicax adulter*, "persistent adulterer," also known as a writer of tragedies and of a contumacious letter to Tiberius co-signed by Julia; he is not known to have held high magisterial office.<sup>1111</sup> He was banished to the island Cercina where he lived for fourteen years until his death.<sup>1112</sup> Quinctius Crispinus had been consul in 9 BC; Velleius provides the colourful description that he hid his extraordinary depravity behind a stern brow (*singularem nequitiam supercilio truci protegens*).<sup>1113</sup> Of the remaining adulterers, Appius Claudius and Scipio, nothing is known other than their banishment.

While the sources are clear that adultery brought about Julia's disgrace and downfall, none reveal any details about the legal means of her banishment. Augustus is known to have sent a letter to the senate, then Julia is known to be imprisoned at Pandateria, and the men

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<sup>1107</sup> Vell. Pat. 2.100; see also Syme (1978) 56.

<sup>1108</sup> Vell. Pat. 2.100; PIR<sup>2</sup> A 800

<sup>1109</sup> Sen. *Vit.* 4.6, is clearly a reference to the threat of Cleopatra when she was allied with Iullus' father M. Antonius during the triumviral period.

<sup>1110</sup> Vell. Pat. 2.100.4; Tac. *Ann.* 4.44.3: *Iullo Antonio ... punito morte*; Dio 55.10.15.

<sup>1111</sup> Tac. *Ann.* 1.53.3–6; PIR<sup>1</sup> S 265; Gracchus' adultery with Julia began when she was still married to Agrippa, who had died a decade earlier. He was a descendant of the famous tribunes Gracchi (133 and 123 BC), Syme (1986) 91.

<sup>1112</sup> Tac. *Ann.* 1.53.4; after fourteen years of exile, soldiers came to kill him, sent either by Tiberius or L. Asprenas, proconsul of Africa.

<sup>1113</sup> Vell. Pat. 2.100.5; EJ p. 37.

named were similarly punished. What happened in between? Although there was a *quaestio de adulteriis* – set up by Augustus himself – it seems clear that she was not prosecuted by a formal trial, either in the *quaestio* or in the senate.<sup>1114</sup> First, an admitted argument *ex silentio*: there is no record in the sources of a trial. Surely a sensational trial that would have generated the ancient equivalent of a media circus could not have been overlooked and unrecorded by every writer of the time, including Velleius whose eye-witness record survives! Secondly, the sources more than once lapse into simple third person singular verbs suggesting that Augustus had been directly in charge of the punishments assessed; Seneca is most blunt: *divus Augustus filiam ... relegavit*; “Divus Augustus relegated his daughter.”<sup>1115</sup> Third, a full senatorial trial would have dramatically heightened the public exposure and attention paid to Julia, and by extension, to her father. Augustus’ desire to minimize the attention drawn by his daughter’s disgrace is revealed by his later comment that he regretted that he had not suppressed the scandal and concealed the events in silence.<sup>1116</sup> In the absence of a formal senatorial trial, there must have been another means by which Julia and her adulterers were condemned. Trials by *cognitio extra ordinem* or by domestic tribunal are almost equally plausible and the fragmentary evidence gives no substantive reason to prefer one over the other.<sup>1117</sup>

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<sup>1114</sup> Fantham (2006) 86. Scholarly consensus has not been attained on the subject of whether there were actually trials or not. The underlying problem is how to define a trial – was an *extra ordinem* procedure still a trial? Was a domestic tribunal still a trial? If we deny all legal proceedings, then we are forced to conclude that the banishment of Julia and her lovers and the death of Antonius took place completely outside the law. This conclusion is implausible in the highest degree. Bauman (1992) 108 and Syme (1974) 928 both conclude that there were trials, but do not engage the question of venue or procedure.

<sup>1115</sup> Sen. Ben. 6.32; see also Suet. Aug. 64: *Iulias ... relegavit*; Tac. Ann. 4.71 (on the younger Julia): *Augustus convictam adulterii damnavit*.

<sup>1116</sup> Sen. Ben. 6.32.

<sup>1117</sup> Bauman (1967) 198–245 discusses in detail the legal mechanisms that underlie this situation. See esp. 203–204: some authorities believe that Julia and her lovers were punished in Augustus’ domestic tribunal (Hausgericht); 231–233: Bauman argues that they were prosecuted in a criminal court over which the emperor himself presided (Kaisergericht).

A final question remains: was adultery the only charge or was there also an accusation of conspiracy? The assessed penalties of exile would have been appropriate to either adultery or *maiestas* charges; only the possible execution of Iullus Antonius would supercede the statutory penalty for adultery. Seneca writes that Julia and her senatorial lovers were *adulterio velut sacramento adacti*; “bound by adultery as if by an oath.”<sup>1118</sup> The word *sacramentum* was cleverly chosen; it is also used to describe a soldier’s oath to his commander. Pliny goes even farther, writing of *consilia parricidae palam facta*; “open plans made for parricide.”<sup>1119</sup> No other historian until Dio resurrects these ideas, but he limits the blame to Iullus Antonius, saying: ὡς καὶ ἐπὶ τῇ μοναρχίᾳ τοῦτο πράξας, ἀπέθανε, “he was put to death on the grounds that he had done this [i.e. adultery with Julia] to obtain the monarchy.”<sup>1120</sup> Pliny’s report of open plans for parricide “might be dismissed as a scandalous and trivial notion.”<sup>1121</sup> Against the hypothesis of a conspiracy stands the silence of Tacitus and Suetonius; especially revealing is the fact that the names of Iullus Antonius or any other member of this group were not recorded in Suetonius’ list of those who conspired against Augustus.<sup>1122</sup> There is no evidence of a the customary *senatusconsultum* decreeing a thanksgiving when a conspiracy had been suppressed.<sup>1123</sup> Furthermore, it is incomprehensible that Tiberius, languishing in his Rhodian exile, would have written letters to Augustus in support of leniency for a treasonous wife. Not only would it have been illogical to promote the safety of Julia if she was guilty of conspiracy, but it would also demonstrate disloyalty on Tiberius’ part. Perhaps most insurmountable: why would Julia enter into a conspiracy to

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<sup>1118</sup> Sen. *Vit.* 4.6.

<sup>1119</sup> Pliny *HN* 7.149.

<sup>1120</sup> Dio 55.10.15.

<sup>1121</sup> Syme (1986) 91; similarly Fantham (2006) 87.

<sup>1122</sup> Suet. *Aug.* 65.2; 19.1.

<sup>1123</sup> Bauman (1967) 201.

seize power at the expense of her own sons?<sup>1124</sup> An oblique comment of Tacitus' may illuminate.

*nam culpam inter viros ac feminas vulgatam gravi nomine laesarum religionum ac violatae maiestatis appellando clementiam maiorum suasque ipse leges egrediebatur.*

By calling a sin common among men and women by the solemn name of injured religious principle and violated *maiestas*, he superseded the clemency of our ancestors and his own laws.<sup>1125</sup>

The common crime of adultery was now being called *impietas et maiestas* and Augustus exceeded the scope of his own adultery laws by introducing allegations of *maiestas*.<sup>1126</sup> Since the idea of a treasonous conspiracy has been considered and dismissed, the concept of *maiestas* raised must be of somewhat different definition; this was the newly developing *maiestas* of the emperor himself.<sup>1127</sup> The much-heralded grant of the title *Pater Patriae* to Augustus in 2 BC gave full official recognition to the personal *maiestas* that Augustus had been assiduously building for more than thirty years. In light of this new title, he could not ignore Julia's scandalous conduct, and since her paramours had failed to uphold their sworn duty of respect towards a member of the imperial house, they had injured Augustus as *sacrosanctitas* and now as the universal *pater*.<sup>1128</sup>

Julia died in exile at Regium in 14, within a few months of her former husband's ascent to the imperial throne. Tiberius had even intensified the conditions of her imprisonment in those last months, forbidding her to leave her house or enjoy human contact. He discontinued the allowance and annual revenue that Augustus had provided for her, using

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<sup>1124</sup> Fantham (2006) 87.

<sup>1125</sup> Tac. *Ann.* 3.24.2.

<sup>1126</sup> Bauman (1967) 202; see also Syme (1974) 928.

<sup>1127</sup> Bauman (1967) 239.

<sup>1128</sup> Bauman (1967) 240–241; he notes the empire-wide oaths of loyalty sworn by all citizens – including Julia's paramours.

the civil law as a pretext, because there was no provision for it in his will.<sup>1129</sup> Tiberius allegedly calculated that her death would pass unnoticed because she had been in exile for so long.<sup>1130</sup> Nor was there a resting place in Augustus' mausoleum for her; by the terms of her father's will, she was denied burial there.<sup>1131</sup>

## 28 (Vipsania) Julia, granddaughter of Augustus AD 8

*Tac. Ann.* 3.24.2; 4.71.4; *Suet. Aug.* 64–65; *Claud.* 26.1; *Pliny HN* 7.149; *Schol. Juv.* 6.158.

PIR<sup>2</sup> I 635; RC 813; RE 10 (1919) Julius 906–908 no. 551

Fantham (2006) 108–116; Bauman (1992) 119–124; (1967) 198–206, 231–233, 242–245; Syme (1986) 115–127; Talbert (1984) 460; Levick (1979) 377; (1976a) 301–339; Meise (1969) 35–48; Allison and Cloud (1962) 720–721.

Daughter of Julia and Agrippa, therefore granddaughter of Augustus; sister of Gaius, Lucius, Agrippina, and Agrippa Postumus; wife of L. Aemilius Paullus, to whom she bore a daughter, Aemilia Lepida.<sup>1132</sup>

The younger Julia's demise came about in much the same way as her mother's and was inevitably linked in historical accounts though the sources are even more fragmentary and cursory when referring to the younger Julia. She, too, was accused of adultery and was banished to Trimerus where she lived until her death in 29, apparently supported all the while by her step-grandmother Livia.<sup>1133</sup> Julia's husband L. Aemilius Paullus was condemned at the same time as his wife, but apparently on charges of conspiracy. He is included in

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<sup>1129</sup> *Suet. Tib.* 50.

<sup>1130</sup> *Tac. Ann.* 1.53.2.

<sup>1131</sup> *Suet. Aug.* 101.

<sup>1132</sup> Paullus (husband): PIR<sup>2</sup> A 391; Aemilia Lepida (daughter): PIR<sup>2</sup> A 419.

<sup>1133</sup> *Tac. Ann.* 4.71.4. Although the scholiast on Juvenal 6.158 alleges that Julia was relegated, then allowed to return, and finally sentenced to perpetual exile, this conflicts with the information given by the more reliable Suetonius, *Claud.* 26.1. Claudius, *admodum adulescens*, had to forfeit his betrothed Aemilia Lepida because her parents (Julia and Lepidus) had offended Augustus; he reached the age of seventeen on 1 August 8.

Suetonius' list of conspirators against Augustus in conjunction with Plautius Rufus.<sup>1134</sup> Nothing more is known about their conspiracy. Julia bore a child while in exile and Augustus refused permission for the child to be acknowledged or raised.<sup>1135</sup> There is no way to know if the child had been fathered by a lover or by her husband. Suspicions that it was the product of adultery or knowledge of its father's conviction for conspiracy are equally plausible motives for refusing to raise the child.

Only one lover is named, D. Junius Silanus; he felt the sting of Augustus' *renuntio amicitiae*, interpreted it prudently, and withdrew into voluntary exile.<sup>1136</sup> There was clearly, then, no trial for him. His powerful brother Marcus Silanus waited until Augustus was dead before requesting clemency for his brother. After the senate gave its approval for Silanus' return from exile, Tiberius replied carefully that his return was permissible because he had not been banished by a law or a decree of the senate but that he would maintain his parent's offense.<sup>1137</sup> Silanus then disappears from the historical record.

The poet Ovid seems to have been somehow involved and was also relegated in the same year, but was allowed to keep all his property.<sup>1138</sup> The reasons are obscure, and Ovid's own hints provide only minimal help. He speaks of *duo crimina, carmen et error*, "two crimes, a poem and a mistake."<sup>1139</sup> The problematic poem is generally agreed to be the *Ars Amatoria*, but the eight year gap between its publication and its author's punishment remains inexplicable. Ovid is at pains to avoid specificity in referring to the *error* because discussion will reopen the initial wound inflicted on Augustus, but he insists that it had nothing to do

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<sup>1134</sup> Suet. *Aug.* 19.1: *exin Plauti Rufi Lucique Pauli progeneri sui*, "then [the conspiracy] of Plautius Rufus and Lucius Paullus, his own granddaughter's husband."

<sup>1135</sup> Suet. *Aug.* 65.4.

<sup>1136</sup> Tac. *Ann.* 3.24.5; PIR<sup>2</sup> I 826.

<sup>1137</sup> Tac. *Ann.* 3.24.5.

<sup>1138</sup> Ovid *Trist.* 2.137–138.

<sup>1139</sup> Ovid *Trist.* 2.207.

with external treason or conspiracy, nor verbal injury, nor indeed with the contravention of any law.<sup>1140</sup> He was punished without trial: *nec mea decreto damnasti facta senatus, nec mea selecto iudice iussa fuga est*, “my actions have not been condemned by a decree of the senate, nor is my exile by the order of a selected judge.”<sup>1141</sup> Whatever his *error*, it was too far removed to be tried as *maiestas*, even the newly conceived personal *maiestas* of Augustus, so it was dealt with extra-judicially.

After Julia died in 29, her remains were refused burial in Augustus’ mausoleum in accordance with the terms of his will.<sup>1142</sup> Her only surviving progeny was a daughter, Aemilia Lepida, who eventually married M. Junius Silanus Torquatus with whom she had several children: M. Silanus, D. Silanus Torquatus, L. Silanus, Junia Lepida, and Junia Calvina.<sup>1143</sup> This family suffered greatly from the prosecutorial activities of the younger Agrippina.<sup>1144</sup>

## 29 Julia, daughter of Drusus and Livilla 43

Tac. *Ann.* 13.32.5, 43.2; Suet. *Claud.* 29.1; Dio 60.18.4; Sen. *Apoc.* 10.4, 13.5; *Octavia* 944–946.

PIR<sup>2</sup> I 636; RC 422; RE 10.1 (1918) 908–909 Julius no. 552.

Rutledge (2001) 112, 148, 298; Barrett (1996) 87; Bauman (1992) 171; Levick (1990) 56, 118; Meise (1969) 143.

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<sup>1140</sup> Ovid *Trist.* 2.51–52; 2.208–210; 3.5.44–48; *Pont.* 2.9.71.

<sup>1141</sup> Ovid *Trist.* 2.131–132.

<sup>1142</sup> Suet. *Aug.* 101.

<sup>1143</sup> Silanus (husband): PIR<sup>2</sup> I 839; Marcus (son): PIR<sup>2</sup> I 833; Decimus (son): PIR<sup>2</sup> I 837; Lucius (son) PIR<sup>2</sup> I 829; Lepida (daughter), no. 31; Calvina (daughter), no. 30.

<sup>1144</sup> See chapter 3, Women *pro accusatoribus*.

Daughter of Drusus and Livilla, therefore granddaughter of Tiberius; wife of Nero Caesar, son of Germanicus; betrothed to Aelius Sejanus; wife of Rubellius Blandus, to whom she bore Rubellius Plautus, two other sons, and a daughter.<sup>1145</sup>

Messalina was alleged to have caused Julia's demise on unknown charges.<sup>1146</sup> Julia is known as one of the people whom Suillius prosecuted, and Suillius is known as Messalina's prosecutor.<sup>1147</sup> She may have been accused on moral grounds, but the charges remain uncertain.<sup>1148</sup> Suetonius includes Julia in a list of defendants executed on unsupported charges and without the chance to plead in self-defense.<sup>1149</sup> She committed suicide in 43 (*ferro ... caesa est*).<sup>1150</sup> She seems to have been a friend of Pomponia Graecina whom Tacitus reports as wearing mourning for forty years after Julia's death.<sup>1151</sup>

Julia's three sons were a potential rivals to Messalina's son Britannicus; all the boys were descended from Augustus in exactly the same degree. At the time of Julia's demise in 43, however, all the boys were very young, and it was by no means guaranteed that any of them would reach adulthood.<sup>1152</sup> It is anachronistic to import into Claudian times later Neronian fears about Julia's son Rubellius Plautus as a focus for sedition.<sup>1153</sup> Julia's demise

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<sup>1145</sup> Drusus: PIR<sup>2</sup> I 219; Livilla: PIR<sup>2</sup> L 303, no. 35; Nero Caesar (husband): PIR<sup>2</sup> I 223; for her betrothal to Sejanus, see Dio 58.3.9; Blandus (husband): cos 18, PIR<sup>2</sup> R 111; Plautus (son): PIR<sup>2</sup> R 115; on Julia's marriage to Blandus and her other children, see Syme (1982).

<sup>1146</sup> Dio 60.18.4; Tac. *Ann.* 13.32.5, 43.2; see also chapter 3, *Women pro accusatoribus*.

<sup>1147</sup> Rutledge (2001) 148, 271.

<sup>1148</sup> Sen. *Octavia* 944–946; Levick (1990) 56.

<sup>1149</sup> Suet. *Claud.* 29.1.

<sup>1150</sup> Sen. *Octavia* 944–946; Dio 60.18.4.

<sup>1151</sup> Tac. *Ann.* 13.32.3; Pomponia Graecina, no. 48.

<sup>1152</sup> Britannicus was born three weeks after Claudius became emperor in 41; Suet. *Claud.* 27.2. There were four children (three sons) born to Julia and Blandus after their marriage in 33; Tac. *Ann.* 6.27.1; Syme (1982) 62, 78. The eldest son could have been as many as seven years older than Britannicus; nine years old at most, therefore, when his mother Julia died in 43.

<sup>1153</sup> Tac. *Ann.* 14.22; 14.57–59; contra Rutledge (2001) 148 and Levick (1990) 56.

was temporally proximate to that of praetorian prefect Catonius Justus, there is no other evidence of a connection between the two.<sup>1154</sup>

### 30 Junia Calvina AD 49

Tac. *Ann.* 12.4; 12.8.1; Sen. *Apoc.* 8.4; cf. Sen. *Oct.* 147–149; Suet. *Claud.* 29.2; Dio 61.31.8.

PIR<sup>2</sup> I 856; RC 469; RE 10.1 (1918) 1111–1112 Iunius no. 198.

Holland (2000) 45–46; Bauman (1992) 180; Syme (1986) 186.

Daughter of M. Junius Silanus and Aemilia Lepida,<sup>1155</sup> sister of Junia Lepida, L. Junius Silanus, M. Junius Silanus (cos 46) and D. Junius Silanus Torquatus, and wife of L. Vitellius (cos 48).<sup>1156</sup>

Calvina faced charges of incest with her brother L. Junius Silanus at the instigation of Agrippina the Younger on the eve of her marriage to the emperor Claudius. According to Tacitus, Agrippina was determined to break the betrothal between L. Junius Silanus and Claudius' daughter Octavia so as to promote her own son Nero as an appropriate husband for the emperor's daughter.<sup>1157</sup> Tacitus and Seneca imply that the charges were fabricated; Suetonius and Dio mention no charges at all.<sup>1158</sup>

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<sup>1154</sup> Bauman (1992) 171; see also chapter 3, Women *pro accusatoribus*. Bauman's speculation that Julia was hoping to replace Messalina as Claudius' wife is not persuasive. Her husband Blandus was still alive, though divorce was easily enough achieved. The proposed marriage of emperor and niece (in this case by adoption, not by blood) seems to anticipate Agrippina's ambitions rather than stand on its own merit. Julia, a rather younger woman, seems not to have possessed similar political acumen and force of character as her cousin Agrippina who successfully manipulated circumstances to achieve marriage to her uncle (including changes in the law to allow it) and primacy for her son. The fact that she had reported to her mother (who reported to Sejanus) her husband Nero's words and actions may contain a hint of political ability, but may also be the naïve actions of a young woman anxious to talk to her mother; Tac. *Ann.* 4.60.2; Bauman (1992) 149.

<sup>1155</sup> PIR<sup>2</sup> I 839, *cos.* 19; PIR<sup>2</sup> A 419.

<sup>1156</sup> Respectively, sister: PIR<sup>2</sup> I 861, no. 31; brothers: PIR<sup>2</sup> I 829, PIR<sup>2</sup> I 833, PIR<sup>2</sup> I 837, and husband: PIR<sup>1</sup> V 501.

<sup>1157</sup> Tac. *Ann.* 12.4.2; Bauman (1992) 180.

<sup>1158</sup> Tac. *Ann.* 12.4.2; Sen. *Octavia* 147–149; Suet. *Claud.* 29.2; Dio 61.31.8.

Silanus knew nothing about the charges, according to Tacitus, until he was suddenly expelled from the senate on December 29, 48, by an edict of the censor Vitellius, father-in-law of Junia Calvina.<sup>1159</sup> His accusers were waiting.<sup>1160</sup> The outraged father-in-law Vitellius acted quickly to force a divorce between his son and Junia Calvina, and to register the incest charges formally. All these events took place in the short time between December 29, 48 and the wedding of Agrippina and Claudius at the beginning of 49. On the day of the marriage of Claudius and Agrippina, Silanus committed suicide.<sup>1161</sup> He had waited until then on the hope that he might still survive the charges, or with the intent of increasing public ill-feeling toward the imperial couple.<sup>1162</sup>

Although there is no explicit statement in Tacitus, Junia Calvina must have proceeded to trial in the Senate. Newly divorced, she was banished from Italy.<sup>1163</sup> Whether her punishment was the *relegatio* imposed under the Julian adultery law, or the more severe *deportatio*, is unclear.<sup>1164</sup> After her departure, Claudius, as *pontifex maximus*, performed expiatory sacrifices to clear the taint of the incest.<sup>1165</sup> Ten years later, after Agrippina's death

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<sup>1159</sup> According to Tac. *Ann.* 12.4, Silanus was praetor that year (AD 48). Because charges could not be filed against a magistrate in office (Buckland [1937] 37, following Mommsen, *Staatsrecht* i<sup>3</sup>, 705), Vitellius used his censorial power to remove Silanus from the Senate and from his magisterial office; Tac. *Ann.* 12.4. cf. Dio 60.15.5 where a praetor was made to resign his office to face charges authored by Messalina (AD 42).

<sup>1160</sup> Suet. *Claud.* 29.1–2.

<sup>1161</sup> Tac. *Ann.* 12.8; Suet. *Claud.* 29.2: *morique initio anni coactus die ipso Claudii et Agrippinae nuptiarum*. There is some flexibility in the interpretation of Suetonius' sentence: *initio anni* could mean that the wedding took place on January 1, or simply that the wedding took place very early in the new year. When Suetonius was certain of the precise date, he would record it as at *Nero* 49.4: Kal. Ian.

<sup>1162</sup> Lendon (1997) 119–120 points out that suicide was a way of saving face. Junius Silanus committed suicide with such ostentatious timing (on the emperor's wedding day) that it could be interpreted as an attack on the emperor's honour, designed to maximize the scandal.

<sup>1163</sup> Tac. *Ann.* 12.8.1.

<sup>1164</sup> In Julio-Claudian times, *deportatio* or *relegatio* were the standard punishments for those guilty of incest, Berger (1953) 497, *s.v.* *incestus*. See also chapter 2.1 *Defendants on Charges of Adultery*.

<sup>1165</sup> For literary purposes, Tacitus made a special effort to juxtapose the two events to highlight the hypocrisy: *inridentibus cunctis, quod poenae procurationesque incesti id temporis exquirerentur*, (*Ann.* 12.8.1). The charges of incest worked for Agrippina to clear the way for her son to marry Octavia, and yet the incest laws had to be revised to allow for the marriage of Agrippina and Claudius. Clearly, political expediency was a higher priority than moral correctness.

in 59, Junia Calvina was allowed to return from exile.<sup>1166</sup> Although Junia Calvina was the last living descendent of Augustus, she wisely avoided politics and lived out her life quietly.

### 31 Junia Lepida AD 65

Tac. Ann. 16.7.3–4; 16.8.2–9.1.

PIR<sup>2</sup> I 861; RC 472; RE 10 (1919) 1113 Junius no. 203.

Marshall (1990) no. 23; Bauman (1989) 109; Syme (1986) 186; Rogers (1952) 303–304.

Daughter of M. Junius Silanus and Aemilia Lepida;<sup>1167</sup> sister of Junia Calvina, L. Junius Silanus, M. Junius Silanus (cos 46) and D. Junius Silanus Torquatus, and wife of L. Vitellius (cos 48).<sup>1168</sup>

Lepida was accused of black magic and incest as part of a political manoeuvre by Nero against her nephew L. Junius Silanus Torquatus and husband C. Cassius Longinus.<sup>1169</sup> Nero's dislike of Cassius caused him to prohibit Cassius' attendance at Poppaea's funeral,<sup>1170</sup> and then to send a letter to the senate ordering the removal of both Cassius and his nephew from that order and accusing them of defection from the house of Caesar and sowing the seeds of civil war.<sup>1171</sup> Although there is no recorded link to the Pisonian conspiracy that was detected four months before, the atmosphere destroy a prominent jurist on such vague

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<sup>1166</sup> Tac. Ann. 14.12.5.

<sup>1167</sup> PIR<sup>2</sup> I 839, cos 19; PIR<sup>2</sup> A 419.

<sup>1168</sup> Respectively, sister: PIR<sup>2</sup> I 861, no. 30; brothers: PIR<sup>2</sup> I 829, PIR<sup>2</sup> I 833, PIR<sup>2</sup> I 837, and husband: PIR<sup>1</sup> V 501.

<sup>1169</sup> Tac. Ann. 16.8.2; 16.9.1. This is Cassius the famous jurist and head of the Sabinian school; see Bauman (1989) ch. 4; for the trial and exile specifically, 107–113; also Rogers (1952) 290, 304–305.

<sup>1170</sup> Furneaux (1896) *s.v.* 16.7.1 sees this as a form of *renuntio amicitiae*. He further notes that this Cassius was the brother of L. Cassius Longinus who was the first husband of Drusilla; see also PIR<sup>2</sup> C 503. Lendon (1997) 142–145 on the escalating insults between Nero and Thrasea Paetus is a useful comparison.

<sup>1171</sup> Tac. Ann. 16.7.2. Nero may have been unusually paranoid – Poppaea's funeral was in August 65, only four months after the Pisonian conspiracy was detected and thwarted in April 65; Tac. Ann. 15.48; Griffin (1984) 166–170.

charges. The senate tried Cassius and Silanus and decreed deportation for both.<sup>1172</sup> Tacitus also records: ...*qui in Lepidam, Cassii uxorem, Silani amitam, incestum cum fratris filio et diros sacrorum ritus confingerent*. “They fabricated against Lepida, wife of Cassius and aunt of Silanus, [charges of] incest with her brother’s son and ominous religious rituals.”<sup>1173</sup>

Lepida was jointly accused – on fabricated charges, according to Tacitus – with two senators, Volcacius Tullinus and Marcellus Cornelius, and an *eques*, Calpurnius Fabatus.<sup>1174</sup> The three men appealed to Nero and the charges against them were allowed to lapse. About Lepida, the senate decreed, Caesar should decide.<sup>1175</sup> Nero’s decision on Lepida’s fate is not recorded; possible the charges were allowed to lapse like those against her fellow accused. After this, Lepida disappears from the historical record. The crime of incest would have demanded a punishment of *relegatio* or *deportatio*. The vague charge of conducting ominous religious rituals could mean that she was suspected of some sort of divinatory inquiry or harmful magic, both of which activities aroused deep anxiety among Roman emperors.<sup>1176</sup> Plausibly, the charges against Lepida were simply meant to aggravate the treason charges against her husband Cassius.<sup>1177</sup> In the end, all five siblings from this family were destroyed.

### 32 Junia Silana AD 55

Tac. *Ann.* 13.19.2–3; 13.22.2.

PIR<sup>2</sup> I 864; RC 474; RE 10.1 (1918) 1113 Iunius no. 203.

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<sup>1172</sup> That the harsher punishment of *deportatio* (including loss of citizenship and property) was meant here is illustrated by the next sentence where Tacitus describes them as *deportatus* (*Ann.* 16.9.1).

<sup>1173</sup> Tac. *Ann.* 16.8.2.

<sup>1174</sup> Tac. *Ann.* 16.8.2–3; 16.9.1; Tacitus may have had direct information about this case since Calpurnius Fabatus was the grandfather of Pliny’s wife and corresponded with Pliny (who in turn corresponded with Tacitus); Bauman (1989) 109; see PIR<sup>1</sup> V 623, PIR<sup>2</sup> C 1403, and PIR<sup>2</sup> C 263 respectively.

<sup>1175</sup> Tac. *Ann.* 16.9.1.

<sup>1176</sup> Cramer (1954) 240–241; cf. Bauman (1974) 59–69.

<sup>1177</sup> Syme (1986) 186.

Holland (2000) 85; Barrett (1996) 174–178; Bauman (1992) 196–198; Griffin (1984) 74; Rogers (1955) 199–201.

Daughter of M. Silanus (*cos.* 15), ex-wife of G. Silius, the man whom Messalina married in 48.<sup>1178</sup> Silana is known to have been childless.<sup>1179</sup> Renowned for her lineage, beauty and wantonness, she and Agrippina the younger had long been friends until secret offenses became unbearable (*insignis genere forma lascivia, et Agrippinae diu percara, mox occultis inter eas offensionibus...*).<sup>1180</sup>

Silana began a legal battle with Agrippina by causing her clients Calvisius and Iturius to accuse Agrippina of plotting revolt with Rubellius Plautus.<sup>1181</sup> She wanted revenge after Agrippina had discouraged a suitable marriage prospect by slandering Silana. Agrippina had recently been stripped of her personal bodyguard and moved out of the imperial house and into her grandmother Antonia's house.<sup>1182</sup> Silana, seeing this as a symptom of her former friend's waning power, decided to attack via legal charges. The alleged revolt involving Rubellius Plautus was carefully calculated to resonate with Nero's fears since Plautus was a descendant of Augustus in exactly equal degree as Nero and therefore, with Agrippina's support, had a potentially viable claim to the throne. Outraged at the charges, Agrippina sought and received an interview with her son in which she convinced him that the accusations were completely unfounded.

Attention then rebounded on the accusers and Silana was immediately recognized as the author of the charges. Her clients Calvisius and Iturius were relegated and Silana was

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<sup>1178</sup> M. Silanus: PIR<sup>1</sup> S 832; G. Silius: PIR<sup>1</sup> S 505.

<sup>1179</sup> Tac. *Ann.* 13.19.3.

<sup>1180</sup> Tac. *Ann.* 13.19.2.

<sup>1181</sup> PIR<sup>2</sup> R 115; see Appendix 2.1.

<sup>1182</sup> Tac. *Ann.* 13.18.3.

driven into exile (*Silana in exilium acta*).<sup>1183</sup> No charges or trial are mentioned, only that Agrippina obtained vengeance on her accusers (*ultionem in delatores ... obtinuit*).<sup>1184</sup> Given the status of the prosecution, the charges against Calvisius and Iturius may have been *calumnia*, intended to penalize unfounded prosecutions. Technically, Silana would not be liable to charges of *calumnia* since she had not registered the charges against Agrippina. Nonetheless, she was identified as the source of the attack and was dealt with accordingly.

### 33 (Cornelia) Livia Orestilla (Caligulan date)

Suet. *Cal.* 25.1.

PIR<sup>2</sup> C 1492.

New wife of Gaius Piso, she was carried off from her wedding to the emperor's house. At the wedding feast, Caligula is reported to have said to the groom, Piso, "Don't touch my wife!" (*noli uxorem meam premere*).<sup>1185</sup> Caligula announced the next day that he had taken her as wife in the style of Romulus and Augustus, but after a few days, Suetonius reports, Caligula repudiated her. Two years later, he banished her suspecting that she had returned to Piso in the interval. This bizarre story does not lend itself well to legal analysis. Whether or not the marriage and subsequent divorce to Caligula were legal, the emperor would still have no standing to claim adultery two years later. By then, it appears, he was remarried to Caesonia and the new marriage would override any previous one. We are left with the bare fact that Orestilla was banished on an unrecorded charge.

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<sup>1183</sup> Tac. *Ann.* 13.22.2.

<sup>1184</sup> Tac. *Ann.* 13.21.6; Bauman (1992) 198.

<sup>1185</sup> Suet. *Cal.* 25.1.

### 34 (Julia) Livilla the Younger AD 39 and 41

Dio 60.8.5; Suet. *Cal.* 24.3; Tac. *Ann.* 14.63.2, also oblique reference at 13.42.3.

PIR<sup>2</sup> I 674; RC 443; RE 10.1 (1918) 938–939 Iulius no. 575.

Barrett (1996) 61–70, 79–83; (1989) 106–110; Bauman (1992) 139–41, 159–60, 163–64, 168–170.

Daughter of Germanicus, sister of Caligula and Agrippina the Younger, niece of the emperor Claudius. She married M. Vinicius in AD 33, at Tiberius' behest.<sup>1186</sup> According to the elder Seneca, she was betrothed as a girl to Quintilius Varus, son of the famous Quintilius Varus and Claudia Pulchra.<sup>1187</sup> This fact will have bearing on the question of subsequent careers of the male family members of prosecuted and convicted women. Livilla was born in 19 and thus was only about seven years old when Pulchra was convicted. It is possible that she was betrothed to Pulchra's son by this age and the betrothal was broken as a consequence of Pulchra's conviction. She was barely 14 when her marriage to Vinicius took place.

She was banished in AD 39 along with her sister Agrippina on account of adultery with M. Aemilius Lepidus (husband of their sister Drusilla) and conspiring with Lepidus and Lentulus Gaetulicus.<sup>1188</sup> She was sent to the island Pontias.<sup>1189</sup> There is no indication that she was formally charged or led to trial in 39. After the death of Caligula, she was recalled from exile and her property was restored by Claudius.<sup>1190</sup> Soon, however, she ran foul of Messalina. In 41 she was accused and convicted of adultery with Seneca; she was banished to the island of Pandateria and died the year after, allegedly at the orders of Messalina.<sup>1191</sup>

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<sup>1186</sup> Tac. *Ann.* 6.15.1; Josephus *AJ* 19.251; Dio 58.21.1.

<sup>1187</sup> Sen. *Contr.* 1.3.10, where Quintilius Varus is named *gener* (son-in-law) of Germanicus. Seneca's *Controversiae* were written in the late 30s AD, thus only a decade or so after the betrothal was broken; Winterbottom (1974, Loeb) xx. Claudia Pulchra, no. 16.

<sup>1188</sup> Dio 59.22; Suet. *Cal.* 24.3.

<sup>1189</sup> See Dio 59.22.8 for her activities during her stay.

<sup>1190</sup> Dio 60.4.1.

<sup>1191</sup> Dio 60.8.5, cf. 60.27.4, 60.18.4; Sen. *Apoc.* 10.4, cf. Suet. *Cal* 29.2.

Livilla holds the dubious distinction of being the only woman in this study to have been banished twice for adultery. This emphasizes the likelihood that her legal woes were entwined with the political motives of the emperors. Caligula likely saw her as a focus for political dissent. Claudius desperately needed to consolidate his power at the beginning of his reign, so he might have been willing to forgive anything short of murder so that he could recall imperial family members who had been harmed by the previous emperor. By distancing himself from Caligula, he cultivated the loyalty of the one recalled and the goodwill of the public.

Tacitus refers to Julia Livilla in context of describing Octavia's demise: very few other women had excited similar pity from the public, only Agrippina when banished by Tiberius and Livilla when banished by Claudius – yet these two had at least a few happy years where Octavia had none.<sup>1192</sup> Livilla was only 20 when she was banished for the first time and 22 the second time (which led to her death the following year), and not really old enough for anyone to claim that she had lived a long, rich life.

Alive at the time of her trial were male family members Caligula and Claudius; there is no indication whether she had a husband in 41.<sup>1193</sup> Her conviction was brought about by Caligula – certainly not in any attempt to indirectly harm male members of her family, since he was the closest, though in the end he was harmed by her conviction nonetheless. Public confidence in his judgement was shaken and people felt sorry for her and her sister.<sup>1194</sup> There seems no doubt that her trial (and that of her sister Agrippina) was politically motivated. As unrest grew against Caligula and his own actions became unpredictable, his

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<sup>1192</sup> *Ta. Ann.* 14.63.2.

<sup>1193</sup> Her marriage to Vinicius would have been dissolved at the time of her first conviction for adultery in 39.

<sup>1194</sup> *Tac. Ann.* 14.63.2.

sisters were a natural rallying point for rebellion; after all, they were Germanicus' children, too.

Even after all the controversy during her lifetime, Claudius allowed her to be interred in the Mausoleum of Augustus – a gesture designed to restore public goodwill towards the Imperial house as much as to pay respect to his dead niece.<sup>1195</sup>

### 35 (Livia Julia) Livilla AD 31

Suet. *Tib.* 62.1; Dio 57.22.2; 58.11.6; cf. Tac. *Ann.* 5.6; 6.29.4; Pliny *HN* 29.20.

PIR<sup>2</sup> L 303; RC 239; RE 13.1 (1926) 924–927 Livius no. 38.

Seager (2005) 154–8, 165–7, 186, 188–89, 227–8; Rutledge (2001) 100, 139–140, 152; Bauman (1992) 139, 144, 147, 149, 155; Marshall (1990) no. 33; Sinclair (1990) 238–256; Syme (1986) 169–171; Levick (1976) 161–164, 200–203; Garnsey (1970) 25–26; Meise (1969) 31, 217–218; Rogers (1935) 119–122.

Daughter of Tiberius' brother Drusus and Antonia; widow of Tiberius' son Drusus Caesar, to whom she had borne twin boys (Germanicus and Tiberius Gemellus) and a daughter, Julia; sister of Germanicus and Claudius; widow of Gaius Caesar, grandson of Augustus.<sup>1196</sup>

Livilla was brought to trial in 31 when Sejanus' ex-wife Apicata wrote a damning letter to Tiberius, revealing that he and Livilla had conspired to murder Drusus by administering poison through the agency of two slaves, Eudemus and Lygdus.<sup>1197</sup> Apicata wrote the letter within days after Sejanus' execution on 18 October 31; she delivered it and

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<sup>1195</sup> CIL 6.891.

<sup>1196</sup> Drusus (husband): died in 23, PIR<sup>2</sup> I 219; Germanicus and Tiberius Gemellus (sons): PIR<sup>2</sup> I 224 and PIR<sup>2</sup> I 226; Julia (daughter): no. 29; Gaius, grandson of Augustus (husband): died in 4, PIR<sup>2</sup> I 216. There is some inconsistency about Livilla's name: Tacitus refers to her as Livia, but Suetonius and Dio call her Livilla. In secondary studies, she is most frequently called Livilla to distinguish her from her grandmother Livia. Technically, her name was perhaps Claudia Livia Julia, so Raepsaet-Charlier (1987) and Groag, PIR<sup>2</sup> L 303, though this was not certain enough to merit her entry under PIR<sup>2</sup> C.

<sup>1197</sup> Tac. *Ann.* 4.11.2; see also Apicata, no. 11.

committed suicide two days after their eldest son was executed.<sup>1198</sup> Although modern scholars are convinced that she did not give an accurate account, Tiberius took her information very seriously.<sup>1199</sup> For eight years he had believed that his son died a natural death and, now in shock over this newly discovered betrayal, he reacted severely. The two slaves were tortured to provide corroboration and their testimony was used against Livilla during her trial in the senate.<sup>1200</sup> The charge against her is not recorded, and notwithstanding allegations of adultery, the official accusation must have been *maiestas*.<sup>1201</sup> She was convicted and executed.<sup>1202</sup> Even without Apicata's inflammatory letter, Livilla might have been doomed. Her close connection to Sejanus was well known – there was talk of their marrying – and she would plausibly have been accused as complicit.<sup>1203</sup>

Livilla is one of only two women in this study to have suffered the posthumous penalty of what modern scholars call *damnatio memoriae*.<sup>1204</sup> The senate met early in 32, a

<sup>1198</sup> EJ p. 42, *Fasti Ostiensis*.

<sup>1199</sup> Seager (2005) 155–156; Martin (1981) 235 n. 31; Levick (1976) 161–162. How could Apicata, divorced eight years previously, a few months before Drusus' death, have known what was done (presumably in strictest secrecy) by Sejanus and Livilla? And why would Sejanus have allowed the two complicit slaves to live?

<sup>1200</sup> Tac. *Ann.* 4.11.2. The trial narrative would have appeared in the lost portion of book 5 of the *Annals* (which would have covered the end of 29, all of 30, and most of 31); the few bits of information we can glean from Tacitus were recorded out of annalistic sequence. Book 6 opens, albeit in a fragmentary state, with what is thought to be the very end of Livilla's trial.

<sup>1201</sup> Rogers (1935) 121 uses the word *perduellio*, but there is no evidence of two categories or degrees of offense under the *lex Iulia de maiestate*. The term *maiestas* is much broader in scope than *perduellio* and seems to have all but replaced the use of the latter in the principate, Lear (1965) 26; Allison and Cloud (1962) 730 n. 1; Dig. 48.4.11 (Ulpian). Even when its sense is implied, as in the case of Cn. Piso in 20, the word itself is not used, Bauman (1974) 109–110; cf. Lear (1965) 28. Regarding the allegations of adultery, see Tac. *Ann.* 4.3.3, Suet. *Tib.* 62.1, and Dio 57.22.2: Livilla committed adultery with Sejanus; Tac. *Ann.* 6.29.4, Dio 58.24.5: with Mamercus Scaurus; Pliny *HN* 29.20: with the slave Eudemus, her doctor.

<sup>1202</sup> Dio 58.11.7 records a variant tradition that Livilla was given into the custody of her mother Antonia and was starved to death.

<sup>1203</sup> Tac. *Ann.* 5.6.2 refers to Sejanus as “consular colleague and son-in-law.” Tiberius and Sejanus shared the consulship in 31, EJ p. 42, although Sejanus' name was erased from the consular *fasti*. Tacitus mentions the subject of marriage between Sejanus and Livilla several times: “hope of marriage” *ad coniugii spem* (*Ann.* 4.3.3); “since Livia was importuning him for the promised marriage” *promissum matrimonium flagitante Livia* (*Ann.* 4.39.1). Cf. Dio 57.22.4b. Tiberius' refusal to allow the marriage, given in *oratio recta* (*Ann.* 4.40) under the year 25, is definitive. Dio 58.3.9 records that Livilla's daughter Julia was betrothed to Sejanus, possibly in 30. Seager (2005) 271 n. 127 expresses uncertainty about Dio's statement, and suggests that Tiberius may have relented and allowed a betrothal between Sejanus and Livilla; also Barrett (1989) 26.

<sup>1204</sup> The other is Messalina, no. 41.

few weeks after she had been executed, and “frightening proposals were voiced also against her likenesses and memory;” *atroces sententiae dicebantur, in effigies quoque ac memoriam eius*.<sup>1205</sup> Sejanus was also subjected to *damnatio memoriae*, and given her connection to the now-reviled prefect, it is perhaps unsurprising that Livilla should have suffered a similar fate.<sup>1206</sup>

Livilla’s two surviving children appear to have been legally untouched by their mother’s trial and execution. Her son Gemellus lived until 38 (about age 18) when he was murdered by Caligula, and her daughter Julia lived until 43 when she fell victim to Messalina’s schemes.<sup>1207</sup>

### 36 Lollia Paulina AD 49

Tac. *Ann.* 12.22.3; Dio 60 (61).32.4.

PIR<sup>2</sup> L 328; RC 504; RE 13.2 (1927) 1394–1395 Lollius no. 30.

Rutledge (2001) 149; Holland (2000) 49; Barrett (1996) 107–108, 132; Marshall (1990) no. 22; Bauman (1992) 181–182; (1974) 65; Syme (1986) 176–177, 184–185; Talbert (1984) 479; Cramer (1954) 259–261.

Ex-wife of P. Memmius Regulus and of the emperor Caligula; daughter of M. Lollius (cos 13), granddaughter of M. Lollius (cos 21 BC), and great-niece of Cotta Messalinus (cos 20).<sup>1208</sup> She is not known to have had any children. When Claudius was planning to remarry

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<sup>1205</sup> Tac. *Ann.* 6.2.1; her name is known to have been erased from an inscription in Lepcis, *Afr. Ital.* 6 (1935) 15.

<sup>1206</sup> Sejanus’ name was chiseled out of the consular *fasti* for 31, EJ p. 42; his statues were pulled down, Dio 58.11.3.

<sup>1207</sup> Gemellus: Suet. *Cal.* 23.3; Julia, no. 29. Germanicus died as a toddler (about age 3) in 23, the same year his father died, Tac. *Ann.* 4.15.1.

<sup>1208</sup> Regulus (ex-husband): PIR<sup>2</sup> M 468; Lollius (father): PIR<sup>2</sup> L 312; Lollius (grandfather): PIR<sup>2</sup> L 311; Messalinus (great-uncle): PIR<sup>2</sup> A 1488.

after the death of Messalina, Lollia was proposed as a potential wife by the imperial freedman Callistus.<sup>1209</sup> For this reason, according to Tacitus, Agrippina destroyed her.<sup>1210</sup>

The charges brought against her were consulting Chaldean astrologers, magicians, and the image (i.e. oracle) of Clarian Apollo about Claudius' impending marriage.<sup>1211</sup> The charges would have been much more serious if she had been believed to have consulted astrologers about Claudius' marriage *after* he and Agrippina were married.<sup>1212</sup> Although *maiestas* was suspended at this time and no source uses that word in connection with these charges, similar accusations had previously been the basis for a charge of *maiestas* against others.<sup>1213</sup> The sources do not record the name of the person who brought the charges into court but Tacitus reveals that he was Agrippina's agent.<sup>1214</sup> We can securely place her trial in the senate because Claudius spoke at length before the senate, first expounding her noble connections, then adding that she had designs on the state.<sup>1215</sup> Tacitus describes Lollia as an *inaudita rea*, suggesting that either she was not allowed to speak in her own defense or that she had no personal interview with Claudius. Under normal procedures, she would have been allowed to speak on her own behalf.<sup>1216</sup>

The verdict was that she should leave Italy and the majority of her property should be confiscated, leaving her with five million sesterces out of her vast wealth. The punishment suggests that the charges may actually have been *maiestas* since she was sentenced to

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<sup>1209</sup> Tac. *Ann.* 12.1.2.

<sup>1210</sup> Tac. *Ann.* 12.22.1: *atrox odii Agrippina ac Lolliae infensa, quod secum de matrimonio principis certavisset*; "Agrippina, fierce in her hatred, was dangerous to Lollia because she had competed with her for the princeps' hand in marriage."

<sup>1211</sup> Tac. *Ann.* 12.22.2.

<sup>1212</sup> Bauman (1992) 182.

<sup>1213</sup> For example, Tac. *Ann.* 3.32.2 where Aemilia Lepida was charged with consulting astrologers under the heading of *maiestas*, though those charges may have been dropped.

<sup>1214</sup> Tac. *Ann.* 12.22.1.

<sup>1215</sup> Tac. *Ann.* 12.22.2.

<sup>1216</sup> See chapter 4, *Women as Witnesses*.

*deportatio* (exile and confiscation of property). There seems no reason at all why she should have been left with the five million sesterces. No one has suggested an additional motive of greed – since she had such enormous wealth, it is possible that Claudius and Agrippina wanted Lollia's money. Under normal circumstances, the prosecutor would receive the confiscated property of the convicted; perhaps the unnamed agent was to share the profits. Soon after Lollia was sent into exile, a tribune of the Guard was sent to her who enforced her suicide.<sup>1217</sup>

Agrippina's involvement in this case is reinforced by the fact that immediately after Agrippina's death in 59, Lollia's ashes were returned to Rome for burial.<sup>1218</sup> Nero did this to further blacken his mother's name which in turn ameliorated his guilt for murdering her. The only way that publicly returning Lollia's ashes to Rome would have had the desired effect was if it was generally believed that Agrippina was the one who had arranged for Lollia's exile and for the tribune to be sent to enforce her suicide, as Tacitus implies.

### 37 Lucusta AD 54, 55, 69

Tac. *Ann.* 12.66.2; 13.15.3; Dio 60.34.2; 63.3.4; Suet. *Nero* 33.2–3; 47.1; Juv. 1.71; schol in Juv. 1.71.

PIR<sup>2</sup> L 414; RE 13.2 (1927) 1710–1711.

Holland (2000) 60, 61, 62, 80–83, 234; Barrett (1996).

Notorious poisoner whose family connections are unknown, but certainly she was not of elite status and may have been a freedwoman.

She first appears in the historical record as a well-known poisoner when Agrippina sought her assistance to murder the emperor Claudius in 54. Tacitus describes her as *nuper*

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<sup>1217</sup> Tac. *Ann.* 12.22.3.

<sup>1218</sup> Tac. *Ann.* 14.12.6.

*veneficii damnata et diu inter instrumenta regni habita*; “recently convicted of poisoning and long held among the instruments of despotism.”<sup>1219</sup> Mere months later, her advice was sought by Nero – while she was being held under detention with the praetorian guard – on ways to murder Britannicus, and she actually supplied him with the specially-brewed poison.<sup>1220</sup> She was again consulted when Nero was escaping the palace hours before his death.<sup>1221</sup> Any one of these recorded actions would have been sufficient as the basis for charges of poisoning, if someone had registered charges.

According to the *lex Cornelia de sicariis et veneficis*, a poisoner was subject to a penalty of *deportatio*, including forfeiture of all property.<sup>1222</sup> The reason for Lucusta’s evasion of the statutory penalty is revealed by Suetonius: after the death (or successful murder) of Britannicus, Nero rewarded Lucusta for her services with a full pardon, extensive country estates, and actually supplied her with students.<sup>1223</sup> The legal mechanism is called *restitutio in integrum* or *restitutio indulgentia principis*, whereby a conviction was expunged and status was restored. Afterwards, she seems to have been under the direct protection of the imperial house, as Suetonius describes. Her first conviction, however, occurred *before* the death of Claudius and thus before Nero had the power to protect her. Tacitus describes her as *diu inter instrumenta regni habita*, suggesting that Claudius – or Agrippina – may

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<sup>1219</sup> Tac. *Ann.* 12.66.2; Dio 60 (61).34.2; Claudius died on 13 October 54.

<sup>1220</sup> Tac. *Ann.* 13.15.3–5; Suet. *Nero* 33.3; Barrett (1996) 170. Britannicus died early in 55, before he was scheduled to receive his *toga virilis* in March. Whether or not Claudius and Britannicus were actually poisoned to death is, of course, subject to modern debate. See, for example, Barrett (1996) 170–172; Levick (1990) 77; Griffin (1984) 74. Given the apparent lack of evidence supporting charges of poisoning against other women (for example, Aemilia Lepida, Munatia Plancina) the mere *perception* of guilt would have been enough to allow proceedings against Lucusta had she not been protected by an imperial family member. The truth of her deeds is irrecoverable.

<sup>1221</sup> Suet. *Nero* 47.1.

<sup>1222</sup> Dig. 48.8.3.5 (Marcian); the jurist notes that in his own time (*fl. c.* 225–250) capital punishment was customary for poisoners except when the condemned person’s status was too high to be subject to such a penalty; similarly, Dig. 48.19.28.9 (Callistratus). It is unsurprising that there were changes in the penalties assessed under this law since three centuries had passed since its inception under the dictator Sulla. See also Berger (1953) *s.v.* *venefici*.

<sup>1223</sup> Suet. *Nero* 33.3.

have employed her services and must have pardoned her or intervened in favour of a very lenient sentence. As for her involvement in Claudius' death, fourteen-year-old Nero was too young to protect her from the law, so her protector must have been her employer Agrippina.

Lucusta was executed by the emperor Galba in 69, not, apparently, as the culmination of a trial based on a single crime, but because she was widely known to have been a poisoner directly employed by Nero.<sup>1224</sup> Dio reports that although Galba refused to execute Tigellinus:

τὸν μέντοι Ἥλιον καὶ τὴν Νάρκισσον τὸν τε Πατρόβιον καὶ τὴν Λουκοῦσταν τὴν φαρμακίδα καὶ ἄλλους τινὰς τῶν ἐπὶ τοῦ Νέρωνος ἐπιπολασάντων κατὰ τε τὴν πόλιν πᾶσαν δεδεμένους περιαχθῆναι καὶ μετὰ τοῦτο κολασθῆναι ἐκέλευσε.

However, he ordered Helios, Narcissus, Patrobius, Lucusta the poisoner, and certain others of those who had risen to the top during Neronian times to be led through the entire city in chains and then executed.<sup>1225</sup>

The Greek names Helios, Narcissus, Patrobius, and the known freedman status of Lucusta's fellow-defendants indicate that they would not be protected by high status when their sentences were determined.<sup>1226</sup> There seems no good reason to have allowed these four to survive. The emperor's personal orders indicate that, whatever the specific charges against Lucusta, the trial was likely an *extra ordinem* procedure. There is no indication of the senate's involvement in the legal process.

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<sup>1224</sup> Dio 63.3.4; Suet. *Nero* 33.2; 47.1. She was so famous that Juvenal mentions her at Satire 1.71, and her name evokes the image of an expert poisoner.

<sup>1225</sup> Dio 63.3.4; he uses the passive form of the verb κολάζω instead of an unambiguous term meaning execution. Although the verb κολάζω usually, in the passive, means merely to be chastised or punished, the context in this case makes it clear that it must mean capital punishment. The previous sentence uses both ἀποθνήσκω and ἀποκτείνω, suggesting that the literary principle of *variatio* led Dio to choose κολάζω.

<sup>1226</sup> The Narcissus mentioned in this passage must not be confused with Claudius' powerful freedman of the same name who died very soon after his patron, about fifteen years before the events of this passage. Helios was an imperial freedman stationed in Asia and who allegedly administered poison to M. Junius Silanus on Agrippina's orders; Barrett (1996) 154.

### 38 Mallonia (Tiberian date)

Suet. *Tib.* 45.

PIR<sup>2</sup> M 115; RE 14.1 (1928) 916.

Rogers (1935) 170.

An elite woman known only from a brief anecdote in Suetonius; nothing is known about her family or connections. She had been summoned to the bed of Tiberius, but showed such repugnance that the offended emperor set informers on her track. During her trial on unknown charges, Tiberius shouted at her. She was, therefore, tried during some kind of formal proceedings and Tiberius attended at least a portion of the trial. Mallonia left the court and, after a violent tirade against the emperor, stabbed herself to death. No verdict is recorded, if indeed one was even reached.

### 39 Marcia Servilia AD 66

Tac. *Ann.* 16.30.2–16.33; Dio 62.26.3.

PIR<sup>1</sup> S 432; RC 526; RE 2 A (1923) Servilius 1822 no. 105.

Gager (1992) 255; Marshall (1990) no. 24; (1989) 42; Hallett (1984) 101, 139–140, 307; Talbert (1984) 484; Champlin (1983) 260–262; Chastagnol (1979) 3–28; Bauman (1974) 65–66; Syme (1967) 412–415; Cramer (1954) 264–265; Rogers (1952) 287–295.

Daughter of Barea Soranus (PIR<sup>2</sup> B 55) who was suffect consul in 52, proconsul of Asia in 63 or 64. Her husband Annius Pollio (PIR<sup>2</sup> A 678), also a senator, was exiled in 65 in connection with the Pisonian conspiracy; Tacitus describes her as *viduata* (widowed) at the time of her trial in 66.<sup>1227</sup>

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<sup>1227</sup> *Viduata* may also be used in the sense of simply ‘deprived’; RC 526 suggests that Pollio may have survived and returned to Rome after the death of Nero.

Servilia's alleged crimes took place in the context of the *maiestas* trials of Barea Soranus, her father, and P. Clodius Thrasea Paetus in AD 66.<sup>1228</sup> Though the two trials are described concurrently, the association seems to be based on their timing and the character and status of the defendants rather than on any legal connection. Xiphilinus has confused the story slightly, claiming that Soranus was executed on the charge of having practised a kind of magic through the agency of his daughter; the basis for the charge was that father and daughter had offered a sacrifice when Soranus fell ill (Dio 62.26.3). Tacitus gives much more detail, devoting a total of thirteen (surviving) chapters to the narrative of Soranus' and Paetus' last days.<sup>1229</sup> He relates that the precise charges against the former were friendship with Rubellius Plautus and courting the provincials with revolutionary intentions.<sup>1230</sup> Certainly any revolutionary intentions were actionable under the *lex maiestatis*.

The charges pertaining to magicians fell on the shoulders of his daughter, Servilia. While her father was on trial for his life, she had sold off her clothing and jewelry to pay for consultations with magicians, asking them about the prospects of her family's survival, whether Nero would be compassionate, and whether the senate's investigation would end badly. She was summoned into the senate during her father's trial, and Tacitus reports her speech in *oratio recta*. She had only asked the gods to preserve her father, and made no

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<sup>1228</sup> The presentation of these cases is convoluted and difficult; for discussion, see Rogers (1952) 287–295; for Thrasea Paetus, see PIR<sup>2</sup> C 1187. Tacitus gives the precise charges against Paetus (above and beyond Nero's long-standing hatred for him) in an *oratio recta* speech by Cossutianus Capito: evading the regular oath, not sacrificing for the emperor's welfare or divine voice, and not attending senate-meetings. Then the climax: *Secessionem iam id et partes et, si idem multi audeant, bellum esse. Ut quondam C. Caesarem, inquit, et M. Catonem, ita nunc te, Nero, et Thraseam avida discordiarum civitas loquitur.* "That was factionalism and secession. If many more have the same daring, it is war. As this faction-loving country once talked of Caesar versus Cato, so now, Nero, it talks of you versus Thrasea." Tac. *Ann.* 16.22.2.

<sup>1229</sup> Tac. *Ann.* 16.21–34.

<sup>1230</sup> *Sed crimini dabatur amicitia Plauti et ambitio conciliandae provinciae ad spes novas.* (*Ann.* 16.23) Rubellius Plautus was the great-grandson of Tiberius and therefore had a claim to the imperial throne as strong as Nero's (13.19.3) but he went into exile in Asia at Nero's request in 60 (14.22) and seems to have lived quietly. His Stoicism and integrity earned him such a good reputation that the emperor could not abide it; Plautus was executed in 62 by a centurion sent by Nero (14.59).

mention of the princeps except among the divinities. Soranus defended his daughter, saying that she had not been connected with the crimes of her husband or father. All in vain; Soranus and Servilia were allowed to choose their own deaths. Faint comfort indeed.

Servilia was likely also charged under the *lex maiestatis*. The law of treason had long included offenses such as consulting astrologers, as in the cases of Libo Drusus in AD 16 and Aemilia Lepida in AD 20.<sup>1231</sup> The statutory penalty was *aquae et ignis interdictio*, unsupervised exile, but could, at the emperor's discretion, be increased to death. Given the context of her trial, after both her father and husband had been found guilty of treason, there seemed no compelling grounds to doubt Servilia's involvement.

Furthermore, the socially expected role of a woman was to support her father or husband in his career, and if his career had included treason, her involvement would be assumed. While the senate was prepared to believe that a woman was capable of participating in treasonous activities on her own, when all the men in her family were condemned for treason there was no realistic chance of her escaping condemnation. Her admission that she had consulted astrologers – an activity that always aroused suspicion – simply made the senate's decision easy.

#### **40 (Maria) AD 33**

Tac. *Ann.* 6.19.1; Dio 58.22.2–3; Pliny *HN* 34.2.4.

Bauman (1996) 60–61; Garnsey (1970) 23; Rogers (1935) 147.

Daughter of Sextus Marius, the richest man in Spain, and allegedly victim of his incest.<sup>1232</sup> Marius had already been the target of political enemies; an attempt to destroy him

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<sup>1231</sup> Aemilia Lepida, no. 3.

<sup>1232</sup> Tac. *Ann.* 6.19; PIR<sup>2</sup> M 295.

in 25 had failed.<sup>1233</sup> Tacitus implies that his ownership of gold and silver mines may have provided additional motivation.<sup>1234</sup> Dio presents a completely different story: Marius, friend of the emperor had sent his beautiful daughter away to prevent her being disgraced by Tiberius, and because of this, Marius was charged with incest and both he and his daughter were destroyed. In either version, the father was the real focus of the prosecution and the daughter's demise was incidental.

The severity of the punishment is noteworthy. Both father and daughter were executed although the usual penalty for incest was *deportatio*.<sup>1235</sup> Tacitus reports that the father was thrown from the Tarpeian Rock, a humiliating form of execution usually reserved for only murderers and the most egregious traitors.<sup>1236</sup> The exacerbated punishment must indicate something: powerful enemies, egregious offense, or both, information about which is not available in the historical record.

#### 41 Messalina (died in AD 48)

Tac. *Ann.* 11.26.1, 11.35.4–7, 11.36.1–5; Dio 60.18.1–2, 60.31.1–5, 60.14.3, 60.22.4–5, 60.27.4, 60.28.2–5; Suet. *Claud.* 17.3, 26.2, 27.1, 29.3, 36, 37.2, 39.1; *Nero* 6.4; *Vit.* 2.5; Juv. 6.120–132, 10.329–345, 14.329–331; Pliny *HN* 10.172, 29.8.

PIR<sup>1</sup> V 161; RC 774; RE 2 (1955) 246–258 Valerius no. 403.

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<sup>1233</sup> Tac. *Ann.* 4.36.1.

<sup>1234</sup> Cf. Plin. *HN* 34.2.4, who mentions Marian copper mines in Spain that produced high quality ore for making *sestertii* and *dupondii* while Cypriot copper was used for the *as*. Gold and silver mines, however, must have supplied the imperial mint at Lugdunum in Gaul. Control over these mines, therefore, would have been important to the emperor.

<sup>1235</sup> Dig. 48.18.5 (Marcian); 48.5.39(38).2 (Papinian); Paul. *Sent.* 2.26.15. The jurists were additionally concerned about instances in which adultery was committed as well as incest. In the present case, there is no indication of the marital status of Marius; his daughter seems to have been unmarried since no husband is mentioned and, according to Dio's account, her father sent her away for her protection – surely a husband's purview if she had had one. The additional crime of adultery, therefore, seems to have been absent in this case.

<sup>1236</sup> On the Tarpeian Rock, see Richardson (1992), *Tarpeia rupes*; see also Aul. Gell. 20.1.53; Livy 6.20.12; Aur. Victor *de Vir. Ill.* 24.6; 66.8; Wiseman (1979) 41–45.

Fagan (2002) 566–579; Barrett (1996) 74–5, 78–79, 81–83, 86–94, 100; Joshel (1995) 52–65; Major (1993) 30–38; Bauman (1992) 166–179; Wood (1992) 219–134; Levick (1990) 57–68, 118–119; Ehrhardt (1978) 51–77; Meise (1969) 123–171; Baldwin (1964) 39–48.

Daughter of M. Valerius Messala Barbatus and Domitia Lepida, Messalina was the third wife of Claudius.<sup>1237</sup> She was heavily pregnant with their second child when her husband became emperor; Britannicus was born twenty-two days later.<sup>1238</sup> Through her mother, Messalina was related to Domitius Ahenobarbus, the first husband of Agrippina the younger.<sup>1239</sup>

Messalina is most famous for her sexual adventures, her reputation for controlling her husband, and her use of the criminal law to destroy personal and political enemies; her inclusion in the present study is based on the latter. Frequently using the assistance of imperial freedman Narcissus<sup>1240</sup> and the prosecutorial services of P. Suillius Rufus,<sup>1241</sup> she authored charges against her niece Julia Livilla, Appius Iunius Silanus, Julia (granddaughter of Tiberius), Catonius Justus (praetorian prefect), Vinicius, Pompeius Magnus, Valerius Asiaticus and Poppaea Sabina, Polybius, the brothers Petrae, and numerous unnamed men and women in the aftermath of the conspiracy led by L. Arruntius Camillus Scribonianus. Only about half of these people were demonstrably prosecuted by proper legal procedures, as discussed in Chapter 3: *Women pro accusatoribus*.

Messalina's downfall occurred in singularly dramatic style. She pursued a passionate adulterous affair with G. Silius<sup>1242</sup> and decided to marry him while Claudius was away at Ostia. Their nuptials were celebrated in formal style with numerous witnesses *velut*

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<sup>1237</sup> Barbatus, PIR<sup>1</sup> V 88; Lepida, PIR<sup>2</sup> D 180; Domitia Lepida, no. 19.

<sup>1238</sup> Suet. *Claud.* 27.2.

<sup>1239</sup> See Appendix 2.3; on the date of Messalina's birth, see Barrett (1996) 270 n. 29.

<sup>1240</sup> PIR<sup>2</sup> N 23.

<sup>1241</sup> PIR<sup>1</sup> S 700; Rutledge (2001) 270–271.

<sup>1242</sup> PIR<sup>1</sup> S 505; Tac. *Ann.* 11.27; 11.26–38; Silius was consul-designate at the time of the wedding.

*susciendorum liberorum causa convenisse*; “as though joined for the purpose of begetting children.”<sup>1243</sup> While the bride and groom attended a party with their guests, imperial freedman Narcissus – Messalina’s former ally and partner – persuaded two of Claudius’ favourite concubines to reveal to the emperor the fact of his wife’s new marriage.<sup>1244</sup> Narcissus was summoned, followed by several other friends and advisors. As messengers arrived in Rome bearing news that Claudius was on his way back with full knowledge of current events, the bride, groom, and party guests scattered.

Messalina set out to meet Claudius on the road to Ostia, traveling in pitiful style on the back of a refuse cart.<sup>1245</sup> As she approached the emperor’s conveyance, shouting that he should listen to the mother of his children, Narcissus reminded Claudius about her shocking new marriage and many prior infidelities, and prevented the emperor from speaking to her.<sup>1246</sup> A meeting was set up for the following day after the emperor heard prayers of intercession from the Vestal Virgin Vibidia.<sup>1247</sup> Meanwhile, Claudius and Narcissus sought out the male offenders. Silius was found at the praetorian camp and executed.<sup>1248</sup> Several illustrious equestrians were also executed, as well as a senator, Juncus Vergilianus, and the mime Mnester.<sup>1249</sup> As Claudius’ anger began to wane, however, Narcissus feared that Messalina would be forgiven, so he ordered her execution.<sup>1250</sup> Claudius was informed that Messalina was dead and he did not question how it happened.

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<sup>1243</sup> Tac. *Ann.* 11.27.1.

<sup>1244</sup> Tac. *Ann.* 11.29.3–30.1; Gardner (1986) 63 n. 53 and 85 remains uncertain whether Messalina’s actions constituted a fully legal divorce from Claudius (based on her obvious intention, although no formal notice was given) or a fully legal marriage to Silius. In the event, the political ramifications of the ‘marriage’ were treated as more urgent than the legal ones.

<sup>1245</sup> Tac. *Ann.* 11.32.3

<sup>1246</sup> Tac. *Ann.* 11.34.2.

<sup>1247</sup> Tac. *Ann.* 11.32.2, 34.3.

<sup>1248</sup> Tac. *Ann.* 11.35.2; cf. Suet. *Nero* 36.

<sup>1249</sup> Tac. *Ann.* 11.35.2–36.4.

<sup>1250</sup> Tac. *Ann.* 11.37.2.

Although Messalina was unequivocally guilty of adultery, and there were many witnesses to her crimes, Claudius had rejected, or at least ignored, the possibility of charging her formally when Narcissus broached the topic.<sup>1251</sup> The political urgency of the situation did not lend itself to engaging in the due process of a non-capital offense. Because her marriage to Silius created a situation that could have led to civil war, an indictment against her would likely have included charges of conspiracy or treason.

The public reaction to Messalina's death reveals how seriously threatening she was perceived. The senate decreed formal penalties against Messalina's memory (*damnatio memoriae*); her statues were destroyed and her name was chiseled out of inscriptions.<sup>1252</sup> Livilla, no. 35, is the only other woman in this study to have suffered this same posthumous penalty.

#### **42 Munatia Plancina AD 20 and AD 33**

Tac. *Ann.* 3.10–18; 6.26.3–4; *Senatus Consultum de Pisone Patre* (SCPP) 8–9, 109–120; Dio 57.18.10; 58.22.5; Suet. *Tib.* 52.3; *Cal.* 2; cf *Vit.* 2.3.

PIR<sup>2</sup> M 737; RC 562; RE 16.1 (1933) 556 Munatius no. 44; also RE 14.1 (1928) *maiestas* 542–559 (at 552).

Potter (1998) 448–449; Griffin (1997) 256, 261–262; Woodman and Martin (1996) 163–165, 178–184; Gager (1992) 254; Marshall (1990) no. 3 and 35; Syme (1986) 376, 429; Talbert (1984) 168, 484; Rogers (1935) 41–51, 149–150.

Wife of Gnaeus Calpurnius Piso, mother of Gnaeus (later Lucius), Marcus, and Calpurnia.<sup>1253</sup> She was accused along with her husband Cn. Piso of treason and the murder by poisoning of Germanicus Caesar. Tacitus provides a lengthy and sensational account of

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<sup>1251</sup> Tac. *Ann.* 11.30.2

<sup>1252</sup> Tac. *Ann.* 11.38.3; Smallwood (1967) no. 99 and 136.

<sup>1253</sup> Gnaeus Piso (husband): PIR<sup>2</sup> C 286; Gnaeus/Lucius (son): PIR<sup>2</sup> C 293; Marcus (son): PIR<sup>2</sup> C 296

the events leading up to the death of Germanicus, including a deathbed speech in which the dying prince blames Piso and Plancina for his condition.<sup>1254</sup> Germanicus' house in Syria had been surrounded by evidence of ill will:

*Et reperiabantur solo ac parietibus erutae humanorum corporum reliquiae, carmina et devotiones et nomen Germanici plumbeis tabulis insculptum, semusti cineres ac tabo obliti aliaque malefica, quis creditur animas numinibus infernis sacrari.*

And the remains of human bodies were discovered dug out from the walls and the ground, and incantations, curses, and Germanicus' name etched on lead tablets, half-burned ashes smeared with putrid matter and other malefic things by which it is believed that souls are consecrated to the infernal divinities.<sup>1255</sup>

Plancina was unequivocally viewed as active in the occult activities and the administration of poison.<sup>1256</sup> Immediately after Germanicus' death, the accusers sprang into action. The notorious poisoner Martina was *percaram Plancinae*, "particularly dear to Plancina," and was arrested and dispatched on a ship bound for Rome.<sup>1257</sup> She died at Brundisium before reaching the capital and the impending trial; poison had been concealed in a knot of her hair, Tacitus reports, but there were no indications on her body suggesting suicide.<sup>1258</sup> Piso himself knew what was being said about the situation and foresaw the poisoning charges against them.<sup>1259</sup>

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<sup>1254</sup> Tac. *Ann.* 2.69–83, speech at 2.71: *nunc scelere Pisonis et Plancinae interceptus.*

<sup>1255</sup> Tac. *Ann.* 2.69.3; Dio 57.18.9 also describes human remains and lead curse-tablets found in Germanicus' house while he was still alive.

<sup>1256</sup> There seems to have been no mention at trial of Plancina's offensive behaviour at Rhodes the previous year: *nec Plancina se intra decora feminis tenebat, sed exercitio equitum, decursibus cohortium interesse, in Agrippinam, in Germanicum contumelias iacere*; "Nor did Plancina constrain herself within the bounds of decorous female behaviour, but was present at cavalry exercises and troop reviews, and hurled insults at Agrippina and Germanicus." Tac. *Ann.* 2.55.6; for more on this, see Marshall (1975) 14–15.

<sup>1257</sup> Tac. *Ann.* 2.74.2.

<sup>1258</sup> Tac. *Ann.* 3.7.2. The implication is that suicide by poison would have left some revealing marks on her body; compare descriptions of Germanicus' and Britannicus' bodies: Tac. *Ann.* 2.73.4; Dio 61.7.4.

<sup>1259</sup> Tac. *Ann.* 2.79.1: pressured to return to Rome to present his case, Piso replied that he would be there when the praetor who investigates poisonings had prescribed a day for defendant and accusers, that is, a trial date (*adfuturum ubi praetor qui de veneficiis quaereret reo atque accusatoribus diem praedixisset*).

The trial began almost immediately after Piso and Plancina's arrival at Rome.<sup>1260</sup> Plancina is named in the trial narrative as having participated in causing the death of Germanicus by *devotiones et veneficia*.<sup>1261</sup> Piso's defense was aggressive and seems to have disproved the accusation of poisoning.<sup>1262</sup> Nonetheless, when it began to be clear that Piso's conviction was inevitable, Plancina separated her defense from his and, through Livia's intervention, was assured of pardon.<sup>1263</sup> After Piso committed suicide, two days were used to conclude Plancina's trial – Tacitus says *imagine cognitionis*, “in the appearance of a trial.”<sup>1264</sup> With the public support of Livia and Tiberius, Plancina's punishment was remitted (*remittique poenam Plancinae*).<sup>1265</sup> She was not, therefore, technically deemed ‘not guilty’ or acquitted in the modern sense, but an exercise of imperial influence assured her impunity.<sup>1266</sup>

Piso and Plancina's two sons were also involved in their parents' trials. Their elder son Gnaeus was charged along with his father and mother, but was acquitted.<sup>1267</sup> Both sons were encouraged by Tiberius to defend their mother, and their family's fortune was preserved intact for their benefit.<sup>1268</sup> No argument can be made that the sons were the targets of harm or in any way the cause of the accusations against their mother. In fact, Tiberius and the

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<sup>1260</sup> Some important works on the *Senatus Consultum de Pisone Patre* (SCPP) are: Eck, Caballos, and Fernandez (1996), the *editio princeps*; Griffin (1997); Barnes (1998); and a special issue of the *American Journal of Philology*, vol. 120 (1999) entirely devoted to discussion of the SCPP.

<sup>1261</sup> Tac. *Ann.* 3.13.2.

<sup>1262</sup> Tac. *Ann.* 3.14.1.

<sup>1263</sup> Tac. *Ann.* 3.15.1; SCPP 109–120. The fact that Plancina had time to distance herself effectively from Piso when his prospects at trial diminished poses problems in understanding the chronology of the trial; Talbert (1999) 111.

<sup>1264</sup> Tac. *Ann.* 3.17.3. There must have been some hiatus in trial proceedings to allow Piso's sons to prepare their defense of their mother; Talbert (1999) 94.

<sup>1265</sup> SCPP 119–120.

<sup>1266</sup> Notably, the SCPP 120–124 reveals that two members of Piso's staff (Visellius Karus and Sempronius Bassus) were full partners and agents in all of his crimes and they were sentenced to *aquae et ignis interdictio* and their property was confiscated. Plancina could not, therefore, have been seen as a full partner in all of Piso's crimes, particularly those of insubordination and sedition.

<sup>1267</sup> SCPP 7, 20–23.

<sup>1268</sup> And for the benefit of their sister Calpurnia; SCPP 93–105.

senate were at some pains to ensure that the sons were not unduly harmed by their parents' actions. The elder son, Lucius, was assigned by lot to govern Africa in 39.<sup>1269</sup>

Plancina faced accusations again in 33, but the sensational circumstances of the trial in 20 overshadow the trial of 33; we do not know for certain what the charges were or if there was a full trial before her suicide. Tacitus reports that she was the target of accusations by no means unfamiliar, and that she paid by her own hand a late rather than undeserved punishment (*petitaque criminibus haud ignotis sua manu sera magis quam immerita supplicia persolvit*).<sup>1270</sup> The implication seems to be that the old charges were simply renewed but that, without imperial protection this time, the outcome was appropriate and final.<sup>1271</sup>

#### 43 Mutilia Prisca and her two daughters AD 30

Tac. *Ann.* 4.12.6; 5.2.2; Dio 58.4.5–7.

PIR<sup>2</sup> M 763; RC 659; RE 23 (1959) Publius 1936 no. 5; RE 16.1 (1933) 938–939.

Seager (2005) 158, 179; Barrett (2002) 191, 221; Marshall (1990) no. 11; Syme (1986) 430; Levick (1976) 177; Rogers (1935) 107–108, 209; (1931) 164–165.

Wife of Fufius Geminus with whom she had two daughters; close friend of Livia.<sup>1272</sup> Geminus was charged with *maiestas* in 30, the year after he held the consulship; there is no indication as to the specific actions that led to his indictment, though he was apparently inclined to acerbic witticisms aimed at Tiberius.<sup>1273</sup> Geminus had been consul during the

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<sup>1269</sup> Dio 59.20.7; this situation provided the occasion to divide Africa into two provinces because Caligula allegedly feared that Piso's arrogance might lead him to revolt if he were in charge of the entire province with its full military contingent.

<sup>1270</sup> Tac. *Ann.* 6.26.3.

<sup>1271</sup> Livia had died in 29 and Tiberius had already withdrawn to Capri, so their protection was not available in 33.

<sup>1272</sup> Geminus (husband); PIR<sup>2</sup> F 511; Tac. *Ann.* 4.12.4; Barrett (2002) 191.

<sup>1273</sup> Tac. *Ann.* 5.2.2; see Bauman (1974) 25–52 for more on defamation and *maiestas*.

time that Agrippina the elder was facing trial and it is possible that some action or involvement on his part was at the root of his peril in the following year.<sup>1274</sup> Tacitus' narrative of this case would have appeared in the lost section of book five, so we are left to rely on the fragments of Dio's account. He reports that Geminus had tried to redeem himself by reading his will in the senate, showing that he had left half of his property to the emperor and half to his children, but then was called a coward as well a traitor. He left the senate-house before the vote on his verdict and was about to commit suicide when a quaestor arrived with orders for his execution.<sup>1275</sup> Dio immediately turns to Prisca's case. The charge against her is not specified, but may have been linked with the *maiestas* accusation against her husband.<sup>1276</sup> Dio states that Prisca's friendship with Livia was the cause of her demise. If, however, her husband Geminus had been involved with the *partes Agrippinae* or Agrippina's trial the previous year, then Prisca's association would have been assumed. When Prisca appeared in the senate for her trial, she stabbed herself to death with a dagger in the presence of the assembled senators.<sup>1277</sup> Dio goes on to record that her two daughters were also destroyed; no word of indictment or trial.<sup>1278</sup>

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<sup>1274</sup> Rogers (1935) 140.

<sup>1275</sup> Dio 58.4.6.

<sup>1276</sup> So Marshall (1990) 345; Rogers (1935) 107–108. Although Tacitus alleges that Prisca had committed adultery with Julius Postumus in 23, there is no indication that there was any trial at the time, and by the time of Geminus' trial in 30, the five year statute of limitations had expired. Adultery could not have been the basis for the charges against Prisca in 30. Compare other wives who were caught up in the treason charges against their husbands: Paxaea, no. 46; Sextia, no. 51; Cornelia, no. 18.

<sup>1277</sup> Dio 58.4.6; Vibullius Agrippa also committed suicide in full view of the senate during his trial in 36. When his accusers (on unrecorded charges) had finished their declamations, he produced poison from a fold of his garment and swallowed it. He was carried off to prison by the lictors and was strangled although already on the point of death; Tac. *Ann.* 6.40.1; Dio 58.21.4.

<sup>1278</sup> Dio 58.4.7; this information was preserved by John of Antioch, who made an epitome of Dio's work; his recorded 'Mucia' is, presumably, an error for 'Mutilia'.

#### 44 (Claudia) Octavia (AD 62)

Tac. *Ann.* 14.60, 62–63; Suet. *Claud.* 27.2; *Nero* 7.2, 35, 57.1; Dio 60.5.7, 31.7; 62.13.1; Jos. *AJ* 20.149; *BJ* 2.249; cf. Seneca, *Octavia*.

PIR<sup>2</sup> C 1110; RC 246; RE 1 (1899) 2893–2898 Claudius no. 428.

Billot (2003) 126–141; Holland (2000) 138–141; Rudich (1993) 70–74; Bastomsky (1992) 606–610; Bauman (1992) 205–208; Marshall (1990) no. 39; Meise (1969) 172–216.

Daughter of Claudius and Messalina, she was betrothed to Nero at the very beginning of 49 after her fiancé L. Iunius Silanus was accused of incest and driven to suicide by the machinations of Agrippina, Octavia's soon-to-be mother-in-law.<sup>1279</sup> The young couple was married in 53; Nero was sixteen, Octavia was barely thirteen.<sup>1280</sup>

After nine years of marriage, Nero wished to divorce Octavia in favour of his long-standing mistress, Poppaea. He claimed that Octavia was sterile – a reasonable enough assertion since she was still childless after nine years. A simple divorce, however was not enough for Poppaea and she drove one of Octavia's servants to claim that she had committed adultery with a slave.<sup>1281</sup> The slave Eucaerus was charged with adultery, but when Octavia's maids were questioned, even under torture, they staunchly defended their mistress.<sup>1282</sup> The fact that her maids were tortured for their testimony indicates that Octavia faced formal charges, but their unwavering support led to an acquittal. There is no word about the verdict of Eucaerus' trial. The divorce proceeded.

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<sup>1279</sup> Tac. *Ann.* 12.3.2; 12.9.

<sup>1280</sup> Octavia must have been born before Britannicus, who was born on Feb. 14, 41, the twenty-second day of his father's reign (Suet. *Claud.* 27.2). If she had been born later than Britannicus, she would not yet have been twelve (the minimum legal age for girls' marriage) in 53 when she was married to Nero. She was born at least nine months before her brother, therefore sometime before June of 40; her betrothal to Silanus is known to have begun in 41 (Dio 60.5.7). Therefore her death in 62 *vicesimo aetatis anno occisa*, "cut down in the twentieth year of life," (Tac. *Ann.* 14.64) was recorded in error – she was probably twenty-two.

<sup>1281</sup> Tac. *Ann.* 14.60.2.

<sup>1282</sup> Tac. *Ann.* 14.60.3; 14.62.1; Suet. *Nero* 35.2.

Later, and therefore not as a result of the adultery charges, Octavia was banished to Campania under the surveillance of a military guard. Public outrage at her treatment compelled Nero to reestablish some connection with her.<sup>1283</sup> But since the servile adultery scam had failed, a similar confession was arranged from Anicetus, Agrippina's executioner and prefect of the fleet at Misenum.<sup>1284</sup> He made his confession with dramatic flair in the presence of people whom the emperor had summoned, a scenario evocative of a trial personally conducted by the emperor in a *cognitio extra ordinem* procedure. Anicetus was banished to Sardinia. Nero immediately published an edict, based on Anicetus' confession, stating that Octavia had bribed the prefect to be her ally in seditious plotting and that she had aborted a fetus conceived from their adultery.<sup>1285</sup> Octavia was now shut away on the island of Pandateria and executed a short time later.

#### 45 Paulina AD 19

Jos. *AJ* 18.65ff.

PIR<sup>2</sup> P 168; RC 389; RE 18.4 (1949) 2326, Paulina no. 1.

Syme (1964) 608, 614–15; Moering (1959) 293–304; Rogers (1935) 32, (1932) 252–256.

Wife of Sentius Saturninus, who was likely a son of the Saturninus who was consul in 19 BC.<sup>1286</sup> Two sons Gaius,<sup>1287</sup> consul *ordinarius* in AD 4, and Gnaeus,<sup>1288</sup> consul *suffectus* in AD 4, are well known to us; a third was possibly Lucius known only from an inscription,

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<sup>1283</sup> Tac. *Ann.* 14.60.5. The manuscript of Tacitus is defective at this point and the meaning of the key sentence is unclear. It seems unlikely that Octavia was recalled to Rome; Woodman (2004) 303 n. 113.

<sup>1284</sup> Tac. *Ann.* 14.62.1–63.1.

<sup>1285</sup> Tac. *Ann.* 14.63.1; Nero seems to have no awareness of contradicting his earlier claim of her infertility.

<sup>1286</sup> Rogers (1932) 255, PIR<sup>1</sup> S 159.

<sup>1287</sup> PIR<sup>1</sup> S 294.

<sup>1288</sup> PIR<sup>1</sup> S 295; if the elder brothers were consuls in 4, then in 19 they should be at least 50 years old.

CIL 6.9979.<sup>1289</sup> Josephus implies that her husband was in Rome at the time of her trial, so it seems more likely that Gaius was her husband as Gnaeus was *comes* to Germanicus in Syria in this same year. Since his attention was fully engaged in the crisis surrounding Germanicus' death, he would have had no time to assist a wife in trouble.<sup>1290</sup>

Josephus relates two anecdotes in immediate succession, the first about a noblewoman Paulina, who, though married, was pursued by a certain Decius Mundus. When even a price of 200,000 Attic drachmas would not overcome her virtuous refusal of his advances, he turned to a trick. Knowing that she was a devotee of Isis, he enlisted the help of his freedwoman Ida who bribed the priests of Isis to arrange a tryst in which Mundus appeared in the guise of the Egyptian god Anubis. He would have got away with it, too, except that he could not resist boasting. Paulina, very upset, told the whole story to her husband Saturninus and begged him to obtain redress. He brought the matter to the emperor Tiberius who, after thorough investigation, crucified the priests and the freedwoman Ida, razed the temple of Isis and ordered the cult statue cast into the Tiber. Mundus was exiled (the appropriate penalty for a guilty adulterer).<sup>1291</sup>

Immediately following is a second anecdote about a Roman noblewoman, Fulvia, who was a Jewish proselyte.<sup>1292</sup> Four Jewish swindlers met with her and persuaded her to

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<sup>1289</sup> PIR<sup>1</sup> S 297; Syme (1964) 614 suggests that Lucius met an early demise, thus explaining his complete lack of public activity in an otherwise illustrious family.

<sup>1290</sup> Tac. *Ann.* 2.74, 2.79, 2.81, 3.7.

<sup>1291</sup> Jos. *AJ* 18.65.

<sup>1292</sup> Rogers (1932) argued that there was only one woman named Fulvia Paulina. He points to the husbands' names being the same, the unlikeliness of two different men named Saturninus both having access to the emperor Tiberius at virtually the same time, both of whose complaints resulted in such drastic action against the offenders. Furthermore, he points out that the practice of multiple names for women became more common in the first century AD, as illustrated by Aemilia Lepida, Appuleia Varilla, Claudia Pulchra; the two names were represented together elsewhere by Baebia Fulvia Claudia Paulina Grattia Maximilla, CIL 6.1361. Josephus must have, he asserts, bungled his evidence. Raepsaet-Charlier (1987) 338 accepts Rogers' theory. Rogers' argument, however, has not persuaded everyone; Loius Feldman, translator of vol. 9 of the 1965 Loeb edition of Josephus' *Jewish Antiquities*, p. 59 n. c, asserts that there are two women, coincidentally married to men named Saturninus. Groag, PIR<sup>2</sup> A 1528, specifically warns readers not to believe that there was only one woman

give expensive gifts to the temple which they then kept for themselves. Fulvia's husband Saturninus reported this crime to Tiberius, whose friend he was, and as a result, the Jews were banished from Rome.<sup>1293</sup>

The two anecdotes are related in the midst of an account of Pontius Pilate's procuratorship in Judea (c. AD 30), but we know from Tacitus that the Jews were expelled from Rome in AD 19, so the anecdotes are out of sequence.<sup>1294</sup> What other mistakes might Josephus have made?<sup>1295</sup> If one husband's name were changed, the stories would simply sound more apocryphal and less coincidental.<sup>1296</sup> Since Tacitus also recorded the expulsion of the Jews and followers of Isis as simultaneous, there is support for Josephus' concatenation of the two anecdotes. Although it still seems very odd that Josephus would relate two such similar anecdotes (together and out of sequence in the same way!) about two different women, most compellingly, however, it seems impossible that Josephus, a dedicated Jewish historian, would have so completely bungled his information as to confuse a Jewess with an Isis worshipper. Such carelessness would have offended both his historian's principles and his religious sensibilities. Furthermore, he seems to approve of the expulsion of the Isis worshippers on moral grounds, but would not, of course, have approved of the

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named Fulvia Paulina; see also Groag, RE 2 A 1528 Sentius no. 10. Syme (1964) discusses the family of the Sentii Saturnini but passes over the problem of the identities of Fulvia and Paulina as "puzzling – and not here to be canvassed."

<sup>1293</sup> Fulvia: PIR<sup>2</sup> F 561. There is no doubt that there was more behind the expulsion of the Jews than four con men and one duped matron. The expulsion is also mentioned by Tac. *Ann.* 2.85 (who connects it intimately with the expulsion of the followers of Isis), Suet. *Tib.* 36, Dio 57.18.5a, and Sen. *Ep.* 108.22. Most plausible is Dio's explanation that Jewish proselytism in Rome had reached a level beyond Roman tolerance.

<sup>1294</sup> Tac. *Ann.* 2.85.4.

<sup>1295</sup> Feldman (1965) 50–51, n. d. Smallwood (1956) 326 suggests that he placed the anecdotes here deliberately to suggest that there were Jewish disturbances in Rome in c. 30. This is possible, but one would think it more desirable for both author and reader to simply state that there were additional disturbances at the later date.

<sup>1296</sup> Feldman (1965) suggests that it is merely coincidence that both women have a husband named Saturninus. There is no evidence in the apparatus criticus to suggest any emendation on textual evidence, but the possibility remains that Josephus has made an error in reporting the name of one of the husbands. The limited evidence available to Josephus may have resulted in his telling the two stories in quite similar ways – a form of literary contamination through proximity. Moering (1959) 302–304, on the other hand, suggests that, in relating these two anecdotes, Josephus has engaged in a novelistic treatment of history for apologetic ends.

expulsion of the Jews.<sup>1297</sup> Therefore, we must accept Josephus' presentation of two distinct anecdotes about two different women.

Josephus records no legal consequences for Paulina, though her status under the law was quite clear. She was guilty of adultery, by her own admission, and was therefore subject to immediate divorce and prosecution. If her husband did not bring charges within the first sixty days, a third party could have done so; she was apparently a wealthy woman and the prosecutor's half share of her assets would have been an attractive target for a *delator*. Furthermore, once her situation had caught and held Tiberius' attention, she could not have hoped to slide back into hiding. Finally, the punishment of exile imposed on Decius Mundus is suggestive, but inconclusive. Exile and confiscation of property is the appropriate punishment for a convicted adulterer, but exile alone could stand as the punishment for any number of crimes, including fraud.

#### 46 Paxaea AD 34

Tac. *Ann.* 6.29.1–3; Dio 58.24.3

PIR<sup>2</sup> P 192; RC 602; RE 18.4 (1949) 2436.

Seager (2005) 198; Griffin (1997) 262; Marshall (1990) no. 16; Levick (1976) 213–214; Bauman (1974) 125–126; Shotter (1969) 654–656; Rogers (1935) 150–151.

Wife of Pomponius Labeo, and co-defendant with him on charges of *repetundae* and *maiestas* based on their conduct when Labeo was the governor of Moesia.<sup>1298</sup> The details of their crimes are not recorded. Both Paxaea and Labeo forestalled conviction by committing suicide, a decision that Tacitus claims preserved the validity of their wills and their right to

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<sup>1297</sup> Moering (1959) 299.

<sup>1298</sup> Labeo (husband): PIR<sup>2</sup> P 726; he was governor of Moesia for eight years; see Tac. *Ann.* 4.47.1 for a description of some of his actions as governor.

proper burial.<sup>1299</sup> Her suicide suggests that Paxaea foresaw conviction and wished to avoid those penalties imposed on the convicted and executed, but not on those who had chosen death voluntarily. Tiberius claimed, according to Tacitus, that Paxaea, “although guilty, had no share in her husband’s danger;” (*etsi nocentem periculi tamen expertem fuisse*).<sup>1300</sup> Guilty of what, precisely, cannot be determined, but it was apparently a sub-capital offense.<sup>1301</sup>

#### 47 Pompeia Macrina AD 33

Tac. *Ann.* 6.18.2.

PIR<sup>2</sup> P 674; RE 21 (1952) 2292 no. 128 (spelled Marcina)

Martin (2001) 140; Bauman (1992) 63; Marshall (1990) no. 15; Hallett (1984) 173; Syme (1958) Appendix 62; Rogers (1952) 301; (1935) 145–146, 209.

Daughter of Gn. Pompeius Macer (*illustris eques*), sister of ex-praetor Pompeius Macer.<sup>1302</sup> She was wife of (Julius) Argolicus, whom Tacitus describes as a leader of the Achaeans and who was destroyed by the emperor (*Caesar adflixerat*) along with his father Laco; no motive for their destruction is given.<sup>1303</sup>

The details of the case are scanty. Macrina’s father and brother were charged at the same time as she was, and they committed suicide when conviction seemed near. The charges against them were vague, but seem to imply *maiestas*: their ancestor Theophanes of Mytilene had been a close friend of Pompey the Great and had been given divine honours by

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<sup>1299</sup> Tac. *Ann.* 6.29.1; see also Dio 58.15.4; Rutledge (2001) 43; Griffin (1997) 262.

<sup>1300</sup> Tac. *Ann.* 6.29.2.

<sup>1301</sup> Although it is not mentioned in the narrative of this case the following may have been relevant to the trial: an SC of 20 or 24 established that when an official was accompanied to his province by his wife, he would be liable for any offense committed by her, Tac. *Ann.* 3.33.3; 4.20.4; Talbert (1984) 439 no. 24. According to the terms of this decree, Paxaea’s offenses would have added to her husband’s danger.

<sup>1302</sup> Gn. Pompeius Macer (father): PIR<sup>2</sup> P 625; Pompeius Macer (brother): PIR<sup>2</sup> P 626.

<sup>1303</sup> Argolicus: PIR<sup>2</sup> I 174; Rogers (1935) 146 proposes that Argolicus and Laco, members of the distinguished family of Eurycles of Sparta (who had been deposed during the reign of Augustus, twice convicted of sedition and extortion and exiled, Jos. *AJ* 16.310; *BJ* 1.531), were destroyed after an attempt to re-establish their family’s primacy. Familial proximity may have been a factor in the subsequent demise of the Pompeii Macri.

the Greeks after his death.<sup>1304</sup> Tacitus' placement of their narrative between a case of treason and one of incest gives no further contextual clues about the nature of the charges. Macrina seems to have gone through a complete trial and her verdict was exile (*exilium statuitur*).<sup>1305</sup> No argument can be made that these charges against Macrina harmed her brother or father. They were harmed by charges against them, which in turn drove them toward suicide. Macrina was the only one to survive the legal process.

#### 48 Pomponia Graecina AD 57

Tac. *Ann.* 13.32.

PIR<sup>2</sup> P 775; RC 640; RE 21.2 (1952) 2351–2352 Pomponius no. 83.

Marshall (1990) no. 38; Syme (1981) 202; (1958) 300, 532.

Wife of Aulus Plautius, daughter of C. Pomponius Graecinus and sister of the younger C. Pomponius Graecinus.<sup>1306</sup> She was charged with foreign superstition and referred back to her husband for judgement. Our only evidence about this woman and her 'trial' comes from a single sentence in Tacitus:

*et Pomponia Graecina insignis femina, <A.> Plautio, quem ovasse de Britannis rettuli, nupta ac superstitionis externae rea, mariti iudicio permissa; isque prisco instituto propinquis coram de capite famaue coniugis cognovit et insontem nuntiavit.*

And Pomponia Graecina, a senatorial woman, wife of A. Plautius whom I previously related as having held an ovation from Britain, was accused of harbouring foreign superstitions and was turned over to her husband for judgement; and he, following ancient tradition, decided regarding the life and reputation of his wife before a council of her kinsmen, and acquitted her.<sup>1307</sup>

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<sup>1304</sup> Tac. *Ann.* 6.18.2; Theophilus was Macrina's grandfather or maybe great-grandfather; Bauman (1992) 63 interprets the charges against Macrina as *maiestas*.

<sup>1305</sup> Tac. *Ann.* 6.18.2.

<sup>1306</sup> PIR<sup>2</sup> P 457, *cos.* 29, governor of Britain 43–46/47; PIR<sup>2</sup> P 717; PIR<sup>2</sup> P 718.

<sup>1307</sup> Tac. *Ann.* 13.32.

Although Graecina was a senatorial woman, her trial was not held in the Senate. There is no indication as to the identity of her accusers, nor of the formal charges. No official charge of harbouring foreign superstitions seems to have existed.<sup>1308</sup> Perhaps this helps to explain the unusual step of allowing her case to be judged by a family council, an antique practice partially revived by Tiberius.<sup>1309</sup> What Tiberius had allowed, however, was for the family council to take responsibility for a woman's behaviour when there was no public prosecutor. Graecina seems to have been accused by a third party – that is, a public prosecutor – but the responsibility for her judgment was left to her husband (*mariti iudicio permissa*). The very high status of Graecina's husband might be posited as a reason for special treatment, yet the very high status of other women's husbands (e.g. Thrasea Paetus) or women themselves (e.g. Agrippina the Elder, Aemilia Lepida, Junia Lepida) did not protect them from the dangers of criminal prosecution. Her status cannot have been the reason. This seems to have been an instance where the ancient patriarchal dictum applied: "Control your wife."

Graecina was accused of harbouring foreign superstitions. There were a number of superstitions around Rome that may have qualified: various Eastern cults such as Isis worship, Judaism, Christianity.<sup>1310</sup> Aside from Christianity, these cults were popular and adherence to one would have aroused no particular censure. Possibly, she had aroused suspicion by engaging in particularly odd rituals, or perhaps something indigenous to Britain

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<sup>1308</sup> There is very little on religious law in the Digest or other legal sources. There were Christians who were tried about this same time (only 40 years later – see Pliny *Ep.* 10.96) whose main offense was refusing to swear by the emperor's name. No other foreign superstitions except Judaism were so monotheistic as to prevent swearing by the emperor's name, and Jews were generally allowed their peculiarities out of respect for the antiquity of their religion.

<sup>1309</sup> Suet. *Tib.* 35: *Matronas prostratae pudicitiae, quibus accusator publicus deesset, ut propinqui more maiorum de communi sententia coercerent auctor fuit.* "He revived the custom of our ancestors, that in the absence of a public prosecutor matrons of ill-repute be punished according to the decision of a council of their relatives." On the ancient custom, see Livy 39.18.6; 48 (epitome); Dionysius of Halicarnassus 2.25.6.

<sup>1310</sup> Eck (1971) 391 rejects the possibility that Graecina was Christian, but allows that she could have been a follower of any other Oriental religion.

acquired during her husband's governorship – Druidism would surely have provoked censure. The fact that her offense was a religious aberration, and apparently no threat to the state, may have allowed for a more private inquiry and judgment.<sup>1311</sup> After facing her husband's judgment, in the presence of a family council (*propinquis coram*), Graecina was pronounced innocent.

#### 49 Quintilia AD 40

Jos. *AJ* 19.32–36; Dio 59.26.4; Suet. *Cal.* 16.4.

PIR<sup>2</sup> Q 35.

Rutledge (2001) 164, 273; Barrett (1989) 158; 293 n 24.

Freedwoman, actress, and mistress of the senator Pomponius who was accused by a certain Timidius of slander (so Josephus) or of plotting (so Dio) against Caligula.<sup>1312</sup> When Quintilia was called as a witness against him, she refused to cooperate and Timidius ordered that she be tortured.<sup>1313</sup> Although cruelly tortured, Quintilia revealed nothing about her lover Pomponius. Caligula was moved by her bravery and her ruined appearance and released both her and Pomponius and granted her a gift of HS 800,000 as compensation for the torture she had endured.<sup>1314</sup>

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<sup>1311</sup> Although of a somewhat later time period, Christian tendencies were dealt with publicly and were not left for private reprimands; see, for example, Pliny, *Ep.* 10.96.

<sup>1312</sup> Jos. *AJ* 19.32; Dio 59.26.4; Josephus later states (19.35) that there was actually a conspiracy to which Quintilia was privy.

<sup>1313</sup> Jos. *AJ* 19.34.

<sup>1314</sup> Dio 59.26.4; Suet. *Cal.* 16.4.

## 50 Sancia AD 33

Tac. *Ann.* 6.18.

PIR<sup>1</sup> S 130; see RE 4.1 (1900) 914–915 Considius no. 17.

Rutledge (2001) 98; Bauman (1996) 63; Marshall (1990) no. 14; Hallett (1984) 173; Rogers (1952) 301; (1935) 145, 210; Syme (1949) 15.

Sister of Considius Proculus and apparently co-defendant with him on charges of *maiestas* brought by Q. Pomponius Secundus in 33.<sup>1315</sup> Although Tacitus describes their demise in a single sentence, he goes on to mention that their accuser is the brother of a Pomponius Secundus who was accused by a Considius some two years earlier.<sup>1316</sup> It is likely that this is the same Considius and, therefore, that the accusations against Considius and his sister in 33 were retribution in kind for the accusations against their accuser's brother in 31. There is no indication as to the precise nature of the actions that led to the charge of *maiestas*, only that Considius was executed and Sancia was banished (*aquae et ignis interdictio*).<sup>1317</sup> Since the action against Considius was likely begun in the spirit of retribution, his sister Sancia seems not to have been the target of harm but was swept up in the case against her brother.

## 51 Sextia AD 34

Tac. *Ann.* 6.29.4–7. Cf. Suet. *Tib.* 61.3; Dio 58.24.3–5; Sen. *Suas* 2.22.

PIR<sup>1</sup> S 481; RC 711; RE 2A.2 (1923) 2055 Sextius no. 44; see also RE 4 (1901) 1521 Cornelius no. 390.

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<sup>1315</sup> Proculus (brother): PIR<sup>2</sup> C 1281; Secundus (accuser): PIR<sup>2</sup> P 757. For problems with her nomenclature, Sancia or Sancta, see Syme (1970) 73.

<sup>1316</sup> Tac. *Ann.* 5.8.1, where he adds a comment about the brother's steadfast loyalty. Pomponius survived this accusation and lived beyond the end of Tiberius' reign.

<sup>1317</sup> Tac. *Ann.* 6.18.1; Bauman (1992) 63.

Marshall (1990) no. 36; Levick (1976) 213; Bauman (1974) 126–128; Syme (1949) 12; Rogers (1935) 138–140, 151–154.

Wife of Mamercus Aemilius Scaurus and member of the prominent Sextii Africani family.<sup>1318</sup> Her husband was charged with *maiestas* in 32, then with adultery and sorcery (*magorum sacra*) in 34; both suicided before the verdict.<sup>1319</sup> The crime of *magorum sacra* was likely dealt with under the *lex Cornelia de sicariis et veneficis*; the adultery under the Julian law.<sup>1320</sup> It is not clear whether Sextia was a co-defendant – obviously not on the charge of adultery – although if she was not herself under indictment, it is unclear why she felt that suicide was her best option.

## 52 Sextia and Antistia Pollitta AD 65

Tac. *Ann.* 16.10–12; cf. 14.22.5; 14.58–59.

PIR<sup>1</sup> A 778; RC 72; RC 712; RE 2A.2 (1923) 2055 Sextius no. 45.

Rutledge (2001) 120, 154–155; Rudich (1993) 141–143; Marshall (1990) no. 29; Griffin (1984) 170; Rogers (1955) 210; (1952) 305–308; (1935) 306.

Antistia Pollitta was the widow of Rubellius Plautus; Sextia was her grandmother. Rubellius Plautus was the son of Julia and Rubellius Blandus, grandson of Drusus and Livilla, great-grandson of the emperor Tiberius and was, therefore, descended from Augustus in exactly the same degree as the emperor Nero.<sup>1321</sup> He became a focus for fears of rebellion

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<sup>1318</sup> PIR<sup>2</sup> A 404; this is the same Scaurus who was married to Aemilia Lepida, no. 3, prior to her trial in 20. On Sextia's family, see Syme (1949) 12.

<sup>1319</sup> Tac. *Ann.* 6.29.3–4; the alleged adultery was with Drusus' wife Livilla, who had been dead for more than two years. On the treason charges of 32, there was either no trial at the time or a rare verdict of not guilty; Tac. *Ann.* 6.9.3.

<sup>1320</sup> On the implications and punishment of *magorum sacra*, see Rives (2003) 320–322; also Martin (2001) 163.

<sup>1321</sup> Plautus: PIR<sup>2</sup> R 115; Julia, no. 29; Livilla, no. 35.

and, in 60, was encouraged to withdraw to his estates in Asia.<sup>1322</sup> Two years later, Plautus was assassinated on Nero's orders.<sup>1323</sup>

In 65, Pollitta's father L. Antistius Vetus faced charges of *maiestas* on the accusation of his freedman Fortunatus and Claudius Demianus, whom Vetus had imprisoned while he was proconsul of Asia.<sup>1324</sup> Since Vetus was under guard, Pollitta travelled to Naples on his behalf where she accosted Nero repeatedly when he left his residence, shrieking and shouting that he should listen to her guiltless father, but the princeps was unmoved.<sup>1325</sup> She returned to her father's side and reported that there was no hope. His trial was imminent and the guilty verdict was foregone. Vetus, Pollitta, and Sextia opened their veins.<sup>1326</sup>

Although only Vetus had previously been indicted, all three were tried posthumously and convicted; perhaps their suicides were taken as evidence of their guilt. *Accusati post sepulturam decretumque ut more maiorum punirentur, et Nero intercessit, mortem sine arbitro permittens*; "They were accused after burial and it was decreed that they be punished according to ancestral custom, and Nero intervened, permitting them death without witness (i.e. suicide)."<sup>1327</sup> We can only surmise that the charges against Pollitta and her grandmother Sextia were also *maiestas* since the trial took place posthumously.<sup>1328</sup>

There is no opportunity to suggest that the charges against Pollitta and Sextia might have been intended to harm a family member, or even the defendants themselves. A possible

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<sup>1322</sup> Tac. *Ann.* 14.22.3. This is five years after Agrippina diffused accusations of plotting with Rubellius Plautus to displace Nero as emperor; Tac. *Ann.* 13.19.3. For a more on this, see Barrett (1996) 175–176; for a broader consideration of Nero's rivals, see Rogers (1955) 195–212; Agrippina, no. 5.

<sup>1323</sup> Tac. *Ann.* 14.57–59.

<sup>1324</sup> Tac. *Ann.* 16.10.2; Nero released Claudius Demianus from prison in Asia as a reward for his accusation. Rogers (1955) 210. The charge of *maiestas* is likely, although not specified, because of the circumstances and family ties to Plautus, and it is confirmed by the fact that the trial continued after the suicide of the defendant. Vetus: PIR<sup>2</sup> A 776; Vetus had been Nero's consular colleague in 55.

<sup>1325</sup> Tac. *Ann.* 16.10.4.

<sup>1326</sup> Tac. *Ann.* 16.11.2.

<sup>1327</sup> Tac. *Ann.* 16.11.3.

<sup>1328</sup> Rogers (1955) 210; compare, for example, the posthumous *maiestas* trials of Cn. Piso in 20 and Libo Drusus in 16.

motive is financial. Because the two women were convicted, likely of *maiestas*, their property would have been confiscated.

### 53 Sosia Galla AD 24

Tac. *Ann.* 4.19–20, 4.52.5; see also Vell. Pat. 2.130.3.

PIR<sup>1</sup> S 563; RC 720; RE S 14 (1974) Sosius 743 no. 13a.

Seager (2005) 160–162; Rutledge (2001) 141–144; Barrett (1996) 34; Bauman (1996) 60; (1992) 145–149; (1974) 115–120; Marshall (1990) no. 6; Syme (1986) 132–133, 376; Talbert (1984) 507; Levick (1976) 163, 286–287 n. 88; Shotter (1967) 712–716; Chilton (1955) 79–80; Rogers (1952) 295–296; (1935) 75–78; (1931) 141–144, 152–153.

Wife of C. Silius Aulus Caecina Largus, with whom she had three sons C. Silius, C. Caecina Largus, and A. Caecina.<sup>1329</sup> She was known as a dear friend of the elder Agrippina, and her husband was a friend of Germanicus. Silius and Sosia faced *repetundae* and *maiestas* charges brought by the consul L. Visellius Varro, but ostensibly arranged by Sejanus and Tiberius.<sup>1330</sup> Sosia was accused as an accessory (*socia*) to her husband's crimes. The trial in the senate was conducted, according to Tacitus, on the treason charges alone, even though he claims the extortion charges would have stuck.<sup>1331</sup> Silius foresaw his conviction and committed suicide; his property was seized, though none was paid over to the provincials, and the *fiscus* provided an itemized calculation of its demands on his estate.<sup>1332</sup> Sosia's trial continued and concluded with her conviction and exile on the motion of Asinius Gallus. A debate followed on the disposition of her property and M. Lepidus ensured that the

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<sup>1329</sup> Silius (husband): cos 13, PIR<sup>1</sup> S 507; sons: PIR<sup>1</sup> S 505, PIR<sup>2</sup> C 101, PIR<sup>2</sup> C 102.

<sup>1330</sup> Tac. *Ann.* 4.19.

<sup>1331</sup> Tac. *Ann.* 4.19.4; Rogers (1935) 77 interprets Tacitus' statement to mean that their guilt on the *repetundae* charges was admitted and therefore the trial needed only to address the question of treason.

<sup>1332</sup> Tac. *Ann.* 4.20.1; all gifts from Augustus were demanded back from his estate. Bauman (1974) 117–120 attributes the property seizure to Tiberius' *renuntio amicitiae*, which antedated the trial.

law was followed in granting a quarter to her accusers and preserving the remainder for her children.<sup>1333</sup>

Sosia Galla stands as the first woman convicted under the *lex Iulia de maiestate*. The nature of the *maiestas* was described as their complicity with the Gallic chieftan Sacrovir and extending the length of the war, but Agrippina later claimed that Sosia had been destroyed because of their friendship. Simple friendship with Agrippina would not have supported an accusation of *maiestas*. Sejanus had warned Tiberius that Agrippina had a political following (the *partes Agrippinae*) that was on the verge of tearing the country apart. Agrippina's relationship to Germanicus gave her a special claim to the allegiance of the Germanic legions, supported by the backing of Silius who had commanded them as well. There may have been more to the prosecution of Silius and Sosia than Tacitus concedes.<sup>1334</sup>

Of their children, only C. Silius is known to have had a political career. He was consul-designate in 48 when he married Messalina in an apparent attempt to claim Claudius' imperial title as well as his wife. Unsurprisingly, he was executed.<sup>1335</sup> His political career had been measurably successful prior to that point and had not been precluded by his parents' destruction in 24.

#### 54 Urgulania AD 16

Tac. *Ann.* 2.34.4; 4.21, 22.

PIR<sup>1</sup> V 684; RE Suppl 19 (1962) 1868–1869.

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<sup>1333</sup> Tac. *Ann.* 4.20.2; Bauman (1992) 145; the M. Aemilius Lepidus here was the consul of 6 and the man famously assessed by Augustus as *capax imperii*.

<sup>1334</sup> Rutledge (2001) 142; Barrett (1996) 34.

<sup>1335</sup> Tac. *Ann.* 11.35.2; PIR<sup>1</sup> S 505.

Barrett (2002) 165–167, 192; Bauman (1992) 135, 167, 202; Marshall (1990) no. 44; Syme (1986) 76, 88, 376, 430; Talbert (1984) 247, 486; Goodyear (1981) 293–5; Beard (1980) 17 n. 49.

Member of a prominent Etruscan family who attained some distinction in the early empire, and wife of M. Plautius Silvanus.<sup>1336</sup> She was the mother of Plautius Silvanus (consul in 2 BC, colleague with the emperor Augustus), and grandmother of Urgulanilla, the future wife of the emperor Claudius.<sup>1337</sup> She was a close friend of Livia and this friendship may have played a role in the political advancement of her son. No doubt Urgulania and Livia planned the marriage of their grandchildren Claudius and Urgulanilla.

Tacitus records that Urgulania was twice involved in the courts.<sup>1338</sup> In the first instance, she was summoned to court by Lucius Piso to recover a sum of money. She refused his summons and took refuge with Livia when Piso was prepared to drag Urgulania out of Livia's house – her friendship with Livia had raised her above the law – and avoided appearing in court when Livia paid the sum owed. In the second instance, Urgulania was summoned as a witness in a case being tried before the Senate; when she refused to appear, a praetor was sent to her home to take her testimony. Her influence, gained through friendship with Livia, was regarded as excessive, and she was thought astonishingly presumptuous to have avoided her civic duty.

Tacitus then interjects the curious statement, *cum virgines Vestales in foro et iudicio audiri, quotiens testimonium dicerent, vetus mos fuerit*, “although it is ancient custom that Vestals be heard in the forum and in court whenever they give their testimony.”<sup>1339</sup> It is not clear whether he meant to imply that Urgulania had been a Vestal, or whether she had been

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<sup>1336</sup> PIR<sup>2</sup> P, stemma 20: Plautii; Silvanus: PIR<sup>2</sup> P 477; Barrett (2002) 192; Syme (1986) 73.

<sup>1337</sup> Barrett (2002) 192; Syme (1986) 88. Urgulania's grandson Plautius Silvanus, when he was praetor in 24, defenestrated his wife Apronia; Tac. *Ann.* 4.22.

<sup>1338</sup> *Ann.* 2.34; Barrett (2002) 165–167.

<sup>1339</sup> *Ann.* 2.34.4.

granted rights equivalent to a Vestal (highly unlikely, since Livia herself did not have these rights yet), or whether he simply meant to put her behaviour in context. Since there is no other evidence to suggest that Urgulania was a Vestal, the last option seems most plausible.<sup>1340</sup> Even these highly regarded priestesses of Vesta, who had legal status and freedoms granted to no other Roman woman, were expected to attend and give evidence in legal proceedings upon request. Urgulania was trying – with some success – to put herself in a position of social and legal superiority to Vestal Virgins.

Several years later, Urgulania's grandson Plautius Silvanus, when he was praetor in 24, threw his wife Apronia out a window to her death.<sup>1341</sup> He claimed to have been asleep at the time and that she must have jumped from the window, but Tiberius' investigation revealed signs of a struggle. Apronia's father, L. Apronius, brought charges against his son-in-law and Tiberius referred the case to the senate. After the judges had been appointed, Urgulania sent a dagger to Plautius. This was thought to be a patent disclosure of imperial sentiment on the matter, given Urgulania's close friendship with Livia. Plautius took the hint and committed suicide.

## 55 Vibia AD 42 and 52

*Tac. Ann.* 12.52.1; Dio 60.16.1–3; Pliny *Ep.* 3.16.9; cf. *Tac. Hist.* 2.75.

PIR<sup>1</sup> V 410; RC 798; RE 8.2 (1958) 1998 Vibia no. 70.

Bauman (1992) 171; Rutledge (2001) 109, 165; Levick (1990) 60–61; Marshall (1990) no. 28; Syme (1986) 259, 278; (1964) 415; Sherwin-White (1966) 249; Cramer (1954) 240, 262, 273.

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<sup>1340</sup> Goodyear (1981) 295; Beard (1980) 17 n. 49 argues the opposite.

<sup>1341</sup> *Tac. Ann.* 4.22.

Wife of L. Arruntius Furius Camillus Scribonianus and mother of Furius Scribonianus.<sup>1342</sup> Vibia was involved in two distinct legal proceedings: one with her husband, the other with her son. Her husband Scribonianus, while governor of Dalmatia, had entered into a conspiracy with Annius Vinicianus in order to overthrow Claudius.<sup>1343</sup> The rebellion was put down after only a few days, and both Vinicianus and Scribonianus committed suicide.<sup>1344</sup> Because of the serious nature of their offenses (*perduellio*), their trials were held posthumously. Vibia is known to have testified about her husband's activities at his trial, which roused the redoubtable Arria (whose husband Caecina Paetus was also sentenced to die) to a sharp rebuke.

*Eadem apud Claudium uxori Scriboniani, cum illa profiteretur indicium, 'Ego' inquit 'te audiam, cuius in gremio Scribonianus occisus est, et vivis?'*

This same woman [Arria] said, in the presence of Claudius, to Scribonianus' wife after she voluntarily gave testimony, 'I should listen to you, in whose lap Scribonianus died, and you still live?'<sup>1345</sup>

Dio notes that all the sons of those who were put to death were granted immunity.<sup>1346</sup>

Ten years later, when her son Furius Scribonianus was banished for consulting astrologers about the death of the emperor Claudius (certainly a *maiestas* charge), Vibia was charged along with him with the added accusation *ut casus prioris (nam relegata erat)*

<sup>1342</sup> Camillus Scribonianus (husband): PIR<sup>2</sup> A 1140; Furius Scribonianus (son): PIR<sup>2</sup> A 1147. Pliny's text (*Ep.* 3.16.9) does not name Scribonianus' widow, which has not solved the confusion raised in the Tacitean manuscripts between the names Vibia and Vinicia as the name of Scribonianus' widow. Syme (1964) 415 n. 2, followed by Levick (1990) 60, argues for 'Vinicia'; the majority of scholarship accepts 'Vibia': PIR, Raepset-Charlier, RE, also Koestermann (1963–) 3.197 and Bauman (1992) 171, 261 n. 29.

<sup>1343</sup> Vinicianus had been proposed for the throne after the death of Caligula, Dio 60.15.1. For this conspiracy, see Dio 60.15–16; Suet. *Claud* 13.2, 35.2; *Otho* 1.2. Tacitus' account of these years is missing, as they fall into the lacuna between books six and eleven.

<sup>1344</sup> Vinicianus: Dio 60.15.5; Scribonianus: Dio 60.15.3. Tacitus, however indicates that he was killed; *Hist.* 2.75.3 gives the name of the soldier who was rewarded for killing Scribonianus.

<sup>1345</sup> Pliny *Ep.* 3.16.9; Arria is famous for encouraging her vacillating husband toward suicide by her own example and with the words: *Paete, non dolet!* "Paetus, it does not hurt!" Pliny, *Ep.* 3.16.6.

<sup>1346</sup> Dio 60.16.2.

*impatiens*; “that she had been intolerant of her previous plight (she had been relegated).”<sup>1347</sup> There is no indication precisely when, nor precisely why, she had previously been relegated, but her intolerance of the situation may suggest that she had been relegated in 42 when she gave testimony against her husband and most likely expected the same immunity that had been granted to her son. If the conspiracy case of 42 was not the occasion of her exile, then she was tried and convicted in another case about which we know nothing. At any rate, she resented Claudius, at whose order she was in exile, and whose death she anxiously awaited. Since she was back in Rome and was tried with her son in 52, her earlier punishment of *relegatio* may have been the more lenient *relegatio ad tempus*, or, more likely, her and Furius’ consultation of astrologers occurred at her place of exile and she was brought back to Rome only for the trial. About her subsequent punishment, nothing is recorded.

## 56 Vistilia AD 19

Tac. *Ann.* 2.85.1–4; Suet. *Tib.* 35.2.

PIR<sup>1</sup> V 490; RC 815; RE Suppl. 14 (1974) 910–911 Vistilius no. 2.

McGinn (1992) 280–295; Marshall (1990) no. 2; Levick (1983) 111–115; Syme (1949) 16–17; Rogers (1935) 31.

Wife of Titidius Labeo,<sup>1348</sup> and daughter of Sextus Vistilius a senator of praetorian rank who was an intimate friend first of Drusus, then of Tiberius.<sup>1349</sup> Her father’s sister was the famous Vistilia whose six marriages produced the children P. Suillius Rufus,<sup>1350</sup> Cn.

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<sup>1347</sup> Tac. *Ann.* 12.52.1.

<sup>1348</sup> PIR<sup>1</sup> T 185.

<sup>1349</sup> PIR<sup>1</sup> V 489.

<sup>1350</sup> PIR<sup>1</sup> S 700; he was an active prosecutor whose cases included Tiberius’ granddaughter Julia and Germanicus’ sister Livilla in 43; in 47 he was put up by Messalina to accuse Valerius Asiaticus. Although he was very powerful under Claudius and in Nero’s early years, he spent the last years of his life in exile; Rutledge (2001) 270–271.

Domitius Corbulo, P. Pomponius Secundus, Q. Pomponius Secundus,<sup>1351</sup> and Caesonia (wife of Caligula), all of whom were therefore first cousins to our Vistilia.

In AD 19, Tacitus reports, Vistilia registered her name with the aediles as a prostitute.<sup>1352</sup> Her husband Labeo was immediately criticized for having neglected to prosecute his wife under the adultery laws. He claimed that the sixty days given for deliberation had not yet passed. The combination of her publicly and officially admitted extra-marital activities and her husband's lack of action was sufficient to send the senate into action.

The timing of, and responsibility for, registering adultery charges was much on the minds of the jurists whose work is contained in the *Digest* 48.5. In this case, even though the cuckolded husband had the obligation to lay charges within sixty days, the charge of adultery must have been registered by a third party since Labeo claimed that his time allotment for action had not yet expired. The woman's father is the only other person who could lay charges within the first sixty days, so it seems probable that her father, Sextus Vistilius, set the prosecution in motion.<sup>1353</sup> Labeo could not be charged for *lenocinium* since the sixty days had not elapsed so the senate judged Vistilia alone; she was banished to the island of Seriphos. There is no reason to believe that this banishment was anything other than the standard *relegatio*, which usually involved confiscation of half the property but did not impact the citizenship of the condemned.

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<sup>1351</sup> PIR<sup>2</sup> D 142, PIR<sup>2</sup> P 756, PIR<sup>2</sup> P 757 respectively.

<sup>1352</sup> Goodyear (1981) 439 points out that aediles exercised some control over brothels, baths, taverns, and other places of public resort, but doubts that they actually kept a register of common prostitutes as this passage suggests; see also Sen. *Dial.* 7.7.3, *Ep.* 86.10; Livy 8.22.3, 10.31.9, 25.2.9.

<sup>1353</sup> Sex. Vistilius later gave some offense to Tiberius, was excluded from his company, and committed suicide in 32; Tac. *Ann.* 6.9.2.

## 57 Vitellia AD 21

Tac. *Ann.* 3.49–51; Dio 57.20.3–4; cf. Livy 34.7.7.

PIR<sup>1</sup> V 513; RC 816; RE Suppl 9 (1962) 1743 Vitellius no. 7q.

Marshall (1990) no. 45; Syme (1982) 462; (1970) 38; Bauman (1974) 152–65; Rogers (1935) 62–64, 215;

Wife of A. Plautius with whom she had two sons: A. Plautius and Q. Plautius and a daughter; her brother Vitellius was a procurator of Augustus.<sup>1354</sup> She was the mother-in-law of P. Petronius who was *consul suffectus* in AD 19, proconsul of Asia 29–35, and father-in-law of the emperor Vitellius.<sup>1355</sup> She was the niece by marriage of Urgulania and mother-in-law of Pomponia Graecina.<sup>1356</sup>

Vitellia was called to witness at the trial of the equestrian Clutorius Priscus. He had written a celebrated poem lamenting the final moments and death of Germanicus, for which he had received money and praise from Tiberius. When Tiberius' son Drusus was seriously ill, Priscus had composed a similar poem with the intention of even greater profit if Drusus should die.<sup>1357</sup> Showing a remarkable lack of judgment, Priscus read his composition at the house of Petronius in the presence of Vitellia and many other illustrious ladies. A *delator* immediately filed charges against Priscus and terrified others into giving testimony against the poet; only Vitellia testified that she had heard nothing. The court believed the majority and the defendant was executed. Vitellia suffered no apparent reprisals for her perjury.

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<sup>1354</sup> Plautius (husband): PIR<sup>2</sup> P 456; son Aulus: PIR<sup>2</sup> P 457, husband of Pomponia Graecina, no. 48; son Quintus: PIR<sup>2</sup> P 459; brother Vitellius: PIR<sup>1</sup> V 503.

<sup>1355</sup> Syme (1970) 38 raises the possibility that Petronius was proconsul from 30–36; the uncertainty over dates has no bearing on the case of Clutorius Priscus.

<sup>1356</sup> See Appendix 2.4; Urgulania, no. 54; Pomponia Graecina, no. 48.

<sup>1357</sup> This was not Drusus' final illness; he died of poisoning about two years later in 23; Tac. *Ann.* 4.8.

## 58 Vitia AD 32

Tac. *Ann.* 6.10.1; cf. Suet. *Tib.* 61.2.

PIR<sup>1</sup> V 517; RC 819; RE S 9 (1962) 1744.

Barrett (2002) 221; Rutledge (2001) 99; Marshall (1990) no. 13; Rogers (1935) 140.

Mother of Fufius Geminus who had been convicted of *maiestas* in 30, and therefore mother-in-law of Mutilia Prisca.<sup>1358</sup> She was executed in 32 because she had wept at the death of her son (*quod filii necem flevisset*).<sup>1359</sup> Although Tacitus trivializes and obfuscates the events, it is likely that she was also charged with *maiestas* and faced a real trial.<sup>1360</sup> Suetonius *Tib.* 61.2 records: *interdictum ne capite damnatos propinqui lugerent*; “There was a prohibition that families not mourn those condemned on a capital crime.” The timing of her trial, more than a year after her son’s death, suggests that it may have been her excessively long mourning was an implicit and continued criticism of Tiberius’ decision to convict Geminus and a reminder of traitors best forgotten.

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<sup>1358</sup> Geminus (son): PIR<sup>2</sup> F 511; see also Mutilia Prisca no. 43.

<sup>1359</sup> Tac. *Ann.* 6.10.1.

<sup>1360</sup> Marshall (1990) 346; Rogers (1935) 140, citing Ulpian Dig. 3.2.11.3. Marshall (1990) 346 n. 33 points out that Ulpian is arguing that violation of the traditionally denied mourning for the specified people (including those convicted of *maiestas*) was undesirable and socially inappropriate but not actually illegal.

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## Appendix 1:

### Chronological Presentation of Roman Women in Criminal Trials

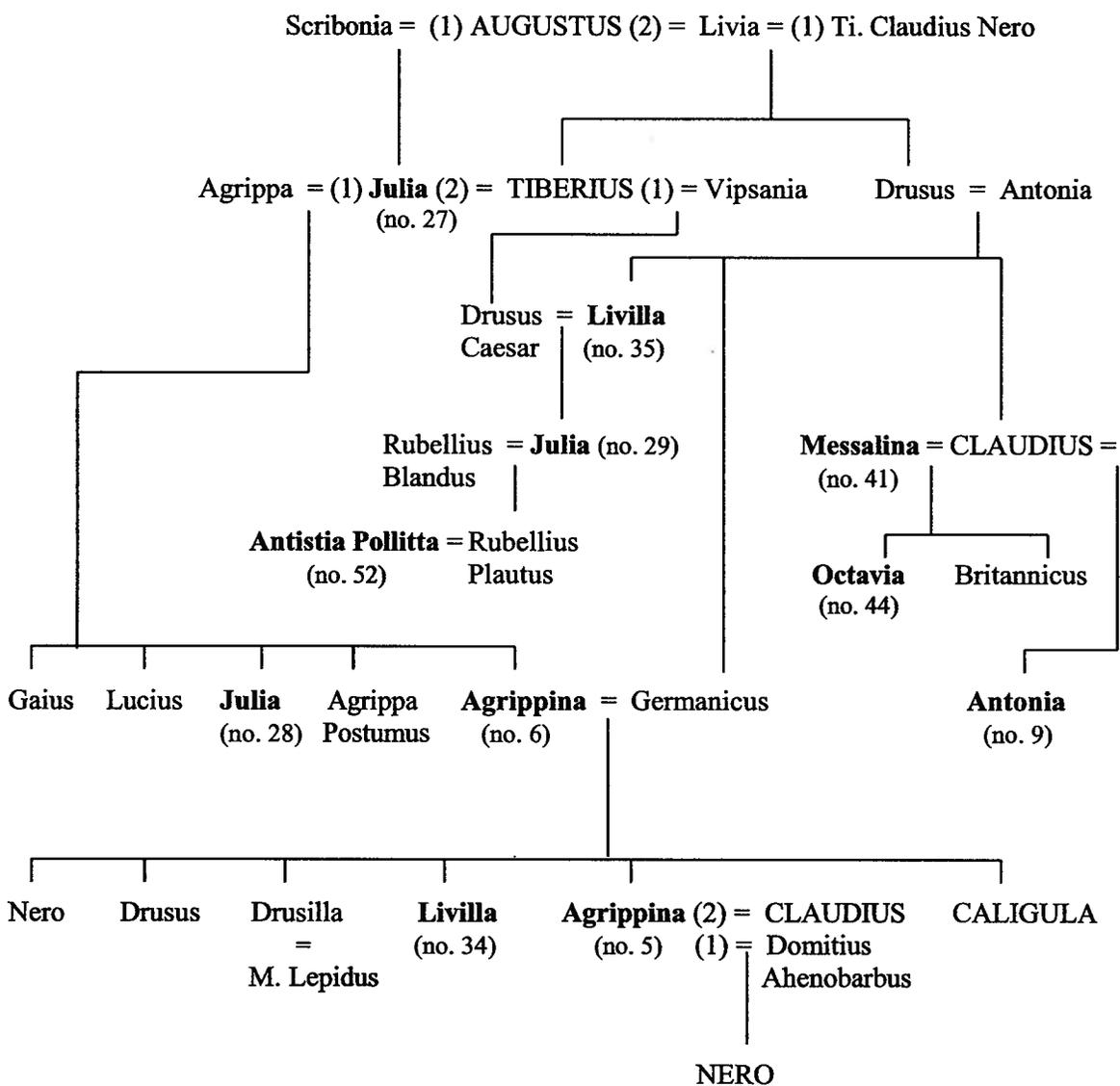
Each woman is listed with the number assigned to her in the Prosopographical Survey of Women in Criminal Trials. Round brackets indicate those cases where the charges are unrecorded or uncertain; square brackets indicate the role of the woman as something other than defendant. Cases are divided by the regnal dates of the five Julio-Claudian emperors. Where the date of a trial is unknown, it is placed at the end of the appropriate reign.

Emperor	Year of trial	Name	Charges	No.
Augustus	2 BC	Julia, daughter of Augustus	(adultery and conspiracy)	27
	AD 8	(Vipsania) Julia	(adultery and conspiracy)	28
Tiberius	AD 16	Urgulania	[witness]	54
	17	Appuleia Varilla	adultery and <i>maiestas</i>	12
	18	Antonia Tryphaena	[prosecutor]	10
	19	Vistilia	adultery – registered as a prostitute	56
	19	Paulina	(adultery)	45
	19	Ide	(adultery)	22
	20	Aemilia Lepida, elder	<i>maiestas</i> , poisoning, <i>falsum</i> , adultery	3
	20, 33	Munatia Plancina	<i>veneficia</i> and <i>maiestas</i>	42
	21	Annia Rufilla	fraud and harassment	8
	21	Vitellia	[witness]	57
	24	Sosia Galla	<i>maiestas</i>	53
	24	Fabia Numantina	<i>veneficia</i> – driving husband insane	21
	24	<i>Ignota</i> , sister of Firmius Catus	<i>maiestas</i>	25
	25	Aquila	adultery	13
	26	Claudia Pulchra	adultery and <i>maiestas</i>	16
	27, 29	(Vipsania) Agrippina the elder	<i>maiestas</i>	6
	30-31	Mutilia Prisca, two daughters	<i>maiestas</i>	43
31	Apicata	[witness]	11	
31	Aelia Junilla and Seianianae	<i>maiestas</i>	2	
31	(Livia Julia) Livilla	<i>maiestas</i>	35	

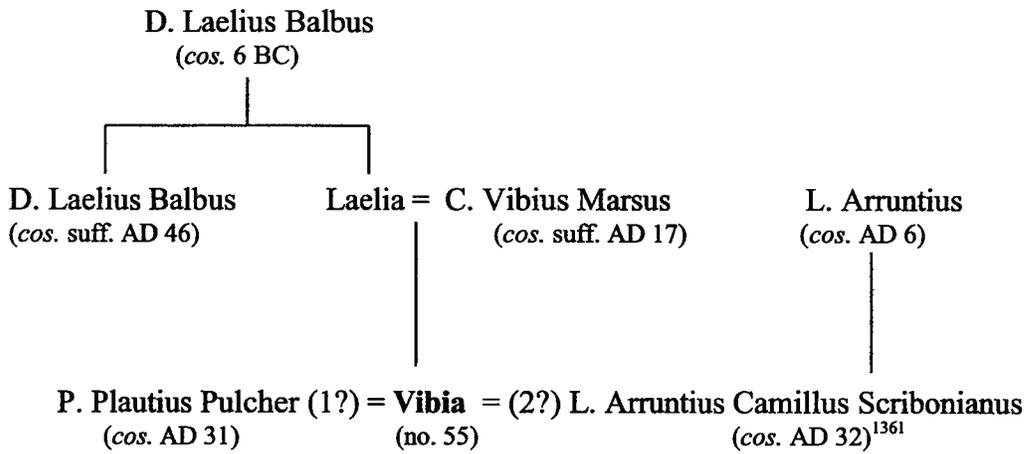
Tiberius (cont'd)	32	Vitia	<i>(maiestas)</i>	58
	33	(Maria)	incest	40
	33	Sancia (or Sancta)	<i>maiestas</i>	50
	33	Pompeia Macrina	<i>(maiestas)</i>	47
	34	Paxaea	<i>maiestas</i>	46
	34	Sextia	<i>(maiestas)</i>	51
	36	Aemilia Lepida, younger	adultery	4
	37	Albucilla	adultery	7
	37	Acutia	<i>maiestas</i>	1
	37	<i>Ignota</i> , mother of Sex. Papinius Mallonia	(unknown) (unknown)	24 38
Caligula	39	Cornelia	<i>maiestas</i>	18
	39, 41	(Julia) Livilla	adultery (and conspiracy)	34
	39, 59	(Julia) Agrippina the younger	adultery (and conspiracy); [prosecutor]	5
	40	Quintilia	[witness]	49
		Cloatilla	<i>(maiestas)</i>	17
		(Cornelia) Livia Orestilla	(unknown)	33
Claudius	42	<i>Ignotae</i> , women conspirators	<i>(maiestas)</i>	26
	42/52	Vibia	[witness]; <i>maiestas</i>	55
	43	Julia, daughter of Drusus	(unknown)	29
	48	Messalina	[prosecutor]	41
	49	Junia Calvina	incest	30
	49	Lollia Paulina	<i>maiestas</i>	36
	49	Calpurnia	(unknown)	15
		<i>Ignota</i>	adultery	23
Nero	54	Domitia Lepida	<i>veneficia</i> ; disturbing the peace of Italy	19
	54-55, 69	Lucusta	<i>veneficia</i>	37
	55	Junia Silana	[prosecutor]; ( <i>calumnia</i> )	32
	57	Pomponia Graecina	foreign superstition	48
	62	(Claudia) Octavia	(adultery)	44
	65	Caedicia	(unknown)	14
	65	Junia Lepida	incest and ominous rituals	31
	65	(Claudia) Antonia	<i>(maiestas)</i>	9
	65	Sextia and Antistia Pollitta	<i>(maiestas)</i>	52
	65	Epicharis	[witness]	20
	66	Marcia Servilia	<i>maiestas</i>	39

## Appendix 2: Stemmata

**Stemma 1: Some Julio-Claudian Family Connections**

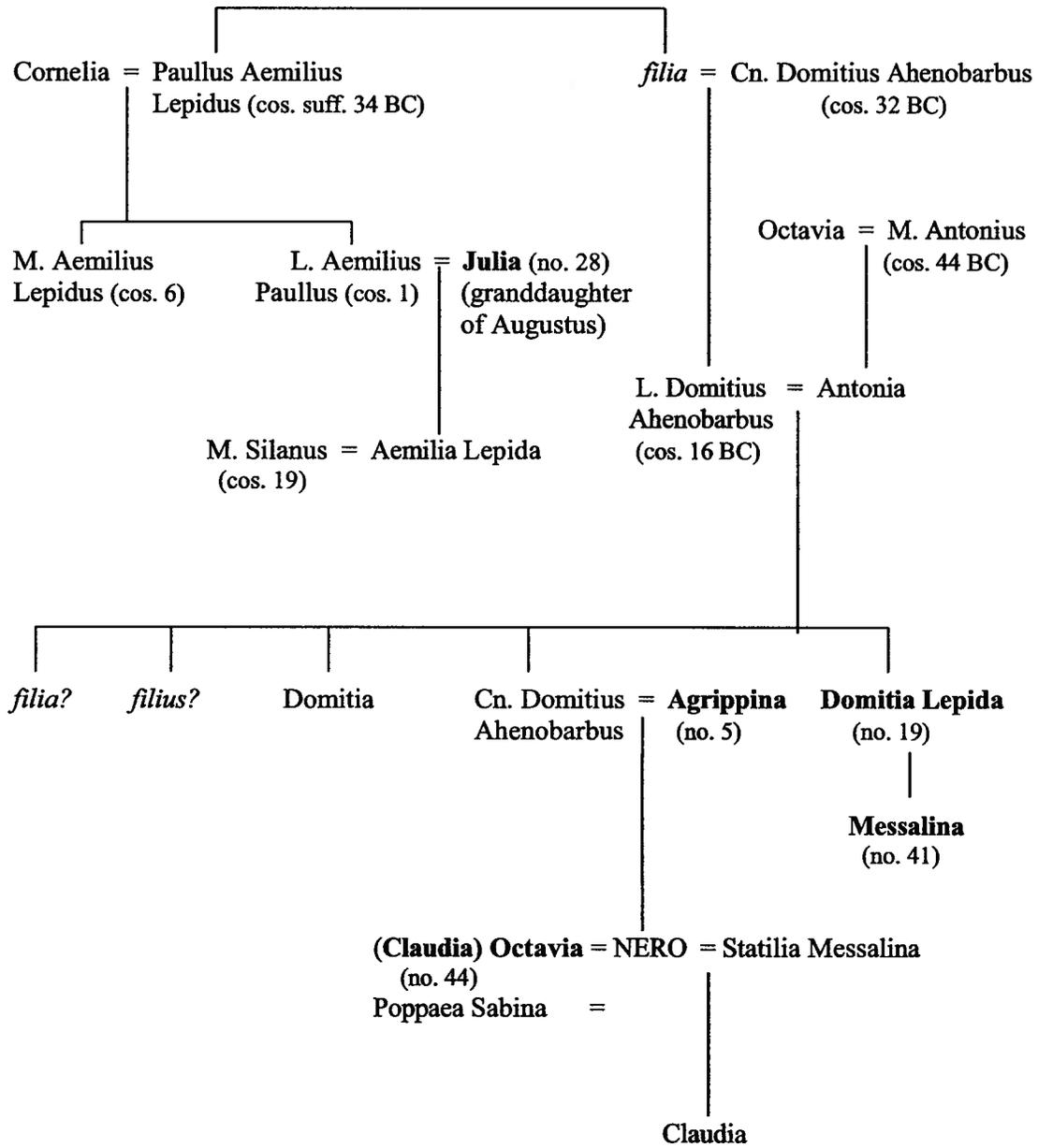


**Stemma 2: Some Laelii Balbi**

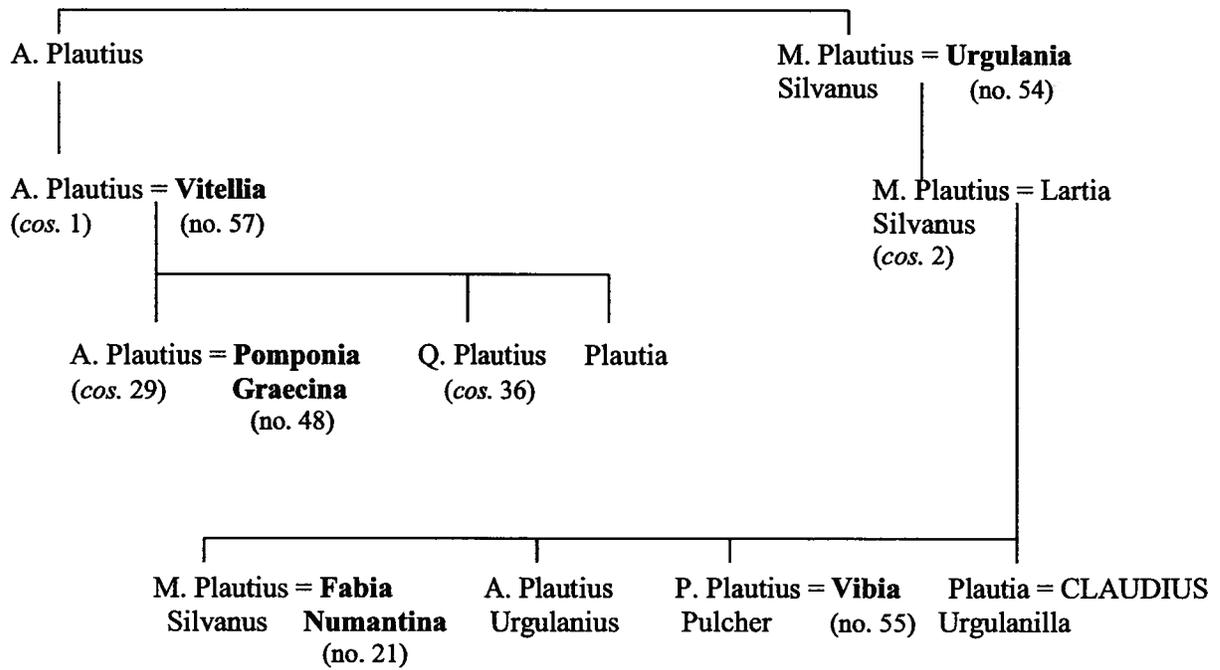


<sup>1361</sup> Cf. Forsyth (1969) 207 who suggests a second Vibia, possibly a half-sister, who married Scribonianus; Syme (1986) 278 n. 62 and stemma 15 conjectures a Vinicia as wife of Scribonianus instead of the Vibia attested in Tac. *Ann.* 12.52.1.

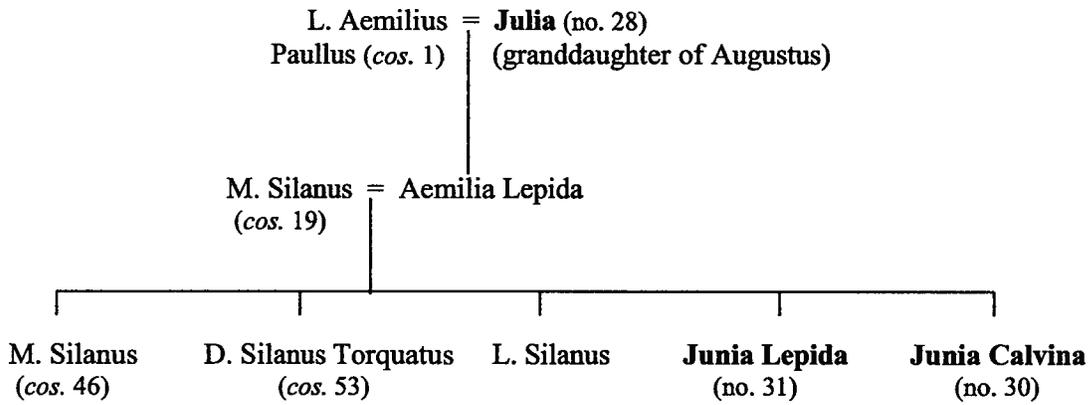
**Stemma 3: Some Ahenobarbi**



**Stemma 4: Some Plautii**



**Stemma 5: Some Junii Silani**



**Junia Silana** (no. 32) shares the family name, but is a rather remote cousin.

Her uncle D. Silanus was named as the adulterer of Augustus' granddaughter Julia (no. 28).

**Stemma 6: Family of Quintilius Varus**

