

Roman Regulation of Prostitutes: A Means of Separation

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Traditionally for Western society, prostitution is thought to degrade its practitioners morally. But, instead of this moral consequence serving as a deterrent, the sex industry boomed in the ancient Roman world.¹ Roman prostitution stands out in that while it was not illegal, it was still considered a major social stain on the person that was practicing this profession. Laws surrounding prostitution in Rome can be described as ambiguous because of its vague legality within the system. Looking at the evidence offered in the exploration of Roman prostitution, which includes *infamia* laws (a legally recognized status of dishonor), the *lex Iulia et Papia*, and the *Tabula Heracleensis*, most of the laws that deal with or mention prostitutes, do not spend an inordinate amount of time explicating the effects of the laws or how they apply to sellers of sex. In fact, prostitution primarily only makes an appearance within laws written to include certain other groups of low moral status. With these other affected professions considered morally wrong alongside that of prostitution, far from being exclusively written for prostitutes, the statutes of *infamia*, the *lex Iulia et Papia*, and the *Tabula Heracleensis* instead seem to have worked as regulatory method used to separate the lower classes from the rest of the Roman population in a bid to create a barrier between the two groups using morality. Romans held morality in high esteem, even if not all Romans practiced what they prescribed.

¹ For further reading into the topic of Roman prostitution see: Judith P. Hallett and Marilyn B. Skinner eds., *Roman Sexualities* (Princeton: Princeton University Press, 1997). Thomas A.J. McGinn, *Prostitution, Sexuality, and the Law in Ancient Rome* (New York: Oxford University Press, 1998). Thomas A.J. McGinn, *The Economy of Prostitution in the Roman World: A Study of Social History and the Brothel* (Ann Arbor, Michigan: University of Michigan Press, 2004).

The *Tabula Heracleensis*, which has been linked to Julius Caesar², establishes and helps create this barrier by revoking the citizen rights of persons of low moral character. Section 25³ of the *Tabula* begins by stating that anyone who falls under the given groups⁴ shall not be “admitted among the Decurions and the conscripts in the senate of any municipality, colony, prefecture, market, or meeting place of Roman citizen, nor shall anyone... be permitted to express his opinion or to cast his vote in that body.”⁵ A person found to be in violation of this law was fined a sum of 50,000 sesterces to be paid to the state. Section 25 pronounces the groups that are to come under the law in a detailed and well thought out list. Persons tried and convicted of: theft, fraud, non-payment of debt, ostracism with revoked status, persons convicted in public trial within their own town or city, lodging false accusations or suspected of collusion, military service members who are dismissed or lose rank due to disgrace, prostitution of one’s body for gain, gladiator trainers, actors, brothel keepers, or persons who bring in a Roman citizen’s head for profit all faced the loss of rights we see in section 25 and additionally

² Allan Chester Johnson, Paul Robinson Coleman-Norton, Frank Card Bourne, *Ancient Roman Statutes: A Translation with Introduction, Commentary, Glossary, and Index* (Clark, New Jersey: The Lawbook Exchange, LTD., 1961), 93. The *Tabula* is a collection of eclectic regulations found near the city of Heraclea in Italy, of which we only have an incomplete sampling due to the damaged nature of the tablets. The age of the regulations on the tablets is contested, but it is somewhere in the first half of the first century BC.

³ There are two different numbering methods used for this source; the Latin transcription is numbered by line while the English translation has been put into sections. Due to the inordinately bothersome Latin transcription, I have used the numbering of the English translation for ease of reference.

⁴ Anyone convicted of theft; anyone condemned in an action for trusteeship, partnership, guardianship, mandate, infliction of injury or fraud; anyone condemned by the Praetorian Law; anyone who binds themselves to fight like a gladiator; debtors who lie under oath; debtors and debtors that have their property seized and sold at auction; anyone exiled by trial; anyone condemned by trial in that municipality, colony, prefecture, market, or meeting place of which he is a citizen; anyone found to have lodged a false accusation; persons in the military who is deprived of rank because of disgrace; anyone dismissed from the military under disgrace; anyone who prostitutes their body for gain; anyone who trains gladiators or acts on stage or keeps a brothel. Allan Chester Johnson. *Ancient Roman Statutes*, 95-96.

⁵ Allan Chester Johnson. *Ancient Roman Statutes*, 95-96.

in the subsequent sections 26, and 27.

Sections 26 and 27 go on to describe further reductions in status, and expresses to Roman citizens within government the prescribed penalties for the implicated. Persons finding themselves on this list could find themselves completely shut out of any government processes. They could not vote, nor "...stand as [a] candidate for or accept the office of duumvir, quattuorvir, or any other office from which he would pass into the senate..."⁶, nor even sit in on a session; this includes being invited by a member of the government such as: the senate, a decurion, a conscript, assembly of the people, or the plebs. The socially and politically damaged person could not attend games or public banquets using the rows allocated for the political groups as well, even if an invitation had been extended to them. The fine of 50,000 sesterces is again repeated for infractions concerning what is further specified in sections 26 and 27.⁷

⁶ Allan Chester Johnson. *Ancient Roman Statutes*, 96.

⁷ For the original Latin see M. H. Crawford, ed. *Roman Statutes*. 2 vols (London: University of London, 1996), 367.; The original Latin begins at line 108: quae municipia colonia(e) praefectura(e) fora conciliabula c(iuium) R(omanorum) sunt erunt, nei quis in eorum quo municipio colonia praefectura (foro) conciliabulo (in) senatu decurionibus conscreiptisque esto, neue quo(i) ibi in eo ordine sen{ten}temtiam deicere ferre liceto, quei furtei quod i(ps)e fecit fecerit condemnatus pactusue est erit; queiue iudicio fiduci(ae), pro socio, tutelae, mandatei, iniuriarum deue d(olo) m(alo) condemnatus est erit; queiue lege 112 {P}Laetoria ob eamue rem, quod aduersus earn legem fec(i)t fecerit, condemnatus est erit; queiue depugnandei caussa auctoratus est erit fuit fuerit; queiue in iure (abiurauit) abiurauerit bonamue copiam iurauit iurauerit; quei(ue) sponsoribus creditoribusue suis renuntiauit renuntiauerit se soldum soluere non posse aut cum eis pactus est erit se soldum soluere non posse; proue quo datum depensum est erit; quouisue bona ex edicto 116 eius, qu(ei) i(ure) d(eicundo) praefuit praefuerit, praeterquam sei quouis, quom pupillus esset reue publicae caussa abesset neque d(olo) m(alo) fecit fecerit quo magis r(ei) p(ublicae) c(aussa) a(besset), possessa proscriptaue sunt erunt; queiue iudicio publico Romae condemnatus est erit, quocirca eum in Italia esse non liceat, neque in integrum resti(tu)tus est erit; queiue in eo municipio colonia praefectura foro conciliabulo, quouis erit, iudicio publico condemnatus est erit; quemue 120 k(alumniae) praeuaricationis caussa accusasse fecisseue qu(i)d iudicatum est erit; quouisue apud exercitum ingnominae caussa ordo ademptus est erit; quemue imperator ingnominae caussa ab exe(r)citu decedere ius(i)t iuserit; queiue ob caput c(iuis) R(omanei) referendum pecuniam praemium aliudue quid cepit ceperit; queiue corpor(e) quaestum fecit fecerit; queiue lanistaturam artemue ludic(r)am fecit fecerit; queiue lenocinium faciet (feceritue). quei 124 aduersus ea in municipio colonia praefectura{ue} foro conciliabulo (in senatu) decurionibus

If the *Tabula Heracleensis*' link to Julius Caesar holds true, the need for delineation between social groups would be strong. Years of civil strife in Italy had decimated the Patrician group in Rome, and Caesar in an effort to bolster the fading group admitted new people to their ranks.⁸ With Caesar's need to restore the senatorial group with new members, but also needing to restore morality to Rome, he would have needed a way to be able to differentiate the morally intact from the morally damaged. This is especially apparent when dealing with the wealthier groups that were able to commit crimes without serious consequences, such as what Suetonius describes as living "as exiles with their fortunes intact."⁹ The *Tabula* with its list of civically restricted groups and its fine for disregarding these restrictions began the process of separation. Females working as prostitutes would have not been affected by the *Tabula* due to civic exclusion of women already. Any ambitious man trying to make their way into politics, however, would have been effectively shut out if past indiscretions, prior convictions, or what was considered to be morally low business dealings came to the attention of the group he was trying to infiltrate.

While the *Tabula Heracleensis* was one method of social and civic separation, the other dominant set of legal definitions working to achieve the same result was the status of *infamia*, in which we can view many of the same elements. The section in *The Digest of Justinian* that details this status gives it the other name of blacklisted (*proscriptio*).¹⁰ This is an appropriate description

conscripte isue (f)uerit sententiam ue dixerit, is (sestertium) (quingenta milia) p(opulo) d(are) d(amnas) esto, eiusque pecuniae quei uolet petitio esto.

⁸ Suetonius, *The Lives of the Caesars*, 1.41.1.

⁹ Suetonius, *The Lives of the Caesars*, 1.42.3.

¹⁰ Alan Watson, ed. *The Digest of Justinian*. 4 vols (Philadelphia: University of Pennsylvania Press, 1985) 82-86. This specific information is found within the first volume.

that we can still easily understand today, and the persons that have incurred this status have been effectively blacklisted. Again we see a list of persons that take on the status of *infamia* at the outset of the section, and the list is as follows: one who has been dishonorably discharged from the military; stage actors or performers; keepers of brothels; ones who have been charged with vexatious litigation or collusion; one condemned of theft, violent robbery, insult, fraud, trickery, partnership cases, wrongful tutelage practice, mandate, or deposit; one who gives a woman in marriage before a period of mourning has been observed, anyone who knowingly marries a woman in this situation, anyone forcing a person into marrying a woman before the period of mourning is over.¹¹

Many of the crimes and/or professions listed within the *infamia* list have been revisited from the *Tabula*, and with the continuity of similarities between the *Tabula* and *infamia* the loss of civic rights for the selected group surely continues. We can also see an addition to this loss in the *lex Julia* on treason in which we see the line, “The infamous, who do not have the right of accusation, are nevertheless undoubtedly permitted this accusation.”¹² So persons who come under *infamia* normally could not bring accusations against someone, unless it was a case of treason against the state or emperor. This means that all the blacklisted groups could have experienced limited access to the courts along with the previously mentioned loss of civic rights.

Breaking down this list, we see three groupings of infractions incurring *infamia*: marriage practices, criminal convictions, and morally degrading professions. While we can write about

¹¹ Alan Watson. *The Digest of Justinian*, vol.1, 82. Latin: *Corpus Iuris Civilis*, 3.2.1.

¹² Alan Watson. *The Digest of Justinian*, vol.4, 317. Latin: *Corpus Iuris Civilis*, 48.4.7.

the function of *infamia* regarding prostitution, in reality, there is minimal explanation for these workers in the *infamia* law code itself. Brothel keepers are mentioned in a few lines by Ulpian¹³, but this is to define, more or less, who brothel keepers were. Women as prostitutes are only mentioned once in this section, and this is to state that women who performed these services while under servitude were not to come under this status when they were freed.¹⁴ Conditions being what they are in the sex trade, the likelihood of a slave, working as a prostitute, being manumitted was slim. The other degrading professions, such as actors and the dishonorably discharged, are given more explanation in the law code than the brothel keepers. In the case of stage performance there is leeway due to the definition of intent not being the same as guilt written within the code. This means that as long as a person did not actually appear on stage, they do not incur *infamia* even if they had their name on a list to appear. These two cases of slaves and actors show that intent, or in the case of slaves forced into prostitution against their own volition, do not warrant criminal conviction because there was no crime committed.

The biggest groupings listed in the *infamia* laws are the criminal convictions and also marriage practices. Just like today, criminal convictions in Rome could revoke citizen rights. According to Paul in the section containing codes concerning changes in civil status, there were three different levels of change, which affected the areas of: freedom, citizenship, and family.¹⁵ The highest level of civil status change was when a person lost all three defined areas. The middle level was when a person lost citizenship, but retained their freedom; this is the level of

¹³ Alan Watson. *The Digest of Justinian*, vol.1, 83. Latin: *Corpus Iuris Civilis*, 3.2.4.

¹⁴ Alan Watson. *The Digest of Justinian*, vol.1, 86. Latin: *Corpus Iuris Civilis*, 3.2.24. "The Emperor Severus said in a rescript that a woman's standing was not harmed by the occupation she had followed while in servitude."

¹⁵ Alan Watson. *The Digest of Justinian*, vol.1, 140. Latin: *Corpus Iuris Civilis*, 4.5.11.

loss we see in the *Tabula Heracleensis* and the codes of *infamia*. The lowest level of civil status change could be seen to be only the change in family. Criminals did not go under the title of *infamia* until after they had been found guilty of the crime they were accused of, and if they did not appeal the case. The explication we see in the rest of the section pertains to when these criminals, or other persons charged, come under the status of *infamia*. Marriage practices mostly deal with when a woman could marry after the death of her husband, and ensuring that the appropriate time was observed.¹⁶ This is related to issues of possible progeny of the dead husband. However, it is surprising that it is found within the same section that the *infamia* incurring list resides because issues of this nature do not seem to be akin to moralistic values.

The *lex Julia et Papia* deals more extensively with marriage practices. The ubiquitous nature of this law transforms it into much more than just marriage control. Therefore, we need to look at not just this law but the section in the *Digest* devoted to the formation of marriage.¹⁷ Within this section the formation of social barriers between the upper orders and the lower groups can truly be seen. The senatorial class were prohibited from marrying freed slaves. Paul writes, "...that if a senator's daughter marries a freedman, the marriage will be void...".¹⁸ After sporadic entries from other jurists, Celsus gives a more concise statement, "...the *lex Papia* provides that all freeborn men, apart from senators and their children, can marry freedwomen."¹⁹ If a person of the senatorial rank went through with a marriage to a freedman or woman, the marriage was void. The only time these marriages were valid was if the person

¹⁶ Alan Watson. *The Digest of Justinian*, vol.1, 82. Latin: *Corpus Iuris Civilis*, 3.2.1.

¹⁷ This section is found in: Alan Watson, *The Digest of Justinian*, vol.2, 198. Latin: *Corpus Iuris Civilis*, 23.2.

¹⁸ Alan Watson. *The Digest of Justinian*, vol.2, 201. Latin: *Corpus Iuris Civilis*, 23.2.16.

¹⁹ Alan Watson. *The Digest of Justinian*, vol.2, 202. Latin: *Corpus Iuris Civilis*, 23.2.23.

of senatorial class lost their rank.²⁰ More restrictions are added to the senatorial group later in the section by way of the *lex Julia et Papia*, which along with prohibiting the marriage to freedmen, also prohibited marriage to actors and their children.²¹ This makes the marriage restrictions not just generational for the senatorial class due to the specific familial listing in the statute, but also the classes that have acquired the mark of *infamia* because the statute follows a familial listing just as the senatorial class does.

The Formation of Marriage²² section is also where we see part of the *lex Julia et Papia* that explains which women come under the title of prostitute, and some restrictions placed on these women. Unlike the other statutes previously discussed, where prostitution was mentioned but not explained in detail, half of the section is devoted to the profession of prostitution and the other half to adulterous women. A prostitute is defined by Ulpian as:

We would say that a woman openly practices prostitution not just where she does so in brothels but also where she is used to showing she has no shame in taverns or other places. 1. "Openly," then, we take to mean anywhere, that is, without preference, not just a woman who commits adultery or fornication, but one who plays the part of a prostitute. 2. Again, because a woman has intercourse with one or two men after accepting money from them, she is not held to have practiced open prostitution.²³

Ulpian does not further explain what he is implying in number two, however, the fact that many poor women could have been engaging in sporadic sexual acts for supplemental income

²⁰ Alan Watson. *The Digest of Justinian*, vol.2, 203. Latin: *Corpus Iuris Civilis*, 23.2.27.

²¹ Alan Watson. *The Digest of Justinian*, 205. Latin: *Corpus Iuris Civilis*, 23.2.44. "A senator, his son, or his grandson, or his great-grandson by his son shall not knowingly or fraudulently become betrothed to or marry a freedwoman, or a woman who is or has been an actress or whose father or mother are or have been actors. Nor shall the daughter of a senator, his granddaughter by his son, or great-granddaughter by his grandson become betrothed to or marry, knowingly or fraudulently, a freedman, or a man who is or has been an actor or whose father or mother is or has been an actor."

²² Alan Watson. *The Digest of Justinian*, vol.2, 199. Latin: *Corpus Iuris Civilis*, 23.2.

²³ Alan Watson. *The Digest of Justinian*, vol.2, 204. Latin: *Corpus Iuris Civilis*, 23.2.43.

would have required leeway on the jurist's part. The women operating under this description are branded with *infamia*. This brand of *infamia* is echoed within the same section of the *lex Julia et Papia* for women convicted, or even just suspected, of being adulterers. Between the explanation of these two statuses there is a sentence reaffirming that senators cannot marry women that have been convicted of a criminal offense. The juxtaposition of these two *infamia* incurring offenses within the same section, in addition to the recurrent theme of restricted marriage for *infamia* holders, gives the impression and reinforces the idea of morality based separation.

All societies have social controls in place for the purpose of segregating certain groups. While we would like to think that modern society has progressed, we still struggle with our own social controls that we have had in place for quite some time. Looking at just a sample of the evidence typically used in the research into ancient Roman prostitution shows us that Romans had to deal with their own issues of social controls. Most of the evidence, far from being exclusive to the control of prostitution, focuses more on other morally dubious groups in a bid to separate them from the upper echelons. We see this in the multigenerational segregation of the senatorial class from the groups specified within the *lex Julia et Papia* where intermarriages could incur penalties. Revocation of the civil rights and civic duties allowed to morally upstanding citizens that are found in the *Tabula Heracleensis* and the *infamia* law, help to push the ones found guilty of being morally corrupt to the fringes of society. Instead of having a socially implied system of separation, Romans promulgated laws to insure the rules were

followed, or at the least that the structure was there to use when necessary. We need to recognize that something more than just the regulation of prostitutes was happening, and in fact this was a social control that the Romans used to ensure the purity of the upper classes.

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