

THE *SENATUS CONSULTUM* FROM LARINUM *

By BARBARA LEVICK

- I. TEXT, TRANSLATION, AND COMMENTARY
- II. RESTRICTIONS ON PUBLIC PERFORMANCE BY MEMBERS OF THE UPPER CLASSES, 46 B.C.—A.D. 15
- III. *ATIMIA*, *INFAMIA*, AND PUBLIC PERFORMANCE
- IV. A.D. 19: THE TESTIMONY OF SUETONIUS, TACITUS, AND PAPINIAN
- V. PRINCEPS, UPPER CLASSES, AND PRIVILEGE

I. TEXT, TRANSLATION, AND COMMENTARY

A bronze tablet found at Larinum (near modern Larino), in the territory of the Frentani, and published in 1978,¹ carries part of an SC of A.D. 19 that embodies measures against public performance on stage or in the arena by members of the upper classes.

This tablet poses a variety of interrelated problems which are the concern of this paper: it is itself incomplete; there are gaps in the history of the measures taken against public performance by members of the upper classes (the offence dealt with on the tablet); it is uncertain whether that was the only offence it dealt with or whether, as the testimony of Suetonius might suggest, it catered for the sexual misconduct of matrons; and there is a paradox about the penalty voluntarily incurred by would-be performers, in that it does not seem to have differed from the original penalty for performing. The solutions to each of the problems are mutually dependent, but I shall deal with them in the above order.

The dimensions have not been revealed, but photographs² show that the original tablet bearing the SC was later cut down to make a *tabula patronatus* of the reverse. This was taken from the upper left-hand corner of the tablet, with the left-hand side of the tablet being cut away to form the triangular top of the *patronatus* inscription, and the right-hand side cut off vertically to make the lower edge. Part of the top of the tablet survives as the left-hand side of the *tabula patronatus*, and the letters SC, which head the inscription, show that about eighteen letters should be missing from the right-hand side if no allowance is made for crowding at the ends of lines: S is about twice as far from the left-hand edge as C is from the right, and C is above the V of ATEIVS in l. 1.

Twenty-one lines survive, each in the commentators' opinion of about 100 letters, a total reached in l. 4 as restored by them. No line is complete, but ll. 7–9 and 2 f. are convincingly restored to lengths of 89–97 letters. The commentators estimate the inscription to have run to c. 63 or 84 lines, depending on the shape of the tablet, square or rectangular.

In the photograph the bronze is not unlike the precisely contemporary Tabula Hebana in appearance,³ but it has proportionately wider spaces between the lines and the Qs have elaborate tails. If the proportions of the two tablets had been the same, there would have been about 50 lines all told on the Larinum bronze.

* I am greatly indebted to Professor E. Gabba for sending me a photocopy of Professor Giuffrè's paper (n. 1) and to the author himself for an offprint. Dr S. M. Hart, Miss E. Rawson, Professor T. P. Wiseman, and Dr A. Lintott made many improvements to an early draft of this paper, and Mr N. Purcell kindly put notes of his own at my disposal. I am very grateful to them for their help, to the Editor and other members of the Editorial Committee, including Professor P. A. Brunt, Professor F. G. B. Millar, and Professor R. G. M. Nisbet, for their comments on a later draft, which brought about radical changes, and to Mrs E. M. S. Wolfram and Dr K. A. Forsyth for help with the final version. Responsibility for its defects remains my own.

¹ Oral communication with circulated text by A. La Regina; M. Malavolta, 'A proposito del

nuovo S.C. da Larino', *Studi pubblicati dall' Ist. Ital. per la Storia Antica* xxvii: *Sesta miscellanea greca e romana* (1978), 347 ff.; *AE* 1978, 145; V. Giuffrè, 'Un senatoconsulto ritrovato: il "Sc. de matronarum lenocinio coercendo"', *Estr. d. Atti dell'Accademia di Scienze Morali e Politiche* xc1 (1980); B. Biondi, *Labeo* xxvi (1980), 277 f.

² Kindly put at my disposal by Mr Crawford.

³ P. Raveggi and A. Minto, *Not. Scavi*, Ser. VIII Vol. 1 (1947), 49 ff., especially 53 ('l'intera altezza in m. 0,90'), with photograph; J. H. Oliver and R. E. A. Palmer, *AJP* Lxxv (1954), 225 ff., with bibliography and photograph; text: V. Ehrenberg and A. H. M. Jones, *Docs. Illustrating the Reigns of Augustus and Tiberius* (ed. D. L. Stockton, 1976), 94a and b.

Text :

- 1 S(enatus) c(onsultum)
 2 [—c. 8—] in Palatio, in porticu quae est ad Apollinis. Scr(ibundo) ad(fuerunt) C. Ateius L. f. Ani(ensi tribu) Capito, Sex. Pomp[ei]us Sex. f. . . . (tribu) —c. 9—]
 3 [—c. 8—] Octavius C. f. Ste(latina tribu) Fronto, M. Asinius Curti f. Arn(ensi tribu) Mamilianus, C. Gavius C. f. Pob(lilia tribu) Macer q(uaestor), A. Did[ius] . f. . . . (tribu) Gallus q(uaestor).]
 4 [Quod M. Silan]us L. Norbanus Balbus co(n)s(ules) v(erba) f(e)cerunt commentarium ipsos composuisse sic uti negotium iis [datum de —c. 13—]
 5 [—c. 6—]rum pertinentibus aut ad eos qui contra dignitatem ordinis sui in scaenam ludumv[e] prodirent ?seve auctora-]
 6 [rent] u(ti) s(ancitur) s(enatus) c(onsultis) quae d(e) e(a) r(e) facta essent superioribus annis, adhibita fraude qua maiestatem senat[us] minuerent, q(uid) d(e) e(a) r(e) f(ieri) p(laceret), d(e) e(a) r(e) i(ta) c(ensuere) :]
 7 [pla]cere ne quis senatoris filium filiam nepotem neptem pronepotem proneptem neve que[m] cuius patri aut avo]
 8 [v]el paterno vel materno aut fratri neve quam cuius viro aut patri aut avo paterno ve[l] materno aut fratri ius]
 9 fuisset unquam spectandi in equestribus locis in scaenam produceret auctoramentove ro[garet] ut ?in harena depugna-]
 10 ret aut ut pinnas gladiatorum raperet aut rudem tolleret aliove quod eius rei simile min[istraret] ; neve si quis se]
 11 praeberet, conduceret ; neve quis eorum se locaret, idque ea de causa diligentius cave(n)dum [esset quod —c. 9—]
 12 eludendae auctoritatis eius ordinis gratia quibus sedendi in equestribus locis ius erat aut p[ublicam] ignominiam]
 13 ut acciperent aut ut famoso iudicio condemnarentur dederant operam et postea quam ei des[?civerant] sua sponte ex]
 14 [equ]estribus locis, auctoraverant se aut in scaenam prodierant ; neve quis eorum de quibus [s(upra) s(criptum) e(st) si id contra dignitatem ordi-]
 15 [nis] suji faceret libitinam haberet, praeterquam si quis iam prodesset (*sic*) in scaenam operasve [suas ad harenam locasset si-]
 16 [ve] na]tus natave esset ex histrione aut gladiatore aut lanista aut lenone.
 17 [?Quodque s(enatus)] c(onsulto) quod M(anio) Lepido T. Statilio Tauro co(n)s(ulibus) referentibus factum esset scriptum comp[?<reh>en]sum esset—ne cui ingenuae quae]
 18 [minor] quam an(norum) XX neve cui ingenuo qui minor quam an(norum) XXV esset auctorare se opera[sve] suas ?ad harenam scaenamve]
 19 [—c. 8—]s locare permetteretur, nisi qui eorum a divo Augusto aut ab Ti. Caesare Aug[usto] in —c. 12—]
 20 [—c. 8—] co]niectus esset ; qui eorum is qui ita coniecisset auctorare se operasve suas [locare —c. 12—]
 21 [—c. 10—]arem redducendum esset statuisset—id servari placere praeterquam [—c. 18—]

Translation (restorations underlined):

(1) Senatus consultum (2) passed on [Roman calendar date (8 letters)] on the Palatine Hill in the colonnade adjoining the temple of Apollo. Present at the drafting were C. Ateius Capito, son of Lucius, of the tribe Aniensis, Sex. Pompeius son of Sextus, of the tribe . . ., [name of an unknown senator of consular or praetorian rank], (3) [praenomen] Octavius Fronto, son of Gaius, of the tribe Stellatina, M. Asinius Mamilianus, son of Curt(i)us, of the tribe Arnensis, C. Gavius Macer, son of Gaius, of the tribe Poplilia, quaestor, A. Didius Gallus, son of Aulus, of the tribe Arnensis, quaestor. (4) Whereas M. Silanus and L.

Norbanus Balbus the consuls declared that in accordance with the commission given them they had drawn up a memorandum on ?matters appertaining to [c. 12 letters] (5) or to those who, contrary to the dignity of the order to which they belonged, were appearing on the stage or at games or were pledging themselves to fight as gladiators, (6) as forbidden by the SCC that had been passed on that subject in previous years, employing fraudulent evasion to the detriment of the majesty of the senate: with regard to what it might please the senate to be done with regard to that matter, the senate's recommendation on that matter was as follows: (7) that it pleased them that no one should bring on to the stage a senator's son, daughter, grandson, granddaughter, great-grandson, great-granddaughter, or any male whose father or grandfather, (8) whether paternal or maternal, or brother, or any female whose husband or father or grandfather, whether paternal or maternal, or brother (9) had ever possessed the right of sitting in the seats reserved for the knights, or induce them by means of a fee to ?fight to the death in the arena (10) or to snatch the plumes of gladiators or take the foil off anyone or to take part in any way in any similar subordinate capacity; nor, if anyone (11) offered himself, should he hire him; nor should any of those persons hire himself out; and that particular precautions were for that reason to be taken against that contingency ?because persons [c. 9 letters] (12) having the right to sit in the seats reserved for knights had, for the sake of bringing the authority of that order to nought, seen to it that they either (13) suffered public disgrace or were condemned in a case involving them in infamy and, after they had withdrawn of their own free will from (14) the equestrian seats, had pledged themselves as gladiators or had appeared on the stage; nor should any of those persons who have been mentioned above, ? if they were taking that action in contravention of the dignity of their (15) order, ? have due burial, unless they had already appeared on the stage or hired out their services for the arena or (16) were the offspring male or female of an actor, gladiator, manager of a gladiatorial school, or procurer. (17) ?And with regard to what was written ?and provided for under the SC which was passed on the motion of the consuls Manius Lepidus and Titus Statilius Taurus, ?namely that it should be permissible for no female of free birth (18) of less than twenty years of age and for no male of free birth of less than twenty-five years of age to pledge himself as a gladiator or hire out his services for the arena or stage (19) [c. 8 letters], except any of them who had been consigned by the Deified Augustus or by Ti. Caesar Augustus to [(for conjectural interpretations of lines 19–21, see commentary)], it is the pleasure of the senate that that provision should be maintained, except . . .

Commentary:

1. Did the text give the title of the SC? M(alavolta) and G(iuffrè) indicate that letters are missing from the end of the line, and fill up the gap with the title (*index*) that is sometimes found after the initial 'SC' (see *FIRA* 1², 291, no. 47; 293, no. 48). M. 364 f. proposes 'De fraude infamiae' or preferably 'De libidine feminarum', with reference to Suetonius, *Tib.* 35, 2, and the SC l. 6 for the first and to Tac., *Ann.* 11, 85, 1, for the second. G. 8, n. 7, and 19, n. 44, objects to the use of *infamia* as a technical term, rightly (see below, section III), and prefers to keep the 'De matronarum lenocinio coercendo' of E. Volterra's list in 'Senatus consulta', *Nuovissimo Digesto Ital.* xvi (1969), 1065. The photograph shows nothing missing from this line: SC is all that was written, and we are not given the title. The SC de Panamara of 39 B.C. (Sherk, *Rom. Docs. from the Greek East* (1969), 158, no. 27) offers a close parallel, aside from its Greek dating: *dogma* = SC; Greek dating by local officials and calendar; Roman consular and calendar dating (the first omitted from the Larinum document: the consular date is implied in l. 4); place of senate meeting.

2. Date: the SC belongs to the first six months of 19, before the suffect consuls came into office.

The Tabula Hebana (above, n. 3) mentions the temple ⁴ 'in quo senatus haberi solet'. It was conveniently near the Palace for the aged Augustus (see *P. Oxy.* 2435 verso, referring to A.D. 13), and Tiberius continued to use it (Suet., *Div. Aug.* 29, 3).

Scribundo ad(fuerunt) introduces the list of witnesses: Willems, *Sénat* II, 206 ff.; J. G. C. Anderson, *JRS* XVII (1927), 43, n. 3; Sherk, *Docs.*, p. 7 f. By the end of the Republic seven to twelve witnesses were normal; one name, including a *gentilicium* of about seven letters and without a *cognomen*, has been lost from the end of the line and the beginning of the next. The two quaestors (*FIRA* I², 291, no. 47; 292, n. 2, citing Dio LIV, 36, 1) are in place at the end of l. 3.

C. Ateius Capito the jurist (*PIR*² A 1279) is senior witness as *suff.* A.D. 5; the SC illustrates his membership of the tribe Aniensis.⁵ His presence gives particular authority to the drafting, it may be noted with some surprise (see Suet., *De Gram.* 22).

M. 366 identified Sex. Pompeius, *cos.* A.D. 14, Dio LVI, 29, 2; see R. Syme, *History in Ovid* (1980), 157 ff.

Octavius Fronto (E. Groag, in *RE* XVIII (1937), 1829, no. 53) spoke as a man of praetorian rank after Q. Haterius in a debate of A.D. 16 (Tac., *Ann.* II, 33, 1 f.). Indeed, he went beyond the terms of the *relatio*, which passed into a *decretum* 'ne vasa auro solida ministrandis cibis fierent, ne vestis serica viros foedaret', and demanded 'modum argento, supellectili, familiae'; but he was defeated by Asinius Gallus, who had the support of the Princeps. It is not surprising to find him backing the present measure.

Fronto's tribe is revealed for the first time by the inscription. Of towns that belonged to it (see Taylor, *Voting Districts*, 275), Etruscan Tarquinii and Beneventum in Samnium produced Octavii: *CIL* XI, 3378 (P. Octavius Albanus, quaestor III) from the first, IX 1816; 1873; 1910; 6284 ('Regillus') from the second; perhaps it was this colony that sent Fronto to the senate.

M. Asinius Curti f. Arn. Mamilianus, hitherto unknown, should be a member of the family from Teate Marrucinum, which belonged to the Arnensis and of which the most distinguished living member was C. Asinius Gallus (*PIR*² A 1229). The filiation does not help; but if Asinius was born a Mamilius, son of Mamilius Curtus, rather than a Curtius Mamilianus, it was to another family native to Teate and so belonging to the Arnensis (*CIL* X, 3023, 3027): 'Testamentary adoption' did not affect a man's tribe. Mamilianus' age in 19 is hard to gauge; he is junior to the *praetura functus* of A.D. 16 and may be of any rank from *praetorius* to *quaestorius*.

C. Gavius Macer is a native of Verona: see G. Alföldy, 'Gallicanus Noster', *Chiron* IX (1979), 507 ff., especially 533 ff., with stemma.

A. Didius was recognized by M. 367 as A. Didius Gallus (*PIR*² D 70), son or grandson of A. Didius Postumus, proconsul of Cyprus some time after 22 B.C.; he was *suff.* 36 and 'senectute gravis' c. 52 (Tac., *Ann.* XII, 40, 7), an example of a late start, slow progress, or a setback (R. Syme, *JRS* LX (1970), 29). He too cannot have been born later than 7 B.C. (*PIR*'s '9' may be adjusted).

4. *Quod . . . verba fecerunt*: see Willems, *Sénat* II, 211, n. 1, and Sherk, *Docs.*, p. 8, with p. 14 for Greek examples. The *relatores* sum up developments and indicate their motives, as in *FIRA* I², 255, no. 35 = Sherk, *Docs.*, 124, no. 22 (SC de Asclepiade).

Commentarium: presumably notes on relevant cases; cf. Tac., *Ann.* VI, 47, 4; *Hist.* IV, 40, 6; M. Bretone, *Labeo* XII (1966), 68.

Sic uti negotium iis [datum, or mandatam, M. 367; imperatum, La R. (of the senate to consuls!)]: the phrase *negotium dare* is characteristic of but not exclusive to commissions

⁴ For the hexastyle Corinthian temple, see also *Res Gestae Divi Augusti* 19, 1, and 21, 2, with Brunt and Moore ad loc., and M(alavolta) 365, n. 2, and G(iuffrè) 19, n. 45, adding to works cited there G. Lugli, 'Il tempio di Apollo Aziaco e il gruppo augusteo del Palatino', *Atti Accad. S. Luca*, N.S. 1 (1951-2), 26 ff., and *Fontes* VIII (1962), 57 ff.; J. Gage, *Apollon romain. Bibl. des Écoles fr. d'Ath. et de Rome* 182 (1955), 523 ff., and 'Apollon impérial', *ANRW* II, 17, II (1981), 566 ff., with 619 ff. (bibliography) for the site; P. Gros, *Aurea Tempia.*

Bibl. des Écoles fr. d'Ath. et de Rome 231 (1976), index; D. L. Thompson, 'The Meetings of the Roman Senate on the Palatine', *AJA* LXXXV (1981), 335 ff., placing the meetings in the *bibliotheca*. (For these last three references I am indebted to the kindness of Mr Purcell and Professor Wiseman.)

⁵ See R. Syme, *JRS* XXXIX (1949), 8; the tribe is attested for his father: T. P. Wiseman, *New Men in the Roman Senate 146 B.C.-A.D. 14* (1971), 215 no. 53: Cic., *ad Fam.* VIII, 8, 6.

given by the senate: see *OLD*, s.v. *negotium*, 5, and above, l. 2 n. It may be inferred that the formal initiative was taken by the senate. G. 24, n. 68, leaves the question open. He observes (10, n. 7) that Tiberius expressed misgivings about sumptuary legislation and other formal changes (Tac., *Ann.* III, 52, 4 ff., cf. II, 33, 6); on the other hand he cared for the dignity of rank.

4 f. Content of the SC: *de rebus ad morem patrum* (La R.) or *ad curam ludorum*. Neither is to the point: it was not only senators' habits that were in question, and the subject is not really the conduct of games. Both suggestions are rejected by M. 364 f., who proposes *ad libidinem feminarum* (for lines where M. accepts supplements proposed by La R. see M. 362, n. 2). This supplement is in accord with the view held by M. and G. that this SC dealt not only with public performances on stage and in the arena, but with the fraudulent registration of women of rank as prostitutes, also dealt with in A.D. 19, according to Tacitus, *Ann.* II, 85 (see above, on l. 1). The question whether this offence was also catered for in the present SC will be faced below, section IV. Here it is sufficient to note that (now the title formerly attributed to l. 1 has been taken out of account) this lacuna is the only place in the surviving lines where the offences mentioned by Tacitus could have been alluded to. If we do not yet positively reject the possibility of female offenders coming within the scope of this SC, other supplements may be considered: I would then suggest *ad fraudes adultera*rum or, if the word *adulterae* is unsuitable for an SC, *ad fraudes mulie*rum or *matrona*rum; what would hold together the two groups of persons to whom the SC would then be addressed is fraudulent evasion of the law; for the phrase suggested, see Tac., *Ann.* XIII, 26, 1: 'actum in senatu de fraudibus libertorum'. If female offenders are excluded, a neutral reference to the dignity of the senate may have been lost, as Mr Crawford suggests: [*d(atum) e(rat) de rebus ad dignitatem patrum*].

5 f. *seve auctora/rent*: M.'s alternative proposal (368); his *operasve suas loca/rent* is unspecific and a reference to fighting as a gladiator is required. G. 20, n. 50, defends 'se locare' as a term for entering the arena (24, n. 69). The text cited there seems rather to distinguish it from 'locare' than otherwise: 'quive depugnandi causa auctoratus erit, quive ad bestias depugnare se locavit locaverit', *Coll.* IX, 2, 2, see also IV, 3, 2 (*FIRA* II, 566 and 553), and Tabula Heracleensis 112 f., *FIRA* I², 149, a reference I owe to the kindness of Dr Lintott; only Acro *ad Hor.*, *Sat.* II, 7, 59, 'qui se vendunt ludo auctorati vocantur', permits a looser interpretation. The gladiator's status differed for the worse from that of other performers, including *bestiarii*: he was invested with religious significance, like a sacrificial animal (see in general, C. Ville, *La Gladiature en occident des origines à la mort de Domitien*, *Bibl. des Écoles fr. d'Ath. et de Rome* 245 (1981), 339 ff.).

6. *Sancire* is used absolutely, in the sense of 'forbid' (cf. *OLD*, s.v. 5). The SCC referred to include that of 22 B.C., probably that of 38 B.C.; see below, Section II.

Adhibita fraude: M. remarks that the phrase qualifies both *prodirent* and (in his text) *locarent*.

Qua maiestatem senat[us] minuerent: for the *maiestas* of the imperial senate, see *BGU* 611 = E. M. Smallwood, *Docs. of the Principates of Gaius, Claudius and Nero* (1967), 367, col. III, 17 f., a speech of Claudius to the senate, as well as Livy III, 63, 10, and VIII, 34, 1, showing the phraseology already permissible in the third decade B.C. (as Miss Rawson has pointed out to me), Val. Max. I, 8, 1, and IX, 5, 1, Vell. Pat. II, 89, 3 ('restituta'), 126, 2 ('accessit'), quoted by P. A. Brunt, *PBSR* xxx (1975), 24.

D(e) e(a) r(e) i(ta) c(ensuere): see Willems, *Sénat* II, 212, n. 3.

7 f. No penalty for managers who hired persons of rank is laid down in the surviving lines of the SC, though it is possible that it ended by prescribing penalties for all violations of its rules. G. 29, besides noting that contracts would be invalid, invokes 'la incipiente cognitio extra ordinem'. The enactment is more comprehensive than that of 22 B.C., mentioned by Dio LIV, 2, 5 (see below, Section II). The persons now forbidden stage and arena are the same as those banned from marriage to freedmen and freedwomen and actors and their children under the Lex Iulia de maritandis ordinibus of 18 B.C. (Paul, *Dig.* XXIII, 2, 44), except that the latter affected only descendants in the male line, to the same number of generations, as Mr Purcell notes, as in Claudius' declaration on what he regarded as the qualification for senatorial office: Suet., *Div. Claud.* 24, 1, 'civis R. abnepotem.' As G. observes (27, n. 74), certain relatives are not mentioned: collaterals and wives of senators

and direct descendants of knights beyond the second generation; the wives would be included in the senatorial order.

8 f. *Ius*]/. . . *spectandi in equestribus locis*: for the Lex Roscia theatralis, see Rotondi, *Leges Publicae*, 374; T. R. S. Broughton, *MRR* II, 145; T. P. Wiseman, *Phoenix* xxvii (1973), 194 ff.; a Lex (?) Iulia (Pliny, *NH* xxxiii, 32; Suet., *Div. Aug.* 40, 1, and 44) is dated by Rotondi, *Leges Publicae*, 462, to before A.D. 4.

9. *Auctoramento*: particularly appropriate with *rogare* (as in *Coll.* iv, 3, 2, *FIRA* II, 553), as recalling the commander's 'sacramento rogare' (*OLD*, s.v. 7e); see G. 25, n. 69, translating 'pretendere', 'claim'.

9 f. *Ro[garet ut cum bestiis depugna]ret M.*; but *auctoramento* demands a reference to gladiators (above, l. 5 n.); *in harena* might be replaced by *ferro*, from Gaius, *Inst.* I, 13, but it is rather short.

Pinnas rapere: cf. the *pinnirapus* of Juv. III, 158, with Courtney ad loc., a man on a par with *leno*, *praeco*, and *lanista*. The feathers are worn by gladiators: Lucilius 122; Varro *LL* v, 142; cf. Livy IX, 40, 3; x, 38, 12. M. 371 thinks of 'l'azione di chi strappava il cimiero dall'elmo dell'avversario sconfitto, per conservarne le piume quali trofeo', while *OLD* interprets Juvenal's word as 'retiarium' (Courtney tentatively concurring). I had been inclined to see a gladiator in training and assigned menial work such as disengaging the plumes from helmets after contests and handing them to the victors, just as there were men to drag off the bodies, cf. the scholiast on Juv. III, 158: 'Quia post mortem retiarum pinnam id est manicum rapit, ut ostendat populo se vicisse', but there is much in favour of Professor Nisbet's view that the verb *rapere* rather suggests snatching in action: Lucilius 122 as quoted by the scholiast: 'cum septem incolumis <pinnis> redit ac recipit se'.

10. *Rudem tollere*: M. 372 interprets 'prendere in consegna la *rudis*', and hence take part in the exercises of the gladiatorial school (or take the *rudis* from an opponent, which he prefers). In support of the second interpretation ('get the foil of someone', in contrast here with *depugnaret*, 'fight to the death'), Professor Nisbet cites Cassiod., *Praef. in Psalt.* I (Migne 70 col. 1): 'sed ut quidam de Homero ait: tale est de eius sensu aliquid subripere, quale Herculi clavam de manu tollere.'

Aliove quod eius rei simile min[istraret]: M. 372 bases this restoration on the (suspect) phrase in Ulpian, *Ad Edictum* VI, in *Dig.* III, 2, 4, 2: 'mancia talia habuit ministrantia et occasione ministerii quaestum facientia'; it is accepted as plausible by G. 21, n. 53.

The legislators may be providing here for amateurs who thought that they could escape the ban if they took part only in contests not intended to be to the death, or in preliminary training bouts.

11 ff. These lines deal with the offence described by Suet., *Tib.* 35, 2. Hence Mr Purcell convincingly regards the clause as explanatory rather than as offering direct instructions to the magistrates.

11. *Cave(n)dum* [?' quod —c. 9—]: Dr Lintott's suggestion that the CAVERI DVM represents CAVENDVM is very attractive. The engraver, who inserts punctuation between I and D, misread and misinterpreted his text.

M. and G. have *caveri dum* [*ne d(olo) m(alo) perseverent qui*], differently interpreted by M. 373 and G. 26, with n. 71. For M. the clause calls for vigilance against further authorization to youths to hire themselves out and against those who (now *dolo malo*) had been forwarding the manoeuvres of those youths. For an SC of A.D. 11, backed by Augustus (Dio LVI, 25, 7, recording no SC; but the present document proves that there was one and gives something of the contents), raised the ban imposed in 22 B.C. (Dio LIV, 2, 5), so that between A.D. 11 and 19 equites were once again free to perform without being declared *infames*. Now the ban was reintroduced, they would find a manager to draw up a contract involving *infamia*, as had happened before 11; ll. 11–14 enjoin vigilance against such an eventuality (*fraus*). This exhortation was valid even after (*et* in 13 = *etiam*) the youths of their own free will renounced their rank. G. interprets the clause better as directed entirely against the young men. The lines may be taken with M. and G. as presenting the object of special precautions as the young men's persistence (*ne . . . perseverent*) in abandoning their rank, or as offering a reason for special precautions to be taken against young men hiring themselves out. This seems preferable: *id* should refer back to the

preceding clause *neve quis . . . locaret* (cf. Tac., *Ann.* 1, 81, 2), *dum* and what follows giving a reason (*ea de causa*) for the special vigilance (so Mr Purcell). *Caveri dum*, however, remains untoward, and Dr Lintott's *cave(n)dum* is preferable, followed rather by a *quod* (Mr Crawford) than a *ne* clause, with the verbs *dederant operam*, *auctoraverunt se*, and *prodierant*.

12. *Auctoritatis*: not merely or not so much to avoid repetition of *dignitatem* in 5 and 14, but a reference to the burdens imposed by membership of a high class (G. 25 and 21, n. 56).

13. *famoso iudicio condemnarentur*: cf. 'famosi iudicii nota subibant' in Suet., *Tib.* 35, 2, and see below, Section IV.

15. *libitinam haberet*: for *libitinam* see L. Bove, 'Due nuove iscrizioni di Pozzuoli e Cuma', *Rend. Accad. Arch. Lett. Napoli* (1966, printed 1967), 214 ff. The phrase *libitinam habere* is not otherwise attested, according to M. 375. He draws attention to the inscription of Sarsina which debars *auctorati*, suicides, and 'quei quaestum spurcum professi essent' from burial in plots provided (*ILS* 7846); note too Cic., *In Pis.* 55: 'ut mortuus infamis referri (*v.l.* efferri) videretur'. For the deterrent effect of the clause G. 22, n. 58, cites Pliny, *NH* VII, 186 (the fate of the corpse of M. Lepidus). The prohibition is apparently to apply to *all* in the specified categories who undertake paid performance after the SC is passed, unless they are hereditary members of the professions, not merely, as M. implausibly holds, to those killed in the arena.

G. 27, n. 72, comments: 'rimaniamo perplessi': the first exemption prevents the legislation being retrospective but accords ill with the exemption of those who were born into the professions and incapable of 'libitinam habere'; he suggests an insertion due to 'completamania' of a kind 'non insolita nella formulazione dei testi "normativi" romani' (he cites A. Guarino, *Labeo* XX (1974), 416). Dr Lintott takes *libitinam haberet* to refer to being a funeral director rather than to securing decent burial, comparing Tabula Heraclensis 104, *FIRA* 1², 148 ('neve eum, quei praeconium dissignationem libitinamve faciet . . . Ilvir(um) IIIvir(um) . . . renuntiato'). *Libitinam facere* was a lesser offence that brought only temporary disqualification from office under the Tabula Heraclensis. Hence its secondary position in the SC. The preceding lacuna might then require a different supplement, containing further minor offences. It is surprising, however, that it was thought worth mentioning at all: *libitinam facere* lacked the glamour that attracted the nobility to public performance.

The restoration of l. 14 f., [*si id contra dignitatem ordi/nis su/i*], implies equestrian offenders, l. 16 that they might also be the children of actors and the like, reverting to their parents' profession. The Lex Iulia de maritandis ordinibus had been passed in 18 B.C. (for its provisions see above l. 7 n.). It became less easy for the children of actors to attain equestrian status in A.D. 23, when the qualifications for membership were tightened up (Pliny, *NH* XXXIII, 32). In spite of the tightening up, such persons are found in equestrian seats in Juv. III, 158.

17. [*?Quodque s(enatus)] c(onsulto)*: *utique* La R., M.; G. 22, n. 61, noting various interpretations of *utique*, suggests *cum* ('come'), as in the SC Volusianum, *ILS* 6043 = *FIRA* 1², 288 ff., no. 45 = Smallwood, *Docs. Gaius to Nero*, 365, l. 24.

Comp<reh>en[sum esset, ne cui ingenuae quae]: M. and G. print *comp[en]*[- - - - -: *ne cui ingenuae quae]*: see M. 375, n. 4, with G.'s comment, 22, n. 61; he found the supplement adopted here in the Tabula Hebana, l. 36, cf. l. 48.

What is the relation between the SC proposed by Lepidus and Taurus in the first half of A.D. 11 and the provisions of ll. 17-21? In M.'s view (376 f.), the present enactment imposed an age limitation, omitted in the SC of 11 (Dio LVI, 25, 7 f.), on persons of either sex who, not being debarred by their status, were otherwise at liberty to engage in public performances; G.'s translation (27), 'Come nel senatoconsulto . . . è scritto: [. . .] a nessuna . . . minore di vent'anni . . .', implies a tralatician clause. The mention of Tiberius in l. 19 would be a later insertion; for Tiberius' powers, see R. Seager, *Tiberius* (1972), 47. I suggest that the reiteration of the SC of A.D. 11 goes almost to the end of the surviving fragment and is confirmed by *id servari placere*. This involves an interpretation of l. 20 f. different from that of G., who translates: 'colui che abbia dismesso di auctorarsi e di locare le sue prestazioni, se il divo Augusto o Tiberio . . . abbiano stabilito che fosse da restituire alla sua condizione, ciò (si decreta) che si osservi, a meno che . . .', where in l. 20

co]nietus esset is 'sia stato gettato', a harsh juxtaposition of the same word in two different senses (note *ita* before *coniecisset*).

17 f. [*Ne cui ingenuae*] . . . XX, etc. For this distinction of sex see Ulpian, *Rules* XVI, 1 (*FIRA* II, 278), as the age 'a qua Lex (Papia Poppaea of A.D. 9) liberos exigit'. It is conceivable that free persons had been evading the penalties imposed on celibates by that law (see P. E. Corbett, *The Roman Law of Marriage* (1930), 120) by embracing, just before they reached the crucial ages, a profession which made them ineligible to marry *ingenui* (*Rules* XIII and XVI 2 = *FIRA* II, 277 ff.). This form of *fraus* was met by the SC of 11. The Lex was hated and the year after the SC of Larinum was passed there was an outcry against the hardships it caused and the danger to those who were evading it (Tac., *Ann.* III, 25 ff.).

The mention of women fits the restoration *opera[sve suas ad harenam scaenamve spurcos/ve quaestu]s* in l. 18 f. (M., G.); but G.'s doubts (23, n. 64) whether the object of *locare* could be *operas ad spurcos quaestus* seem just, and the 33-letter supplement is much too long.

19 f. *Aug[usto in ludum scaenam spurcosve/quaestus co]nietus* M., G.; the variation between this and the restored wording of the preceding lines is not explained, and it is extraordinary to find Augustus consigning persons to 'spurcos quaestus'; even of *damnatio ad bestias*, P. Garnsey, *Social Status and Legal Privilege in the Roman Empire* (1970), 130, cites no instances between Balbus (Pollio *apud* Cic., *Ad Fam.* x, 32, 3) and Gaius Caligula (Suet., *Gaius* 27, 3 f., cf. Dio LIX, 10, 3), although these victims may be singled out as *honesti ordinis*. The brothel and the stage are incredible as punishments at this date: cf. 'inve ludum custodiamve coniectus' (Gaius, *Inst.* I, 13), from the Lex Aelia Sentia, referring to *slaves*. The verb, if taken to mean 'consign to a certain status' (*OLD*, s.v. 9) might be followed, e.g., by 'in numerum infamosorum', 'gladiatorum', 'inter infames', (cf. *Dig.* III, 2, 2, 2).

20 f. *Qui eorum is qui ita coniecisset*: M. 377, G. 23, n. 65, concurring, deletes *qui eorum* as a dittography from the preceding line, but the meaning is still unclear; perhaps the original was *co]nietus esset; si quem ita coniecisset, auctorare se operasve suas [locare permitteretur*, etc.: if the Princeps had so consigned anyone (e.g., to the status of *infamis*), he was to be permitted to hire himself out as a gladiator, etc. Professor Brunt suggests *coniectus esset* for *coniecisset*, with the implication that the persons concerned had not acted of their own accord, and Professor Nisbet the transfer of *is qui ita coniecisset* from after (*cui eorum* in l. 20 to after *statuisset* in 21: (*cui eorum auctorare se operasve suas [locare permitteretur usque dum eum ad l]arem redducendum esse{t} statuisset is qui ita coniecisset*. ('... until the person who had so consigned him shall have determined that he was to be restored to his own Lar'). This makes it possible to save (*cui eorum* ('which person among them might be permitted . . .')), but the change is fairly radical. Further, in spite of other oddities in the language of the SC (the phrases used for the gladiatorial activities of l. 9 f. and the *libitinam haberet* of 15), Miss Rawson's doubts of the phrase *ad l]arem redducendum* seem well founded. M. 377 interprets it as recall from exile or recovery of previous status; G. 23, n. 66, thinks of the latter (which would include recall), and invokes Macr., *Sat.* II, 7, 3, the fate of Laberius: 'Ergo bis tricenis annis actis sine nota/eques Romanus <e> Lare egressus meo/domum revertar mimus'; but this is verse. This further difficulty increases the attractiveness of Dr Lintott's suggestion (*cui eorum is qui ita (censu)isset auctorare se operasve suas [locare permittendum esse eumque ad condicionem p]arem redducendum esse{t} statuisset*: the Princeps had reduced them to the *condicio* that was *par* to the job they were doing. This involves only small changes of the text, the most serious that of *coniecisset* to *censuisset*, but seems rather long for the space available. Mr Crawford suggests *permisisset* at the end of l. 20, with *vel* in 21 introducing *statuisset*: permits to perform or to return to honourable status granted by the Principes are to stand. What precisely the Princeps was doing cannot be determined with certainty at present; rather than risk creating an illusion of certainty and so perpetuating error, I leave the lacunae unfilled. The main provision of the clause is to reiterate the SC of A.D. 11 in forbidding public performance to minors, except those whose performances some action of the Princeps (permissive or punitive) made legitimate; and they were to be allowed to perform (until the Princeps revoked his previous decision?). But there were exceptions to the rule laid down

in the SC of A.D. 11 (*praeterquam*) (or possibly to the actions of the Princes which in most cases made public performance permissible).

The imperial powers implied belong strictly to the censorship or, as an act of *coercitio*, to the *imperium* of the magistrate; the imperial monopoly illustrates the entrenched position of the Princes at the end of Augustus' life.

21 ff. The missing part of the document certainly contained *discussionis eventus* and a statement of numbers present (*FIRA* 1², 238). Did the substantive part of the SC conclude with penalties? In the extant part of the inscription only one penalty may be mentioned, the loss of the right *libitinam habere*, l. 15, if the phrase is to be interpreted in that sense. It may be that no penalty was specified, the senate reserving the right to take cognizance *extra ordinem*: cf. 'de eo . . . ad senatum referretur', SC Hosidianum (*ILS* 6043 = *FIRA* 1², 288 ff., no. 45 = Smallwood, *Docs. Gaius to Nero* 365, l. 13 f.).

The great question is whether the SC dealt, not only with public performance on stage and in the arena, but with the *fraus* of upper class married women who registered as prostitutes. This is assumed by M. and G., but the bronze as preserved offers no support to such an assumption. It will be discussed below (Section IV) after the place of the SC of Larinum in the whole series of enactments on public performance by senators and equites has been examined.

II. RESTRICTIONS ON PUBLIC PERFORMANCE BY MEMBERS OF THE UPPER CLASSES, 46 B.C.—A.D. 15

Tertullian offers the paradox that the Romans adored people they penalized.⁶ By the principate of Augustus Romans of all classes and both sexes were devotees of circus, arena, and stage. Livy's account of the introduction of *ludi scaenici* from Etruria in 364 B.C. and the development of the theatre from that time was designed 'ut appareret quam ab sano initio res in hanc vix opulentis regnis tolerabilem insaniam venerit'.⁷ Not all were content to be members of an audience; some sought to take part in private performances; ⁸ others satisfied their passion vicariously by pursuing professionals; ⁹ others again took a place before the public.¹⁰

The first attested prohibition against senators fighting in the arena belongs to 46 B.C. Evidently the question had never arisen until the turbulent years of the Civil Wars. Only then could a man enrolled in the senate think of fighting as a gladiator.

Of Caesar's games of 46 Dio writes: ¹¹

In all the contests the captives and those condemned to death took part; yet some even of the knights, and, not to mention others, the son of one who had been praetor fought in single combat. Indeed a senator named Fulvius Sepinus desired to contend in full armour, but was prevented; for Caesar deprecated that spectacle at any time, though he did permit the knights to contend.

Of the same games Suetonius writes ¹² that 'munere in foro depugnavit Furius Leptinus stirpe praetoria et Q. Calpenus senator quondam actorque causarum.' Apart from a possible muddle over the names he is in accord with Dio's account: we are to take it that Caesar prevented an actual senator from taking part in a public gladiatorial show, while a man himself an eques but of praetorian stock and a former senator was permitted to take part.

It looks as if this distinction between senators and equites was drawn by the Dictator

⁶ Tert., *De Spect.* 22, 2: 'amant quos multant'; the paradox is implicit in Cic., *Pro. Quinct.* 78.

⁷ Livy VII, 2, 3 ff. (13 is cited), cf. Val. Max. II, 4, 4.

⁸ For this and the following notes, see J. P. V. D. Balsdon, *Life and Leisure in Ancient Rome* (1969), 279 ff. He cites Sall., *Cat.* 25, 2 (Sempronia), Macr., *Sat.* III, 14, 10 (Sulla). At 14, 5, Macrobius states that it was not Sempronia's dancing that was the problem, but her proficiency; 6, 8, and 10 are also informative. We do not know how accomplished the consul of A.D. 19, Norbanus, was on his trumpet (Dio LVII, 18, 3).

⁹ L. Friedlaender, *Sittenges. Roms* II⁹ (1920), 62; Balsdon, *op. cit.*, 281, n. 196 f. (references mainly to the Principate). See also Tac., *Ann.* I, 54, 3 (Maecenas and Bathyllus), cf. I, 77, 5 (A.D. 15); A. Gell. XX, 4 (uncertain date).

¹⁰ Friedlaender, *op. cit.*, 61; Lucil. 1273 f. Marx, *apud* Cic., *De Orat.* III, 86; *Pro Sest.* 9; Suet., *Div. Iul.* 26, 3; Sen., *Ep.* 87, 9.

¹¹ Dio XLIII, 23, 5 (tr. E. Cary, Loeb ed.); see E. Meyer, *Caesars Monarchie u. der Principat des Pompeius* (ed. 3, 1922), 386, n. 1.

¹² Suet., *Div. Iul.* 39, 1.

acting on his own responsibility, although a senatorial ban cannot be ruled out (see below, on Dio's treatment of Augustus' prohibitions).

Dio's account¹³ of a ban imposed in 38 B.C., however, suggests that an *ad hoc* prohibition was imposed (by a magistrate?) and followed by an SC; in the same breath we are told of a ban on slaves acting as lictors:

One person was chosen to be quaestor while still accounted a boy . . . ; and another, who had been enrolled in the senate, desired to fight as a gladiator. Not only was he prevented, however, from doing this, but an act was also passed prohibiting any senator from fighting as a gladiator, any slave from serving as a lictor, and any burning of dead bodies from being carried on within two miles of the city.

It is noteworthy that the stage is not mentioned by Dio and Suetonius in their account of the ban of 46, nor by Dio in his of 38. That may be because they were concerned only with the particular requests that gave rise to the bans, or because the bans themselves were *ad hoc* measures concerned only with the arena. The first alternative is more economical: when Dio gives his next account of a prohibition, under 22 B.C.,¹⁴ he says that senators were already barred from the orchestra, indeed that their sons were:

And since knights and women of rank had given exhibitions on the stage even then, he forbade not only the sons of senators, who had even before this been excluded, but also their grandsons, so far, at least, as these belonged to the equestrian order (καὶ τοῖς ἐγγόνοισι τοῖς γε ἐν τῇ ἱππᾶδι δῆλον ὅτι ἐξεταζομένοις) to do anything of the sort again.

Either there was an intervening enactment or enactments, or there was a SC in 38 which forbade stage as well as arena to senators and their sons. In 22 B.C. the ban was extended strictly speaking to their grandchildren, or, on the less restricted meaning of the word, to their descendants. If we accept Reiske's emendation of the MSS τε to γε, these grandchildren (or descendants) are 'those enrolled in the equestrian order.' It is not easy to see why the posterity of senators affected by the ban (to however many generations it was) should be thus restricted to those registered as equites; no such restriction is to be found in any other document, including the SC from Larinum. Following Professor Brunt's suggestion, I am inclined to keep the MSS reading, which would translate 'and persons, registered, of course, in the *ordo equester*' (or perhaps one might interpret it as 'and persons openly presenting themselves as members of the *ordo equester*' (that is, not only those who possessed the requisite census but who expected to be officially enrolled as equites on the census lists). Certainly the equites, still exempt at least in 46 and found slaughtering wild beasts at the Ludi Apollinares of 41 B.C.,¹⁵ did fall under both forms of the ban (against stage and arena) at some time during the principate of Augustus: Suetonius says of Augustus¹⁶ 'ad scaenicas quoque et gladiatorias operas et equitibus Romanis aliquando usus est, verum priusquam senatus consulto interdiceretur. Postea nihil sane praeterquam adulescentulum Lycium honeste natum exhibuit.' Given the incompleteness of the record of such prohibitions (note that nothing is said in the existing text of Dio about any measure taken in A.D. 19), we cannot be sure that the undated SC mentioned by Suetonius is identical with Dio's measure of 22 B.C. Dio here as elsewhere when an SC is certainly or probably involved seems to attribute the action to Augustus himself.¹⁷ Nonetheless it is probable that the two bans are identical. Dio attributes his to the fact that equites and women of distinction have appeared on the stage; and he says under 23 B.C.¹⁸ that Augustus' nephew and prospective heir Marcellus offered aedilician games in which an eques and a distinguished woman were brought on the stage. Augustus might justly be held responsible for the performers put on in 23 by his nineteen-year-old nephew; whatever knights appeared later, they were not put on by Augustus. He watched the gladiatorial shows of

¹³ Dio XLVIII, 43, 2 f. (tr. E. Cary).

¹⁴ Dio LIV, 2, 5 (tr. E. Cary); cf. LIII 31, 3 (23 B.C.).

¹⁵ Dio XLVIII, 33, 4; cf. Suet., *Div. Aug.* 43, 2 ('confectores ferarum . . . ex nobilissima iuventute' under Augustus). The Q. Vitellius, a senator who fought as a gladiator in 29 B.C. (Dio LI, 22, 4, with

Wiseman, *New Men*, 276, no. 505), could have been one of those expelled in that year, but we do not know.

¹⁶ Suet., *Div. Aug.* 43, 3.

¹⁷ See B. Levick, *Historia* XVI (1967), 207 f.

¹⁸ Dio LIII, 31, 3.

A.D. 11,¹⁹ but for them formal dispensation had been granted. Of such shows nothing is said in Dio's account of the ban of 22 B.C., though Suetonius does include them. Dio is probably silent because what had provoked the measure was activity on the stage: performances in the arena, which were more heinous, were certainly included. A pre-existing ban on knights fighting and performing in the arena is implied by Dio's account, cited below, of the way the ban was first evaded and then in A.D. 11 lifted. To all appearances women also came under the ban for the first time in 22 B.C. Dio does not specifically say that they did, but in both passages concerned with the games and the ban he mentions distinguished women alongside equites. Nor does Dio specify their rank: the daughter of a senator might be married to an eques and vice versa, so the same woman might come into both categories (see the Larinum SC, l. 17 f.).

The SC of 22 does not seem to have been very effective. The first known instance of violation came soon after it was imposed. In his consulship of 16 B.C., as in his praetorship (19 at latest), L. Domitius Ahenobarbus brought *equites Romani* and *matronae* on the stage as mimes.²⁰ Another violation occurred in 2 B.C., when Dio notices the praetorian games of Quinctius Crispinus for that reason.²¹ How did equites and others who defied the ban hope to get away with it? Masks for actors (not mimes) made it easy for the authorities not to recognize them, except at moments when removal was obligatory;²² then there was the imperium of the presiding praetor and the influence of his powerful friends. A praetor might be overridden by a consul, but the *consul prior* of 2 B.C., when Crispinus gave his games, was Augustus, who had something better to think about that year, as Dio makes clear: Crispinus' elder brother and the other alleged lovers of his daughter.²³ By A.D. 11 the ban had become so discredited that it was lifted, presumably on application.²⁴

The knights—a fact which may cause surprise—were allowed to fight as gladiators. The reason for this was that some were making light of the disfranchisement (*atimia*) imposed as the penalty for such conduct. For inasmuch as there proved to be no use in forbidding it, and the guilty seemed to require a greater punishment, or else because it seemed possible that they might even be turned aside from this course, they were granted permission to take part in such contests. In this way they incurred death instead of disfranchisement; for they fought just as much as ever, especially since their contests were eagerly witnessed, so that even Augustus used to watch them in company with the praetors who superintended the contests.

Whether Augustus acted on his own responsibility or again by SC Dio does not state: the latter is plausibly assumed by Giuffrè (18): the Larinum SC proves that there was senatorial legislation on public performance in that year. The measure of 11 actually cited in the Larinum SC is restrictive rather than permissive: it forbade public performances by free-born persons under the ages of 20 (women) and 25 (men). It belongs, as the consuls who sponsored it prove, to the first half of the year, but could still be an afterthought to the original relaxation of the rules: the relaxation had been taken advantage of by persons below the age of discretion, and the loophole was promptly stopped, the senate taking advantage of the occasion to protect young people of all classes. On the other hand it is equally possible that the senate anticipated such developments and provided against them in its original measure relaxing the prohibition. In A.D. 15 Tiberius was no doubt following the precedent of his recently deified father in allowing the request of knights that they be allowed to fight in the games given by his son Drusus in his own name and in that of Germanicus.²⁵ The Princeps, in contrast with Augustus in A.D. 11, showed his disapproval by refusing to watch the contests and when one of the gladiators was killed he forbade the man's opponent to continue. By A.D. 15, then, the restrictions on public performance by senators and equites were as follows (subject always to defects in the record): senators and their sons had expressly been forbidden arena and stage alike since 38 B.C., their grandchildren (descendants?) since 22 B.C. Members of the *equester ordo*, those entitled by birth

¹⁹ Dio LVI, 25, 8.

²⁰ Suet., *Nero* 4, with M. 355, n. 3, 369 f. and 381, putting responsibility on *lanistae*.

²¹ Dio LV, 10, 11.

²² Balsdon, *op. cit.* (n. 8), 278, with n. 179. Miss Rawson draws attention to Festus 238L where only actors in Atellan farces are allowed to keep masks on

throughout, and to the fact that there is now no suggestion that performers in Atellan plays are of superior status.

²³ Dio LV, 10, 12.

²⁴ Dio LVI, 25, 7 f. (tr. E. Cary).

²⁵ Dio LVII, 14, 3.

and census to seats in the first fourteen rows in the theatre, and women of equestrian and senatorial families, had been under the same ban since 22 B.C., but after persistent evasion equites had been exempted from it explicitly by SC as far as gladiatorial shows were concerned, and *a fortiori* for performances on the stage.

III. ATIMIA, INFAMIA, AND PUBLIC PERFORMANCE

In his account of the lifting of the ban on equites fighting in the arena, quoted above, Dio says that before the ban was lifted equites were risking *atimia*, afterwards death. The word is often used by Dio in a penal context, but in several senses. As in the case of Cicero, it can refer²⁶ to the complete deprivation of citizenship rights that would naturally follow on the imposition of *aquae et ignis interdictio* and the victim's removal to another state. Elsewhere, however, Dio draws up lists of penalties in which *atimia* figures in a scale before exile or death, or between exile and a pecuniary penalty. *Atimia* in A.D. 11 is probably the loss of rights reserved to the upper classes: they suffered the consequences on becoming *infames*: essentially that of being struck from the equestrian census list, *a fortiori* losing the *latus clavus* if they wore it.²⁷ Roman ambivalence to the stage, actors, and acting is well known (see above, Section II) and has parallels in England and elsewhere in modern times.²⁸ From Rome the religious factor was absent. The Romans feared the stage because it was alien and novel, brought the people together for no legitimate purpose, excited them, cost money, and could win an individual popularity. There was no place for actors or the stage in the official view that the Romans cultivated of themselves as farmers and soldiers. Gladiatorial games were admittedly an ancient institution, and of religious significance. But the combatants were necessarily expendable, and set apart by their role as sacrificial victims.

Actors are thought to have been of non-Roman origin, slaves or freedmen, at best *peregrini* (before 91 B.C.).²⁹ Gladiators would certainly be slaves for the most part, prisoners-of-war or condemned criminals.³⁰ However, large sums could be made on stage or in the arena.³¹ By the time the equestrian class was beginning to crystallize in the twenties of the second century B.C.,³² only social stigma, in particular that of servile birth, prevented an enfranchised peregrine or freed slave from rising out of the plebs if he were a successful actor or gladiator. The fees must have been attracting freeborn Roman citizens too, if they were unable to make a living (or so good a one) in other ways, as they later attracted free men all over the Empire.³³

How far professional performers were penalized is hard to say because of the apparent inconsistency of the ways in which they were treated, and that is due to the number of variables involved: manners changed; different levels of society were implicated; there were several types of performance (drama; mime; Atellan farce; the arena, with various combat and subordinate roles; the circus);³⁴ the sources of prohibition and penalties might be equally diverse (censor's *nota*; edict; comprehensive *lex*; SC passed *ad hoc*).

²⁶ Dio xxxviii, 23, 1; 3 ff.; 24, 1; 26, 1. Interdiction: B. Levick, *Historia* xxviii (1979), 370 ff.

²⁷ Dio lII, 7, 1, and 31, 3 (a lesser penalty than exile or death); LV, 18, 3 (between exile and a fine). One can be ἀτιμος... ἐξ ὑπάτου, like Antony (L, 20, 5), and removed from one's consulship in disgrace (xlVIII, 35, 2); to go to prison involved *atimia* (XL, 45, 4; LVIII, 3, 4); one can die in disgrace like Cleander (LXXIII, 13, 1) and (if an emperor) suffer dishonour after one's death (LX, 4, 5 f.); not to receive an office may constitute *atimia* (xxxvi, 24, 5). But there is no evidence that *atimia* means deprivation of Roman citizenship, except as a contingent result of *aquae et ignis interdictio*.

²⁸ See E. K. Chambers, *The Elizabethan Stage* (1923), I, 236 ff.

²⁹ W. Beare, *The Roman Stage* (ed. 3, 1964), 166 f. Miss Rawson has pointed out to me that slave actors, who would mostly need to be native speakers of Latin, would normally be *vernae*; dancers, including *pantomimi*, would be another matter.

³⁰ Friedlaender, op. cit. (n. 9), 54 ff.

³¹ Balsdon, op. cit. (n. 8), 281, with nn. 200 ff., citing Cic., *Pro Rosc. Com.* 23; Pliny, *NH* VII, 129; Macrobi., *Sat.* IV, 14, 13 f. (actors); 297 with n. 287, citing Livy XLIV, 31, 15; Suet., *Tib.* 7, 1; *ILS* 5164 (A.D. 177, ll. 29 ff., 62 f. (gladiators)).

³² C. Nicolet, *L'Ordre équestre, Bibl. des Écoles fr. d'Ath. et de Rome* 207 (1966, repr. 1974), 1, 163 ff.; M. I. Henderson, *JRS* LIII (1963), 70 = *The Crisis of the Roman Republic* (ed. R. Seager, 1969), 78. I accept the view of T. P. Wiseman, 'The Definition of "Eques Romanus" in the late Republic and early Empire', *Historia* XIX (1970), 67 ff. (the class included those qualified by census); and see E. Badian, *Roman Imperialism* (ed. 2, 1968), viii.

³³ *ILS* 7846 (first century B.C.); 5163 (A.D. 177); L. Robert, *Les Gladiateurs dans l'Orient hell.* (1940, repr. 1971), 285 ff.

³⁴ On the circus, see E. Rawson, 'Chariot Racing in the Roman Republic', *PBSR* XLIX (1981), 1 ff.; *cursores*: see Suet., *Div. Aug.* 43, 2; see Rawson, art. cit. 9, with n. 37 f., citing Asc. 93C and Suet., *Div. Iul.* 39, 2, for Sulla's and Caesar's victory games.

Tenney Frank argued³⁵ that actors proper, as opposed to mimes and *a fortiori* to gladiators, were not subject to the disqualifications of *infamia* during the Republic: it was only when mime drove serious plays off the stage that the two became assimilated and actors in general subject to the disabilities. He cited the case of Q. Roscius, who was given the gold ring by Sulla and continued to play, though without fee, and insisted on the respectability of his connexions and those of the contemporary tragedian Clodius Aesopus.³⁶ In sharp contrast was the case of D. Laberius the poet, who was forced to play in one of his own mimes and lost his status as an eques until it was restored to him by Caesar, who returned him to his place in the fourteen rows and gave him half a million HS.³⁷

Tenney Frank failed to prove his case (Livy insists that the Atellan farceurs were an exception to the disabilities imposed on actors), and the question 'were actors *infames*?' neglects the nature of *infamia* itself.³⁸ First, as is shown by the wide vocabulary associated with it (persons are *infames*, *famosi*; they suffer *infamia*, *ignominia*, *probrum* or a *nota*; *ludicra* are *infamosa*, *turpia*), it is not a unified concept. Ill-repute of various kinds was a reason for invoking a repertoire of mostly *ad hoc* rulings with very different legal bases—the censor's *nota*, the praetorian edict, *leges* and SCC—consequences, and effectiveness. Only as the law was codified did it become possible to concoct a portmanteau concept, *infamia*.³⁹ Second, stigmatizing a person was punitive or preventative, an action taken when a man attempted to move upwards from one class to another where he was not welcome, or was behaving in a way that the other members of his class considered deleterious. A member of the plebs who pursues the profession of actor is *infamis* when the question arises of his carrying out certain civic functions.⁴⁰ The diversity of purpose and effectiveness of measures that would be justified by referring to *infamia* are shown by a few instances: certain potential jurors were disqualified from service by the Lex Acilia of 123 B.C., section 13, if Mommsen's restorations are correct;⁴¹ potential members of the *ordo* are disqualified in the Tabula Heracleensis, sections 94 f., 104 f., 110 ff.;⁴² certain witnesses by the Lex Iulia de vi.⁴³ Like these disqualifications certain penalties were presumably effective: the ten years' loss of the *ius honorum* imposed by a Lex Cornelia de ambitu⁴⁴ and the five years' of the Lex Iulia of 18 B.C.⁴⁵ It does not follow that the penalty was exacted in every case. Thus an outraged husband, even one *in patria potestate*, could kill an adulterer on the spot, 'servum, et eum qui auctoramento rogatus est ad gladium, vel etiam illum qui operas suas ut cum bestiis pugnaret, locavit';⁴⁶ it did not always happen. The senator whose conduct earned the censorial *nota* did not always receive it; if he did, it could be set aside, as Cicero pointed out,⁴⁷ unlike the sentence imposed in a *famosum iudicium*. In the absence of a police force it is not surprising to find the fourteen rows occupied by persons one would have

³⁵ 'The Status of Actors at Rome', *CP* xxvi (1931), 11 ff., against B. Warnecke, 'Die bürgerliche Stellung d. Schauspielers im alten Rom', *N. Jahrb. f. kl. Altert.* xvii (1914), 95 ff.; *contra*, W. M. Green, *CP* xxviii (1933), 301 ff., and see Balsdon, *op. cit.* (n. 8), 279 ff., with n. 185, citing Cic., *Pro Arch.* 10; Nepos, *pr.* 5; Livy xxiv, 24, 3; Tac., *Dial.* 10, 5; Cic., *De Off.* 1, 150.

³⁶ Art. cit., 16. For Roscius see Cicero's defence and *De Leg.* 1, 4, 11; his sister married P. Quinctius: *Pro Quinctio* 77; Macr., *Sat.* iii, 14, 13; the affection in which he was held: Cic., *Pro Arch.* 17. For Aesopus and his son's alleged marriage to a Metella, see Porph. *ad Hor.*, *Sat.* ii, 3, 239, where 'ex aure' may have given birth to 'uxori'.

³⁷ Suet., *Div. Iul.* 39, 2; Macr., *Sat.* ii, 7, a f.; Sen., *Contr.* vii, 3, 9; see Shackleton Bailey *ad Cic.*, *ad Fam.* xii, 18, 2 (his 205) and J. R. Schwartz, *REA* L (1948), 264 ff.

³⁸ See A. H. J. Greenidge, *Infamia: its Place in Roman Public and Private Law* (1894); M. Kaser, '"Infamia" und "Ignominia" in den röm. Rechtsquellen', *ZSS* Lxxiii (1956), 220 ff.; V. Arangio-Ruiz, *Ist. di Diritto rom.* (ed. 14, 1977), 59 ff.; J. A. Crook, *Law and Life of Rome* (1967), 83 ff., with 303, n. 7; all have further bibliography. M.'s use of the term is censured by G. 8, n. 7.

³⁹ A general concept is implicit in *Dig.* xlviiii, 7, 1 *pr.* (Marcianus, first half of the third century A.D.): 'quasi infamis ex senatus consulto'; cf. iii 2, 2, 2 (Ulpian): 'inter infames efficit'.

⁴⁰ *Coll.* iv, 3, 2 (*FIRA* II, 553).

⁴¹ *FIRA* I², 88, v. 13.

⁴² *ibid.* 147 ff. As Professor Brunt observes, it is not from the Lex and the Tabula themselves that we know that some of the disqualifications they specify imply *infamia*: it is to be argued from their inclusion amongst the consequences.

⁴³ Callistratus, in *Dig.* xxii, 5, 3, 5.

⁴⁴ G. Rotondi, *Leges Publicae Populi Romani* (1912), 361.

⁴⁵ Dio LIV, 16, 1.

⁴⁶ *Coll.* iv, 3, 2 (*FIRA* II, 553). Dr Hart draws attention to the yet larger and more varied list of Macer in *Dig.* xlviiii, 5, 25 (24), *pr.*, still without the word *infamia*; but cf. *Sent. Pauli* ii, 26, 4 (*FIRA* II, 351).

⁴⁷ *Pro Clu.* 119 f.: 'turpi iudicio damnati in perpetuum omni honore ac dignitate privantur, sic hominibus ignominia notatis neque ad honorem aditus neque in curiam reditus est.'

thought disqualified; even in face of the *Lex Roscia theatralis* and its penalty, only a timid gentleman gave up his seat for want of the census.⁴⁸

If this view of *infamia* is correct, that it was a concept used to justify a variety of forms of disqualification and discrimination, which were not always applied, the position of Q. Roscius is to be distinguished from that of D. Laberius for more complex reasons than their practising different forms of acting. Q. Roscius, 'the Garrick of his age', was an attractive personality, a man of culture and wealth; but the crucial factor was that he enjoyed the friendship of a powerful politician, indeed the patronage of L. Sulla. A gold ring bestowed by him was not likely to be removed. This was equally true of one conferred by Caesar, whose gesture was imitated by his protégé Balbus in a theatre in Spain for the benefit of Herennius Gallus, a man of respectable municipal origin.⁴⁹ Admittedly Laberius had laid himself open to the specific disabilities imposed in, e.g., the *Lex Iulia Repetundarum* and made himself ineligible for military service. This last disability would not have been imposed until the following census, depended on the censor, and could be removed (if the censor defied Caesar's clear wishes) by a vote of the people. The real difference between Roscius and Laberius was that Laberius was ashamed of what he had been forced to do; Roscius gloried in his art and was great enough to give lustre to the stage.⁵⁰

It is legitimate to bring in another factor, one that Tenney Frank discounts: pay.⁵¹ A man was more likely to be penalized if he were paid for his services than if he kept amateur status. Even Roscius waived his fees when he became a knight.⁵² The Pompeian soldier whom Balbus made to fight in the arena in Spain was aware of the distinction: he fought two duels *gratis*,⁵³ but refused 'auctorare sese', and, perhaps in ironical reference to the gladiators' oath, which permitted *urere, vincere, necare*, was burned to death after fleeing for refuge among the spectators. Pay figures throughout in the SC of 19, in ll. [5], 9, 14, [15], 18, [19], 20. For some performers of rank it might well have been an important factor: according to Tacitus, Nero found it easy to persuade members of the nobility on to the stage because they were 'egestate venales',⁵⁴

The last decades of the Republic and the first of the Principate were a period of swift social change, and of changing standards. The *ad hoc* measures that a censor might take were no longer considered enough to govern the conduct of members of the upper classes. The senate had to intervene, with the series of measures discussed in Section II, thus making it clear and certain that those members of the senatorial and equestrian orders who infringed the ban would indeed suffer loss of rank.

IV. A.D. 19: THE TESTIMONY OF SUETONIUS, TACITUS, AND PAPINIAN

We now come to a twofold problem: first, that of relating the measure embodied in the SC of Larinum to those mentioned by the above authors, of whom only Suetonius concerns himself with public performances by members of the upper class, while both he and the others deal with the sexual misdemeanours of matrons, Tacitus ascribing the measure to A.D. 19; second, that of explaining how the young men in Suetonius evaded *infamia* apparently by incurring it.

Suetonius, in the section of his biography of Tiberius that he devotes to the Princeps' concern for economy and morality,⁵⁵ notices that women began to make open profession of *lenocinium* to free themselves from their status as *matronae* and so to escape the penalties of adultery (relegation to an island with loss of property);⁵⁶ similarly young men of senatorial and equestrian rank were voluntarily incurring infamy as a result of judicial proceedings,

⁴⁸ Juv. III 152 ff.; cf. Hor., *Ep.* I, 1, 57 ff. For the *Lex Roscia*, see above, on l. 8 f.

⁴⁹ Asinius Pollio *apud* Cic., *ad Fam.* x, 32, 2.

⁵⁰ See Macr., *Sat.* II, 7, 3.

⁵¹ Greenidge, *op. cit.* (n. 38), 124 f., citing Pegasus in *Dig.* III, 2, 2, 5; see also Ulpian in *Dig.* III, 1, 1. Balsdon, *op. cit.* (n. 8), 290, suggests that the gladiators of A.D. 15 (Dio LVII, 14, 3) were using dummy weapons.

⁵² Cic., *Pro Rosc. Com.* 23.

⁵³ Asinius Pollio *apud* Cic., *ad Fam.* x, 32, 2;

comparable later events: Suet., *Cal.* 27, 2; Tac., *Hist.* II, 62.

⁵⁴ Tac., *Ann.* XIV, 14; cf. the 'Auctoratus ad sepeliendum patrem' of *Quint. Decl.* 302 and the gladiator of 9; Balsdon, *op. cit.* (n. 8), 290 with n. 246, citing Livy XXVIII, 21, 2; Hor., *Ep.* I, 18, 36; Sen., *Ep.* XCIX, 13; Juv. VIII, 199 ff.; XI 5 ff. and 20.

⁵⁵ Suet., *Tib.* 35, 2, with the notes of J. R. Rietra, *C. Suetoni Tranquilli Vita Tiberi—C. 24—C. 42* (1928).

⁵⁶ P. E. Corbett, *The Roman Law of Marriage* (1930), 133 ff.

so that they might escape the provisions of a senatorial measure directed against appearance on stage or in the arena ; both alike were punished with exile :

Feminae famosae, ut ad euitandas legum poenas iure ac dignitate matronali exoluerentur, lenocinium profiteri coeperant, et ex iuventute utriusque ordinis profligatissimus quisque, quominus in opera scaenae harenaeque edenda senatus consulto teneretur, famosi iudicii notam sponte subibant ; eos easque omnes, ne quod refugium in tali fraude cuiquam esset, exilio [Tiberius] adfecit.

Tacitus also records ⁵⁷ that precisely in A.D. 19 the senate took severe measures against female misconduct and forbade the granddaughter, daughter, or wife of a Roman knight to become a professional prostitute :

Eodem anno gravibus senatus decretis libido feminarum coercita cautumque, ne quaestum corpore faceret cui avus aut pater aut maritus eques Romanus fuisset. nam Vistilia praetoria familia genita licentiam stupri apud aediles vulgaverat, more inter veteres recepto, qui satis poenarum adversum invidicas in ipsa professione flagitii credebant. exactum et a Titidio Labeone Vistiliae marito, cur in uxore delicti manifesta ultionem legis omisisset. atque illo praetendente sexaginta dies ad consultandum datos necdum praeterisse, satis visum de Vistilia statuere ; eaque in insulam Seriphon abdita est.

A third text, mentioning an undated SC and concerned only with the case of the women, is offered by Papinian in his *De Adulteriis*,⁵⁸ where he seems to add a second method of evading the law, that of becoming an actress.

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

How many enactments are involved in these texts ? In particular, were the measures against young men and against adulteresses mentioned by Suetonius embodied in one SC, and that the SC from Larinum ? It is probable (as Professor Brunt points out), that Papinian's SC is identical with the measure on women mentioned by Tacitus and Suetonius, because the outcome of Vistilia's case is as Papinian envisages, but we cannot be certain. It should cause no difficulty that Tacitus seems to cast the countermeasure in the form of (plural) *decreta*, Papinian mentions one SC in connexion with all female offenders, and Suetonius presents the Princeps as responsible for all the action taken. If Tacitus' plural is to be taken seriously,⁵⁹ the first SC might be of general import, a second and separate measure, as Professor Brunt remarks, dealing with Vistilia. The absence of the senate from Suetonius' account proves nothing (see above, p. 106 with n. 17). There are further minor discrepancies : that Papinian and Suetonius use a word implying that the women were keeping brothels (*lenocinium facere, profiteri*), Tacitus saying that Vistilia declared herself a prostitute and that the SCC dealt with that ; and that Tacitus writes of women of equestrian and (by implication from the case of Vistilia) senatorial family, while Papinian speaks generally of *matronae*. The first discrepancy may be due to Suetonius and Papinian using a technical term rather loosely,⁶⁰ unless both methods were being used to evade the Lex Iulia de Adulteriis, and both were catered for in the SC ; and the second may be due to a widening in the application of the law in the period of time that elapsed between the passing of Tacitus' SC and Papinian's time of writing, if *matronae* is not used simply as an imprecise term for women of senatorial and equestrian rank : as to the women who in Papinian have recourse to the stage as a means of evasion, this too may be a development later than A.D. 19 ; and the anomalous mood of the verb justifies treating the phrase with caution.

⁵⁷ Tac., *Ann.* II, 85, 1 ff., with Furneaux and Koestermann *ad loc.* The behaviour of Julia the Elder is worth recalling : Sen., *De Ben.* VI, 32, 1.

⁵⁸ *Dig.* XLVIII, 5, 11 (10), 2 ; see G. 8, n. 6, who refers to his paper 'Papiniano : fra tradizione ed innovazione', *ANRW* II, 15 (1976), 632 ff., at 655 ff. ; for doubts on the authenticity of parts of the passage cited, see the 1980 paper (art. cit., n. 1), 33, n. 99.

⁵⁹ cf. Tac., *Ann.* XII, 60 : 'Sempronii rogationibus . . . Serviliae leges.'

⁶⁰ See G. 16, n. 30 ; he declines to take the writers' words in a technical sense ; nonetheless, he thinks that the SC may have concentrated on *lenocinium*, which did not imply adultery before the 'declaration' and committed the woman to less ; the two are equivalent juridically.

Further problems are posed by the text of Suetonius. First, when heard of in A.D. 15, equites at least were being allowed in the arena; how in Suetonius do they come to be evading a senatorial ban⁶¹ by *fraus*? The answer may be that the relaxation of the ban was precarious and *ad hoc*. Tiberius' hostile attitude to such performances may have deterred knights from seeking further exemptions: they knew that the senate would now be reluctant to grant them. Beyond this there was strong feeling against the theatre in the early years of Tiberius' principate: strikes by actors, rioting amongst the audiences, and their attempts to put pressure on the Princeps, had drawn attention to it, and senators had been forbidden to visit actors at home.⁶² Fear of unrest (one of the leaders of the mutiny in Pannonia had been a former *claque* leader)⁶³ may have been aggravated in 16 by the case of Libo Drusus and the popular agitation that attended the progress through Italy of the pretended Agrippa Postumus (the two events may have been connected).⁶⁴ The year 19 opened with an omen (ironically it was Norbanus the consul blowing his own trumpet) that came to be associated in men's minds with the death of Germanicus. But the Sibylline oracle quoted by Dio connects *stasis*, the luxury of Sybaris, and the downfall of Rome, and it was applied to 'the present situation'.⁶⁵ In the climate of A.D. 15-19 and in the absence of further exemptions, the ban of 22 B.C. could have been considered to be still in force.

More serious is the question of what penalty the young men were hoping to evade when they 'famosi iudicii notam sponte subibant'. The *atimia* specified by Dio as the penalty in A.D. 11 we have seen was for senators' expulsion from the senate, loss of the *latus clavus*, and presumably in addition the penalties to which equites were liable, expulsion from the census lists as holders of that rank and so from the fourteen rows of seats reserved for the order at the theatre and circus. Yet the young men in Suetonius appear to be escaping these penalties precisely by involving themselves in one that must be very similar, the consequences of condemnation in a *iudicium famosum*.

The fact that *infamia* resolved on scrutiny into a repertoire of disparate judicial, social, and political weapons seems at first sight to provide the solution. The young men who wished to appear on the stage might look for a form of voluntary disgrace that was temporary, like those of the *Leges Cornelia* and *Iulia de Ambitu*.⁶⁶ But those measures would not readily be available to young men who had not yet stood for office. Further, the penalty imposed must be no less grievous than that incurred through performing on stage or in the arena, or it would be hard to maintain that the man involved had not disgraced himself further by hiring himself out for those purposes. Condemnations in a *famosum iudicium*, on the other hand (and there were even private suits that involved *existimatio*⁶⁷), were both grave and intended to be permanent, and the victim might claim that his appearances on stage while they were in force, being made in good faith by one who was, as he supposed, debarred from public life in any case, should involve no further infamy and so no further penalty.⁶⁸ Macer certainly implies that one *iudicio publico damnatus* might be permitted *restitui in integrum* (by the Praetor).⁶⁹ Gaius particularly mentions the favour shown by the Praetor to minors.⁷⁰ The original prosecution would of course have been collusive.

This view is open to grave objections. Would the (as it proved) temporary penalty indeed have exempted men who were still potential equites and senators from the severe

⁶¹ Plural SCC in the Larinum text, l. 6; see pp. 106-7: the term may refer to a "politica" legislativa senatoria, manifestatasi in più di un provvedimento'.

⁶² Tac., *Ann.* 1, 54, 3 (A.D. 14); 77 (15); Dio LVII, 14, 10 (15); cf. II, 5 f.; Suet., *Tib.* 47.

⁶³ Tac., *Ann.* 1, 16, 4.

⁶⁴ Tac., *Ann.* 11, 27 ff.; 39 f.; Dio LVII, 16, 3 f.; cf. Suet., *Tib.* 25.

⁶⁵ Dio LVII, 18, 5, discussed by R. F. Newbold, 'Social Tension at Rome in the early years of Tiberius' reign', *Athenaeum* N.S. LII (1974), 110 ff., at 115 ff.

⁶⁶ Rotondi, *Leges Publicae*, 361 and 443.

⁶⁷ Cic., *Pro Roscio* 16; Macer in *Dig.* XLVIII, 1, 7 ('velut furti, vi bonorum raptorum, iniuriarum'). It is surely in such actions that the answer is to be

found: Asc., *In Corn.* 78C, says outright that 'quem populus damnasset in senatu ne esset' (lex Cassia of 104 B.C.); cf. *Lex Acilia* l. 11, *FIRA* 1², 87.

⁶⁸ The narrow and specific effect of condemnation is shown by the *ad Her.* 1, 11: 'Lex vetat eum, qui de pecuniis repetundis damnatus sit, in contione orationem habere: altera lex iubet, augurem in demortui locum qui petat, in contione nominare. Augur quidam damnatus de pecuniis repetundis in demortui locum nominavit; petitur ab eo multa.'

⁶⁹ *Dig.* XLVIII, 5, 25 (24), *pr.* (Macer). For the procedure see W. W. Buckland, *A Textbook of Roman Law* (ed. 3, by P. Stein, 1963), 719 ff.; note the possibility envisaged in the *Tabula Heracleensis*, l. 118, *FIRA* 1², 149. For the development of this restricted *infamia*, see Kaser, art. cit. (n. 38), 270 f.

⁷⁰ Gaius, *Inst.* IV, 57.

disqualifications incurred by those who took to the arena? In the Tabula Heracleensis it was the man who was 'depugnandi causa auctoratus' who was debarred from curial office for life, while undertakers and the like suffered only 'dum eorum quid faciet'.⁷¹ If this solution, which entails maintaining that the penalty imposed in a *iudicium publicum* exempted a man from the same penalty resulting from public performance, is unacceptable, two further possibilities remain. The first is to suppose that the penalty of *atimia* mentioned by Dio as the consequence of public performance by the upper classes was heavier than mere loss of senatorial and equestrian rank: that it (for example) included relegation or even *aquae et ignis interdictio*. The usage of Dio is against such a view; when he means removal from Rome he regularly adopts the verb $\phi\epsilon\upsilon\gamma\epsilon\iota\nu$, as emerges from the index of Boissevain.

The last possible way of removing the paradox is to suppose that there was an enactment between A.D. 15 when the ban was relaxed and the time of which Suetonius writes, an SC that imposed a more serious penalty than mere loss of privileges, to make it worthwhile for the youths to evade it by incurring the penalties of *infamia*: again, a term of removal from Rome would meet the case, and the theatrical disturbances mentioned by Tacitus and alluded to above would provide an occasion. The youths' evasion was met by imposing the same, or a more serious penalty (relegation to an island would make it equivalent to that imposed on women who failed to avoid the legal consequences of adultery by registering as prostitutes) in a subsequent measure. What would the place of the Larinum SC be in this sequence? The *fraus* named in l. 6 and implied in l. 12 f., *eludendae auctoritatis eius ordinis*, and the specific reference to voluntary condemnation in a *famosum iudicium* make it clear that the Larinum SC is not the measure that was being evaded but that which brought the evasion to an end. It is likely then to have embodied penalties dealing with the *fraus* that it is particularly concerned (*diligentius*, l. 11, perhaps with reference to past failures) to frustrate; but the plural SCC referred to in l. 6 do not entail any measure later than A.D. 11: it can refer only to those of 38 and 22 B.C.

Of the three possibilities canvassed (temporary *infamia*; *atimia* as a heavier penalty than *infamia*; an intervening enactment of A.D. 15), the first, that the young men incurred *infamia* that was then revoked, and claimed that their public appearances as *infames* had been made in good faith, still seems to offer the best explanation of the Suetonius passage. The Romans themselves may have been unclear as to the consequences of public performance by one who was already *infamis* and so apparently immune to the prohibitions of 38 and 22—until the trick became familiar. In any case, even if the Larinum SC was not one of a series of three concerned with public performance and all passed within the space of a few years, there was still enough concern with the subject, and enough continuity from one measure to another (cf. ll. 6, 11, and 17) to make it legitimate to doubt whether the SC of Larinum found space also to cope with the misdemeanours of well-born adulteresses. It is only the conjoining of the two offences by Suetonius, who likes to arrange his material by topic, that makes the hypothesis plausible. True, both the SC of Larinum and the *decreta* of Tacitus belong to A.D. 19, but so too may the Lex Iunia Norbana on manumitted slaves,⁷² another matter connected with *mores* but distinct from adultery as from public performance.

Unfortunately, the fact that Tacitus leaves the *decreta* until the end of his account of 19, while the SC from Larinum belongs to its first six months, is not conclusive for separating them. Tacitus places the *decreta* 'eodem anno' as the birth of twins to the wife of Drusus Caesar; that followed quickly on the arrival of the news of Germanicus' death on 9 December.⁷³ Tacitus has left the main order of events: the decrees are followed by the expulsion of the Jews, election of a Vestal (a nice counterpoint), a corn shortage and Tiberius' remedy, his refusal of the title Pater Patriae and of an offer for the murder of Arminius. The decrees should be early in the year: grain shortages might be expected during winter and spring, the first arrivals from Alexandria being in May.⁷⁴ Tacitus may of

⁷¹ 104 f., *FIRA* 1², 148.

⁷² Rotondi, *Leges Publicae*, 463.

⁷³ 'Recenti maestitia', *Ann.* II, 84, 1; *Fast. Ost.*, *Inscr. Ital.* XIII, 1, 184 f.

⁷⁴ G. Rickman, *The Corn Supply of Ancient Rome* (1980), 130, cf. 70 (the shortage in the winter of 19–20), following U. Wilcken, *Hermes* LXIII (1928),

51 and 62 f. A shortage in spring 19 would chime in well with the Egyptian shortage of January, both being due to a bad harvest in 18. There was a shortage at the death of Gaius, 24 January, A.D. 41 (*Sen., De Brev. Vit.* 18, 5), and during the reign of Otho, 15 January–16 April, 69 (*Tac., Hist.* I, 86). Tacitus reports another at the end of 32 (*Ann.* VI, 13, 1).

course have abandoned chronological order again: the shortage is sandwiched between two 'senatorial' events, and he has artistic reasons for Adgandastrius' letter at the end of the book.

If the two measures described by Suetonius did form part of one SC, the silence of Tacitus on the restraints placed on upper-class performers needs explanation. The reasons offered by Malavolta, 'forse . . . l'intenzione di non dare rilievo alla premura mostrata da Tiberio in questa occasione per il decoro della classe senatoria ed equestre', and his intention 'a presentare la classe dirigente . . . come una componente originariamente sana della società',⁷⁵ besides insisting on the unattested role of Tiberius in this legislation, lay too much stress on the historian's bias, ignoring his presentation of evidence for Tiberius' concern for the failings of the ruling classes, while his claim that the 'ben nota cura di Svetonio nella consultazione degli *acta senatus* sarebbe alla base del suo resoconto più completo' rightly meets with criticism from Giuffrè.⁷⁶ Tacitus read authors and *acta*—but used what he found significant: here the individual involved in the adultery case, daughter of a friend of Nero Drusus and Tiberius Caesar,⁷⁷ and a woman of many other high connections.⁷⁸ Equites in performance awoke less interest: only when *nobiles* are involved and Nero is personally responsible does Tacitus notice the subject.⁷⁹ Further, adultery was a charge with political uses, and Augustus' law had rebounded on himself.⁸⁰

Tacitus might then have remained silent on the young performers, even if they had been dealt with in the same SC as offenders in Vistilia's class. What may be of greater significance is the order of the material in Suetonius. If he was drawing on a single SC, it is surprising that he reverses the order of the material, putting the performers, who occupy at least the first twenty-one lines of the SC, after the women. Perhaps the order is chronological, the Vistilia affair having come to the attention of the senate first, and that form of *fraus* leading members to demand action on the *fraus* of the performers, and to ask the consuls to draw up a memorandum on it and present their recommendations in the form of a *relatio*. The measures embodied in the Larinum SC followed a little after the Vistilia affair, and Tacitus passed over them. In sum, we seem to be dealing with two related but distinct measures.

V. PRINCEPS, UPPER CLASSES, AND PRIVILEGE⁸¹

The SC of Larinum must be seen in a wider context too, a nexus of measures taken in the early Principate to serve a set of interrelated ends. First, measures designed to strengthen the existing social structure and keep its strata distinct.⁸² We should notice first of all Augustus fixing a senatorial census (18 B.C.) and then raising it from 400,000 H.S. to one million.⁸³ C. Nicolet can write that 'commence à se dessiner, à partir de 18 av. J.-C., un *ordo senatorius* qui finira par englober non seulement les sénateurs en titre, mais leurs descendants, sous une même dénomination.'⁸⁴ That beginning was shown not only by the fixing of a definitive census, but by the moral obligation put on senators' sons and descendants to stand for office, of which they were to have a quasi-monopoly symbolized by their wearing of the *latus clavus*, which in principle was reserved for them.⁸⁵

To reinforce these measures came the *Leges Iulia de maritandis ordinibus*, also of 18 B.C., and *Papia Poppaea* of A.D. 9,⁸⁶ which encouraged marriage within the upper classes, while intermarriage between persons of senatorial family, down to great-grandchildren in the male line, with freed persons, actors, and their children, was forbidden.⁸⁷ These measures at least served to demonstrate acceptable canons of behaviour and the importance

⁷⁵ Art. cit. (n. 1), 350, 382.

⁷⁶ Art. cit. (n. 1), 10, n. 7.

⁷⁷ Tac., *Ann.* vi, 9, 2.

⁷⁸ R. Syme, *JRS* xxxix (1949), 16 f.; LX (1970), 27 ff.

⁷⁹ Tac., *Ann.* xiv, 14 and 20.

⁸⁰ *ibid.* iii, 24, 2; cf. ii, 50.

⁸¹ This section owes much to Newbold, art. cit. (n. 65); I am indebted to Mr Purcell for drawing my attention to it in connexion with the SC from Larinum.

⁸² See P. A. Brunt, 'The Lex Valeria Cornelia', *JRS* LI (1961), 71 ff., especially 76, with n. 37.

⁸³ Dio LIV, 17, 3; 26, 3 ff.

⁸⁴ C. Nicolet, 'Le Cens sénatorial sous la République et sous Auguste', *JRS* LXVI (1976), 20 ff., especially 38.

⁸⁵ Suet., *Div. Aug.* 38, 2.

⁸⁶ For these enactments, see Rotondi, *Leges Publicae*, 443 ff. and 457; P. E. Corbett, *Law of Marriage*, 31 ff., 119 ff.; A. Watson, *The Law of Persons in the later Roman Republic* (1967), 32 ff.

⁸⁷ *Dig.* xxiii, 2, 44 *pr.* (Paul).

attached by the Princeps to maintaining rank and privilege. So too did those that ensured the physical separation of senators and equites from plebs on public occasions, such as Augustus' elaborate arrangements for seating in the theatre, made after a senator had failed to find a place at Puteoli,⁸⁸ and the allocation in A.D. 5 of special seats in the circus to equites,⁸⁹ such as they already had in the theatre under the Lex Roscia. The *recognitio* and annual *travectio* of the equites may be seen in the same light.⁹⁰ Even more important, because it enhanced power as well as dignity, was the Lex Valeria Cornelia of A.D. 5, creating ten centuries of Gaius and Lucius Caesar to act as *centuriae praerogativae* in the election of consuls and praetors, and consisting entirely of senators and equites of high standing.⁹¹ Tacitus says nothing of equites in his sketch of Augustus' penetration of the state. Nonetheless they demanded the more attention as the line that separated some of them from the plebs was so fragile: the possession of a mere 400,000 H.S.

But Augustus also had to allow for the upward mobility that had accelerated as a result of the Social and Civil Wars and because of the needs of the autocratic rulers of Rome.⁹² In the upper ranks of society, suffect consulships, new and revived priesthoods, a patriciate enriched with fresh blood, took care of that, all within a familiar framework. What had to be made clear to the established aristocracy and to those who were moving up into and within it was that its values were unchanged and that it was worth entering. The aristocracy must be all that it had been in status, power, and conduct. The support given to the SC of 19 by men from families relatively new to the senate, such as C. Ateius Capito, Octavius Fronto, and M. Asinius Mamilianus, may easily be understood.

Even the people received more than *annona* under the new dispensation: they saw the state working as it had before the Civil Wars, but more efficiently; religion carried on as it had been in the temples that Augustus was restoring. It was, however, carried on by the upper classes; the people eventually lost prerogatives, and R. F. Newbold is probably right to see the first ten years of Tiberius' reign as a time of particular social tension. Tiberius, who may have felt more strongly about the conduct of the upper classes than Augustus did, continued with measures that emphasized the distinctions and privileges of rank. His first action on coming to power was effectively to transfer elections from people to senate,⁹³ an action which he found compatible with that of creating ten more centuries of senators and equites under the provisions of the Tabula Hebana and Tabula Ilicitana.⁹⁴ If the Lex Iunia Norbana on the rights of *liberti*⁹⁵ belongs to 19, there is a cluster of measures with mutually consistent aims that belong within a few months of each other. Only four years later came another, the Lex Visellia, regulating admission to the *equester ordo* and restricting membership and the gold ring to those who possessed the census and could prove the free birth of their grandfather.⁹⁶

The prohibition reinforced by the SC of 19, for all the penalties it invoked, proved as vulnerable as its predecessors. True, it apparently ended public performances by members of the senatorial and equestrian orders for the reign of Tiberius. But in Gaius Caligula a young man came to power who felt differently from Tiberius about the matter, and who knew nothing of the need to maintain the established values of the aristocracy for its existing members and those who were making their way up into it. Gaius asked for an exemption from the ban so that he might exhibit men and women of quality in public.⁹⁷ His performers were made an example of by Claudius,⁹⁸ but Nero was as keen on the stage as Gaius had been on gladiatorial shows, the more so as he wanted to take part himself.⁹⁹

St. Hilda's College, Oxford

⁸⁸ Suet., *Div. Aug.* 44, 1; cf. Lex Ursonensis, *ILS* 6087 (= *FIRA* 1², 177 no. 21), ch. 127.

⁸⁹ Dio LV, 22, 4.

⁹⁰ Suet., *Div. Aug.* 37, 1; 38, 3, with T. P. Wiseman, *Historia* XIX (1970), 70.

⁹¹ Above, nn. 3 and 82.

⁹² See Newbold, art. cit. (n. 65), 130 ff., overstressing repression and tension; M. K. Hopkins, 'Elite Mobility in the Roman Empire', *Past and Present* xxxii (1965), 12 ff. = *Studies in Ancient Society* (ed. M. I. Finley, 1974), 103 ff.

⁹³ Tac., *Ann.* I, 15, 1; Vell. Pat. II, 124.

⁹⁴ See above, n. 3.

⁹⁵ See Rotondi, *Leges Publicae*, 463.

⁹⁶ *ibid.* 464 f., with Wiseman, art. cit. (n. 32), 76.

⁹⁷ Dio LIX, 10, 1 f., with M. 362.

⁹⁸ Dio LX, 7, 1.

⁹⁹ Tac., *Hist.* II, 62: 'Cautum severe ne equites Romani ludo et harena polluerentur. Priores id principes pecunia et saepius vi perpulerant, ac pleraque municipia et coloniae aemulabantur corruptissimum quemque adulescentium pretio indicere' (which may help to explain the setting up of the bronze at Larinum).