

FORBIDDEN PLEASURES: SUMPTUARY LAWS AND THE IDEOLOGY
OF MORAL DECLINE IN ANCIENT ROME

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ABSTRACT

This thesis investigates two important and related aspects of Roman history during the period 217 B.C. - A.D. 70. Salient types of social legislation, in particular the *leges sumptuariae*, *funerariae*, *alvariae*, marital and sexual laws and magisterial edicts, form one element of the inquiry. The reasons for, and the extent of, the public regulation of the personal expenditure and private behaviour of citizens are explored under the changing political circumstances of the period. Another concern is to analyse the development of a prominent theme in the classical writers and historians, namely, the perspective of moral decline. The deep-rooted and pervasive pessimism evident in the historiographical tradition during a period of exceptional prosperity and imperial expansion is critically examined. The interaction between law and morality is a principal focus of this thesis.

In chapter 1 (10-30), the general themes of the work are introduced. A review of the relevant scholarly literature is followed by a brief exposition of my methodology and objectives (11-13). Then a chronological survey of the important social regulations passed during the Republic and early Principate is provided (13-17).

Chapter 2 (31-72) probes the ways in which legal enactments were presented both within governing circles and to the populace at large. The public interest was frequently invoked. Paternalistic concern, it is argued, was often advanced for that which was essentially self-regarding (31-36). A succinct account of the debate on decline in classical authors leads to a consideration of the *mos maiorum* (ancestral custom) and the role of myth in Roman historiography (36-46). The contemporary dispute between liberal and radical scholarship on the nature and function of law in society is summarized (46-50). In Ancient Rome, it is contended, the governing order's preferential access to the channels of public discussion was of decisive importance. It facilitated the expression of an ideological perspective which served to promote widespread acceptance of its legislative needs, as is exemplified by the passage of sumptuary controls so necessary for the well-being of the senatorial aristocracy in the second century B.C. (50-52).

The socio-economic significance of Roman sumptuary laws is examined in chapter 3 (73-163). The main discussion is prefaced by a typology of sumptuary laws, designed to account for the existence of expenditure restraint in widely differing political systems (73-75). The inquiry proceeds, firstly, to investigate those regulations (esp. the *iura* and *leges teatrales*) which had a direct bearing on the structure of Roman society and, then, to explore the complexity of problems that the maintenance of this formal framework entailed for the authorities in periods of rapid social and economic change. A consideration of powerful social pressures and forces such as envy, emulative consumption and mobility, is complemented by a discussion of the diverse strategies employed by the Roman authorities to uphold hierarchical distinctions (75-107). Profit-capping, price-fixing, monopolies and rationing form diverse topics of an inquiry into the economic objectives of sumptuary restraint (108-119). Status requirements and the spiralling cost of political competition are

held to account for the divorce between the attitudes and practice of the members of the governing order with regard to *luxus* and Hellenistic practices (119-128).

A detailed inspection of the sumptuary legislation passed during the Republic provides the core of chapter 4 (164-210). The laws are assessed under separate categories, e.g., *leges de sumptibus et de luxu mensae, funerariae, de habitu et cultu, viariae* (164-182). The techniques by which the aristocracy endeavoured to preserve cohesion amongst its ranks and thus to uphold its collective rule are scrutinized (182-192).

In chapter 5 (211-259), attention is focused on how the Roman authorities attempted to compel obedience to these measures. The operation of extra-legal constraints is discussed (211-214). A hypothesis of the development of Roman criminal law from its origins through to the early Principate is advanced with particular emphasis on the significance of senatorial participation in the juridical process and on the need to define accurately the competency of individual magistracies (214-239). The use of private informers (*quadruplicatores* in the Republic, *delatores* in the Empire) is critically assessed (239-243).

In chapter 6 (260-288), opinions and actions at variance with the conservative orthodoxy on historical development are evaluated. Resistance to sumptuary restraint surfaced in a variety of ways: in the formal abrogation of a measure; in technical dodges; in outright defiance (260-268). The ambivalences between publicly expressed ideals of conduct and actual practice came to a head in the adjudicative processes of the court. The mechanisms of forensic practice served to provoke maturer reflections on social change (269-273). Roman attitudes towards change are surveyed. It is argued that divergent opinions on ancestral tradition and on the propriety of innovation were often advanced in opposition to overzealous attempts at sumptuary restraint or in pursuit of specific political goals (269-279).

Chapter 7 (289-329) concludes the work with a historical appraisal of the coincidence between the passage of sumptuary legislation and the debate on moral decline. Three major developments in the functioning of this coincidence are outlined: (1), its use as a regulatory device by the senatorial aristocracy from the early 2nd century B.C. onwards; (2), its use as a crucial source of legitimation by the aspiring politician-generals of the 1st century B.C.; (3), its use as a key disciplinary tactic by the imperial regimes from Augustus onwards (289-307). Finally, serious governmental incursions into central areas of social life during the early Principate - the suppression of criticism, legal scrutiny of knowledge and belief, restrictions on assemblage - are examined, and interpreted as evidencing the autocratic tendencies of the period (308-315).

Four short appendices follow (330-361): the first outlines the major theories of decline (330-333); the second explores the terminology of inequality (334-339); the third surveys the major perspectives on social change (340-342); the fourth documents the manifestations of luxury in Roman society (343-361).

CONTENTS

Preface	6
Abbreviations	8
I INTRODUCTION: FORBIDDEN PLEASURES	10
Polyarchus - law and morality - objectives of thesis - review of scholarly literature - survey of relevant social legislation in the Republic & early Principate - governmental intervention - notes	
II 'FOR YOUR OWN GOOD': THE VOCABULARY OF PATERNALISM ..	31
Moral presentation of legal enactment - in the public interest - <i>a rectis in prava</i> : the debate on decline - <i>luxus</i> : foreign pleasures - anti-Hellenism - <i>mores</i> <i>maiorum</i> - myth in Roman historiography - the role of law - legal discourse - notes	
III THE SOCIO-ECONOMIC SIGNIFICANCE OF ROMAN SUMPTUARY LAWS	73
Introduction - brief typology of sumptuary laws - Social Considerations; Inequality - sumptuary laws and social structure; <i>iura</i> , <i>leges teatrales</i> - implications of hierarchy: mobility, social imitation, limited mobility, status - 'the protection of the non-tipper' - social tensions - envy - the moral hierarchy - wealth accumulation - law and social practice - aspects of consumer behaviour - the stability of the family - testamentary disposition - regulation of marital and sexual behaviour - personnel Economic Considerations; Profit-capping - price-fixing - monopolies - <i>praemercatores</i> - rationing - bullionism - protectionism - allocation of resources - inflation - the meaning of luxury - theories of consumer behaviour - the provision of luxury goods and the Roman economy - the creation of demand - growing dependency and the concentration of wealth - notes	

IV	ARISTOCRATIC POWER-SHARING	164
	Introduction - <i>leges de sumptibus et de luxu mensae</i> - <i>leges funerariae</i> - <i>leges aleariae</i> - <i>leges de habitu et cultu</i> - <i>leges viariae</i> - <i>aedificatio</i> - forbidden pleasures - aristocratic enrichment - <i>leges de donis</i> - the maintenance of standards - notes	
V	THE MECHANISMS OF ENFORCEMENT	211
	Extra-legal restraints - aspects of the development of Roman criminal law - Republican and Imperial jurisdiction - <i>censores</i> - <i>aediles</i> - <i>senatus consulta</i> - <i>tresviri capitales</i> - power of envy - notes	
VI	OPPOSITION AND REPEAL: ALTERNATIVE VIEWS ON SOCIAL CHANGE	260
	Resistance to sumptuary restraint - humbug - dissent - evasion - symbolic usurpation - morals and forensic practice - Roman attitudes towards change - notes	
VII	CUI BONO? THE POLITICS OF MORALITY	289
	The maintenance of privilege - the problem of legitimation - artistic patronage - tradition and innovation - political discipline in the early Principate - <i>correctio morum</i> - the suppression of criticism - legal scrutiny of knowledge and belief - restrictions on assemblage - <i>luxus mensae</i> - notes	
	Appendix 1 Theories of Decline	330
	Appendix 2 Inequality and Terminology	334
	Appendix 3 Social Change	340
	Appendix 4 Manifestations of Luxury	343
	Veblen's thesis - status - <i>luxus mensae</i> - domestic service - <i>habitus et cultus</i> - <i>aedificatio</i> - public festivals - notes	
	Table 1 Sumptuary Laws	362
	Table 2 Banishments during the Republic and early Principate	364
	Bibliography	366

PREFACE

Classical historians, no less than their modern counterparts, were preoccupied with the task of formulating the underlying principles of historical development. A compelling and enduring perspective was fashioned during the tumultuous instabilities of the late Roman Republic. That moral atrophy had affected the conduct of leaders and populace alike became axiomatic and provided the basis for explaining significant types of social and political change. Corroboration was offered in the actualities of political statecraft - the promulgation of sumptuary and related social legislation. In contrast to the studied optimism of post nineteenth century evolutionary theorists, with their accent on progress in human affairs, these ancient observers discerned a unilinear movement in a very different direction.

This thesis seeks to explicate the legislative actions of Roman authorities and the commentary they provoked. By necessity it is a wide-ranging inquiry. Modern analyses of political discourse are brought to bear on questions of long-standing importance.

A brief introduction reviews the scholarly literature and surveys the relevant legal enactments. In chapter two the basic components of this legal discourse have been deconstructed in order to examine severally their implications. The central socio-economic concerns of Roman sumptuary and related social legislation form the core of chapter three. Then the available evidence for those sumptuary measures which were passed during the late Republic is assessed under different legal categories and discussed with particular reference to the powerful political imperatives of this period. In chapter five the focus of interest centres on enforcement procedure and is concerned to explain how, in the absence of complex executive agencies, the Roman authorities sought to ensure compliance with their designs. Subsequently, the ramifications of the imposition of legal

norms seriously at variance with established social practice are explored. Resistance, whether technical in the shape of legal dodges or flagrant as revealed in outright contraventions such as symbolic usurpation, forms one topic of inquiry. Another is the fascinating interplay between publicly acceptable canons of behaviour and current practice, between statutory and actual morality which surfaces in the adjudicative processes of the courts. Ciceronian evidence is drawn upon to demonstrate how the mechanisms of forensic practice provoked maturer reflections on social change. In the final chapter salient types of early imperial intervention are investigated and the diverse functioning of the legal discourse on moral decline is analysed in its changing historical context.

Many debts have been incurred in the course of this investigation. I should especially like to thank Dr. Tim Cornell, who kindly undertook to supervise my thesis at a formative stage, for his patient and thought-provoking support of my endeavours. Without his encouragement and practical help my task would have been infinitely heavier. The commencement of my research owed a great deal to the assistance and inspiration of Professor Frank Goodyear. For his valuable guidance during the initial period I am deeply grateful. The advice and suggestions, especially on Greek history, of Dr. Susan Sherwin-White were much appreciated. Finally, I should like to express my gratitude to the organisers and participants of the Ancient History seminars at the Institute of Classical Studies and at University College London for providing stimulating discussion on a whole range of matters. I have particularly benefited from the comments and criticisms of Professor Michael Crawford.

Needless to say, sole responsibility for the premises, methodology and conclusions contained in this thesis lies with myself.

ABBREVIATIONS

<i>AHR</i>	<i>American Historical Review.</i>
<i>AJPh</i>	<i>American Journal of Philology.</i>
<i>Annales</i>	<i>Annales: Economies, Sociétés, Civilisations.</i>
<i>Ath</i>	<i>Athenaeum.</i>
<i>BICS</i>	<i>Bulletin of the Institute of Classical Studies.</i>
<i>BPP</i>	<i>British Parliamentary Publications.</i>
<i>Bruns</i>	<i>Fontes Iuris Romani Antiqui</i> ⁷ ed. C.G. Bruns 1909.
<i>CIL</i>	<i>Corpus Inscriptionum Latinarum</i> 1863-.
<i>CJ</i>	<i>The Classical Journal.</i>
<i>Cl Ant</i>	<i>Classical Antiquity.</i>
<i>CPh</i>	<i>Classical Philology.</i>
<i>CQ</i>	<i>Classical Quarterly.</i>
<i>CR</i>	<i>Classical Review.</i>
<i>CWeek</i>	<i>Classical Weekly.</i>
<i>DHI</i>	<i>Dictionary of the History of Ideas</i> ed. P.P. Wiener 1968.
<i>ECHR</i>	<i>Economic History Review.</i>
<i>EHR</i>	<i>English Historical Review.</i>
<i>EJ</i>	<i>Documents illustrating the Reigns of Augustus and Tiberius</i> collected by V. Ehrenberg & A.H.M. Jones ² Oxford, 1976
<i>Enc.Br.</i>	<i>Encyclopaedia Britannica.</i>
<i>ERE</i>	<i>Encyclopaedia of Religion and Ethics</i> ed. J. Hastings et alii 1908-28.
<i>ESS</i>	<i>Encyclopaedia of the Social Sciences</i> ed. E.R.A. Seligman 1930.
<i>FIRA</i>	<i>Fontes Iuris Romani AnteIustiniani</i> vol.1 ed. S. Riccobono 1941.
<i>GIF</i>	<i>Giornale Italiano di Filologia.</i>
<i>G&R</i>	<i>Greece and Rome.</i>
<i>Hist.</i>	<i>Historia.</i>
<i>HJAS</i>	<i>Harvard Journal of Asiatic Studies.</i>
<i>HSCP</i>	<i>Harvard Studies in Classical Philology.</i>
<i>IESS</i>	<i>International Encyclopedia of the Social Sciences</i>

- ed. D.L. Sills 1968.
- IJ* *Irish Jurist.*
- ILS* *Inscriptiones Latinae Selectae* 3 vols.
ed. H. Dessau 1892-1916.
- ISSB* *International Social Science Bulletin.*
- JHS* *Journal of Hellenic Studies.*
- JLE* *Journal of Law and Economics.*
- JRS* *Journal of Roman Studies.*
- Malc.* *Oratorum Romanorum Fragmenta* 3 vols
ed. H. Malcovati 1930.
- Mommsen:* Th. Mommsen
Staats. *Römisches Staatsrecht* 1887; 1888.
Strafr. *Römisches Strafrecht* 1899.
- MSES* *MacMillan Student Encyclopedia of Sociology*
ed. M. Mann 1983.
- OCD* *Oxford Classical Dictionary.*
- OLD* *Oxford Latin Dictionary.*
- P&P* *Past and Present.*
- PBA* *Proceedings of the British Academy.*
- PBSR* *Papers of the British School at Rome.*
- PCPS* *Proceedings of the Cambridge Philological Society.*
- Peter* *Historicorum Romanorum Reliquiae* 2 vols.
ed. H. Peter 1914, 1906.
- PW* *Real Encyclopädie der klassischen Altertums-
wissenschaft* ed. A. Pauly, G. Wissowa & W. Kroll
1893-.
- RHR* *Radical History Review.*
- Rad. Phil.* *Radical Philosophy.*
- Rotondi* *Leges Publicae Populi Romani* ed. G. Rotondi
1912.
- SIFC* *Studi Italiani di Filologia Classica.*
- Smallwood* *Documents Illustrating the Principates of Gaius,
Claudius and Nero* E.M. Smallwood 1967.
- Smith* *Dictionary of Greek and Roman Antiquities*
ed. W. Smith et alii 1890.
- TAPA* *Transactions and Proceedings of the American
Philological Association.*
- ZSS* *Zeitschrift der Savigny-Stiftung für
Rechtsgeschichte.*

INTRODUCTION: FORBIDDEN PLEASURES

For legislators, wishing to reduce to a uniform level the race of man and to stamp out the luxury of citizens, have caused a class of virtues to emerge. Accordingly, they promulgated laws concerning contractual obligations and all other matters which were considered necessary for social association, but especially concerning clothing and other aspects of daily life so that it should be made the same for everyone.... Beside Deified Justice, they brought in Temperance and Self-Control and termed 'greed' pre-eminence in the enjoyment of pleasures;

Polyarchus in Aristoxenus' *Life of Archytas*.'

The interaction between law and morality, which Polyarchus' enigmatic denunciation of the sumptuary legislator was designed to expose, is nowhere more clearly evidenced than in the celebrated city-states of antiquity, especially in Rome of the Republic and the early Empire.

Their organic relationship stands revealed in the coincidence between two striking features in the political life of this period: firstly, in the remarkable degree of public regulation of a citizen's expenditure and behaviour; secondly, in the articulation and imposition of an orthodox interpretation of historical development.

In the case of the former, apparel, eating habits, mode of transport, gift-exchange, funeral arrangements and many other *minutiae* of personal life were subjected to legal scrutiny.² This intervention represents the fullest expression of the paternalistic prerogative assumed by governmental authority.

With respect to the latter, a deeply foreboding, unilinear perspective on social change contained both a judgement on the ruinous departure from conventional practice and a dire prediction about the later course of

events.³ Explanations for what had gone wrong - political instabilities, violence, military defeats, economic reverses such as famines - were located in the altered behavioural traits of human actors.⁴ Contrast rather than comparison was sought with the past. Novelty was substituted for recurrent practice. In proportion to the exaggeration of ancestral achievement, so contemporary failures were magnified against a hazy aura of virtuous perfection. On the surface this gloomy perception and the accompanying legal activity were complementary. Law was consciously used as an instrument to check nefarious social customs or even to restore venerable traditional values. Closer inspection reveals powerful tensions and contradictions within this dialogue.

This thesis sets out to investigate a series of problems and paradoxes which lie at the heart of the historiographical tradition. Why, during a period of sustained imperial expansion and national prosperity, was social development so persistently conceived in such pessimistic terms? How does one explain the glaring gulf between the attitudes and conduct of the ruling order with regard to *luxus* and Hellenistic practices? What do the forms of statutory response to social and economic changes at Rome reveal about the salient anxieties and objectives of their promulgators?

The hallowed *mores maiorum*, the deleterious effects of luxury on the morality of individuals and of the community, and the recourse to startling types of legal interference to stem the flow of a perceived decline have provided a focus of interest for scholarly investigation and political debate.⁵

In addition to the general surveys of Roman moral and social tradition,⁶ several in-depth studies have been made into separate aspects. The Roman censorship has received the attention of J. Suolahti and E. Schmäling.⁷ H. Rech has investigated the *mos maiorum*,⁸ while U. Knoche *et alii* have discussed the subject of decline in Ancient Rome.⁹ A series of monographs, of which the most interesting is by J.F. Houwing, have striven to pinpoint the correct dating and content of the *leges sumptuariae*.¹⁰

But questions of central importance have remained unanswered and the merit of many of these studies is diminished by three basic characteristics.

The first is methodological: the age-old predilection for studying historical phenomena in straightforward chronological succession - in annalistic fashion. In contrast to the commendable erudition and attention to detail, incisive analysis on topics of crucial significance has been either lacking or sadly truncated. The second is interpretative: the propensity to accept uncritically statements or judgements preserved in the ancient sources as reflecting actual feelings and intentions.¹¹ This premise, as will be shown, is unsound. The third is their restricted fields of enquiry: forms of expression and legal enactment have been largely isolated from economic and social practice, important inter-relationships overlooked. Exceptional degrees of autonomy have been bestowed on ideas.¹² Where societal forces have been admitted, developmental aspects have been ignored.¹³

A different methodology has been adopted here. A strictly chronological approach has been eschewed apart from a brief outline of legislative measures relevant to this thesis (pp. 13-16 below) and of the debate on decline (pp. 34-36 below). Instead, an examination of certain laws which show similarities in respect of particular traits, e.g., content, scope, motivation, etc, will be pursued in order to elucidate themes of crucial historical significance. The fact is that a multiplicity of objectives may have prompted the passage of any law while the loss of historical context in many cases makes it problematic to determine the intention of its promulgator. Further, some statutes were rushed through to combat immediate exigencies. Others were the result of a growing realisation that a particular practice was posing a threat to the long-term stability of the government. Legal restraint itself may have had unforeseen consequences which required further action. Where pertinent, ideas and comment contained in the ancient authors will be discussed and related to the legal activity. But frequently perceptions were clouded by ideological fiats. Further, the divorce between stated word and real

intention is as old as political dialogue itself.¹⁴ Finally, forms of expression and legal activity will be examined against a whole range of economic, social and political imperatives. No simple determinism is assumed between economic base and political/ideological superstructure. The relationship between socio-economic facts on the one hand, and ideological and political forces on the other is conceived of as a complex interaction but one where legal discourse fulfils a vital role.

For law stands, as it were, at a junction, an interstice where the ideas, fears and wishes of governing bodies are translated into concrete action, where policy is put into effect. Expressed figuratively the operation of law might be likened to the synchronising efficacy of a vast, complex gear-mechanism through which the ruling authority attempts to uphold its political supremacy in the face of the constant disjunctures caused by developments in economic and social practice. But legal rules, both in respect of their content and their efficacy, bear witness as much to the limitations as to the capacities of power.

Brief survey of sumptuary and related social laws in the
Roman Republic and early Principate.

The remarkable dearth of funerary *corredi* in cremation and inhumation tombs from the beginning of the sixth to that of the fourth century B.C. attests to the existence of sumptuary restraint in Archaic Rome and foreshadows a series of *leges funerariae*.¹⁵ However, the numerous social regulatory measures attributed to the mythical or semi-historical figures of Regal Rome are interesting more as indicators of the preoccupations of their later sources than for their dubious historical value. In fact, the legendary characters of the early kings of Rome provided a most fertile ground for the brazen invention of tradition.¹⁶ The fabled austerity of Romulus, who provided for the summary punishment of women guilty of adultery or of wine-bibbing, is resonant both of the sharpened aristocratic anxieties of the second century B.C. and of the moral pretensions of the

politician-generals of the first.¹⁷ Numa Pompilius was credited with the restraint of funerary expense and mourning. The provisions on sacrificial meals attributed to him by Cassius Hemina may well reflect senatorial concern to monitor the cost and supply of some foodstuffs in the mid-second century B.C.¹⁸

While other *leges regiae* may testify to an ancient interest in social reform,¹⁹ the Decemviral code - the Twelve Tables - inaugurated a considerable programme of legislative restrictions: legal control of their patrimony was wrested from spendthrifts,²⁰ the practice of usury was checked²¹ and unauthorised nocturnal gatherings forbidden.²² The origin of the stringent curbs that were applied to funerary display and extravagance was traced by ancient authors to the Greek city-states, in particular Athens where similar measures were adopted, sometimes as part of a definite policy of *ἰσονομία*.²³ An equally fruitful source for precedents can be found amongst the Laconian and Cretan law-codes of the Dorian races,²⁴ whose severe temperament was both receptive to such rules and frequently contrasted with the luxurious tastes of the Ionian peoples.²⁵ The flourishing sea-board towns of Sicily and Magna Graecia, e.g., Locri,²⁶ Thurii²⁷ and Syracuse,²⁸ where Pythagorean thought was particularly marked, are another likely source of influence.²⁹

The poverty of evidence for the late fourth and early third centuries B.C. precludes any firm conclusion on the existence of financial restraints although two notable *leges de ambitu* were carried,³⁰ while the expulsion of P. Cornelius Rufinus from the senate as a result of a celebrated censorial action by C. Fabricius Luscinus argues, in my opinion, for the presence of a formal sumptuary measure.³¹

The onset of the Hannibalic War saw a spate of intense legal activity as the authorities grappled to make the most of all available material wealth and to repress the divisive effects of social envy. The *lex Claudia de navibus senatoribus* (218? B.C.) and the *lex Metilia de fullonibus* (217 B.C.) were closely followed by the *lex Oppia* which introduced sweeping restrictions on female apparel, ornamentation and transport.³² The victorious conclusion to the war

and the continuing success of operations in the eastern Mediterranean provoked a further flood of statutes. The singularly moral quality of *fides* between patron and client was underwritten by the Publician (209 B.C.) and Cincian laws (204 B.C.) which were concerned to constrain the best-owal and acceptance of gifts, the former during the festival of the *Saturnalia*, the latter for professional services such as advocacy. A *lex alearia* was passed.³³ Sexual activity too came under legal scrutiny although our knowledge of the measures is sadly deficient. A *lex Titia*? hampered procuring, while minors received the protection of the Scantinian (226? B.C.) law and the *lex Plaetoria de circumscriptione adolescentium* (193/2 B.C.). The passage of the *lex Furia testamentaria* (209-169 B.C.) and the *lex Voconia de mulierum hereditatibus* together with several canvassing and balloting laws bear witness to the senate's grave concern for the economic and political stability of its order.³⁴

Luxus mensae, a topic which engrossed generations of Roman politicians and writers, was bridled by the rogation of C. Orchius (trib. pleb. 181 B.C.) who limited the number of guests.³⁵ The *lex Fannia* (161 B.C.) elaborated restraints on both public and private table expenditure while its penalties were extended to guests and its validity throughout Italy by the Didian law of 143 B.C. More detailed provisions specifying forbidden delicacies were added by the *lex Aemilia* in 115 B.C., a year when the *ars ludicra* came under attack. It was followed by the *lex Licinia* (c.107 B.C.) which excited sharp comment from satirists and popular opposition.³⁶

In the sweeping programmes of moral and social reform in the first century B.C., sumptuary restraint played a major role. With the exception of the Antian law (71 B.C.) and the *rogatio* on luxury travel of the tribune Curio (50 B.C.), all known legislation was proposed by the mighty politician-generals of the period, Sulla, Pompey, Julius Caesar and Augustus.

Dicing, adultery, funerary extravagance and *luxus mensae* were the subject of a battery of statutes instituted by Lucius Cornelius Sulla (c. 81 B.C.), who yet drew fire from

moralists for setting a maximum price on a whole range of dainties³⁷ and for transgressing, in typically Sullan fashion, his own measures. Although Pompey and Crassus were dissuaded from imposing their own restrictions in 55 B.C., no inhibitions hindered C. Iulius Caesar who was elected to the startling new post of *praefectus moribus*. His *leges Iuliae*, which both revived earlier sumptuary laws and put new limits on personal travel, jewellery and, perhaps, funerary monuments, were aggressively enforced. Overzealous imitation of his predecessors led to an early setback for Augustus. His perseverance resulted in what can only be described as a major piece of social engineering. Banquets and weddings received the attention of his *lex sumptuaria*. Marital relationships and illicit forms of sexual activity were comprehensively redefined by his *leges Iuliae de maritandis ordinibus & de adulteriis coercendis* (18 B.C.), but required the modification of the *lex Papia Poppaea* (A.D. 9). The boundaries between the social orders were further guarded by the *lex Fufia Caninia* (2 B.C.) and the *lex Aelia Sentia* (A.D. 4) on testamentary manumission and by adjustments to, and implementation of, the *leges teatrales*.³⁸

An added urgency was injected into the passage of sumptuary law during the early Principate when aristocratic solicitude was matched by imperial concern. The senatorial order, conscious of its diminished political importance, clamoured for the regulation of dress, articles of conspicuous consumption and participation in public exhibitions and games - the most tangible, outward signs of a status that was in such danger of erosion. Tiberius issued a series of edicts on all the afore-mentioned categories and made several contributions of his own to the diverse list of social legislation. Silk was ruled out for men. His restrictions on the sale of all but the most common victuals in *ganae* and *popinae* were repeated by several emperors though they may well evince a desire to check incidental activities rather than the practice *per se*.

During the Republic, the conduct of philosophers, rhetors, astrologers and religious sects had passed under the intermittent review of the authorities⁴⁰ but the intensity and ferocity of imperial ordinances on these

subjects betrayed a growing and ominous intolerance of divergent beliefs and opinions. Criticism was stifled. Books were burnt and their authors penalised. Apologists and flatterers flourished.

Caligula adopted a more relaxed attitude to sumptuary restraint, waiving restrictions on the number of gladiators at public shows.⁴¹ By contrast, Claudius made great play of his censorial duties, and he took steps to bridle luxury travel, to abolish taverns, to check cults and to bar the sale of hot water and boiled meats in cookshops. Nero's personal extravagance led to no abatement in the flow of laws. His celebrated act, from motives of self-display, was to ban the general use of amethystine or Tyrian purple dyes. Vespasian's severe measures heralded yet another attempt at moral rejuvenation.

This review is by no means exhaustive since formal statutes were frequently prefaced by detailed senatorial decree or amplified in magisterial, especially censorial and aedilician, *edicta*. Besides, the historical record of these enactments is woefully incomplete.⁴²

Governmental Intervention.

The scale and number of these measures belie the conviction of many scholars who maintain that the Roman authorities were reluctant to encroach upon the sphere of private morality.⁴³ For, as M. I. Finley has observed, there was no theoretical limit to the intrusion of the state in ancient cities where it was generally accepted that members of the ruling council might adopt any measures conducive to the common weal.⁴⁴ Indeed both governments and political commentators in antiquity were not reticent in their proposals for far-reaching reform of social habits. The emperor Claudius, for instance, sought to alter the daily life of citizens in the pursuit of his policy goals and to this end he deprived many of the simple pleasures of drinking together at *popinae*.⁴⁵ The strict supervision of an individual's behaviour was a tenet not only of ancient philosophers such as Plato, Aristotle and Cicero, who were

advocates of sumptuary restraint,⁴⁶ but of classical historians and politicians. Dionysius of Halicarnassus is just one example of many who extolled the use of legislation to promote justice and temperance amongst citizens.⁴⁷ Nor were such sumptuary and social laws exclusive to the Greco-Roman world. Similar prescripts are attested in numerous nations and municipalities of Mediaeval and Renaissance Europe, and developed Asiatic communities.⁴⁸

Their prominence in these societies provokes contrast with the current practices in West-European countries.

On the question of general morality, developments in political thought have affected the propensity of modern governments to intrude in private affairs. What contemporary societies possess and ancient cities lacked was a positive formulation of personal rights - freedom of expression, freedom of worship, freedom of assemblage and so forth - upon which the state apparatus should not encroach.⁴⁹ The central dilemma of some modern political philosophers - the incompatibility of the coercive powers of the state with individual freedom - was not at issue in antiquity where communal interests took precedence over private concerns. Indeed, in Roman society, a sense of belonging to a unit - be it the family, tribal grouping, order and so forth - was deeply instilled. Individual rights were subordinated to corporate obligations, duties and protection.⁵⁰

On the specific matter of sumptuary measures, three considerations require comment. Firstly, financial constraints are inimical to the prevailing capitalist ideology which eschews formal economic planning in its zeal for unfettered private enterprise. Ostensibly, at least, a voluntarist position is adopted which equates unimpeded consumer spending with personal liberty.⁵¹ Similarly, with the onset of the industrial revolution, formal barriers within the social structure were dismantled as personal wealth emerged as the primary determinant of expenditure patterns.⁵² Thirdly, the lack of co-ordinated redistributive mechanisms in the ancient world by which the glaring imbalances in the possession of goods and services might be mitigated made the exercise of moderation an imperative amongst the privileged both in their display of wealth and

in their exercise of power.⁵³ Indeed restraint was a keynote which pervaded classical thought and practice.⁵⁴ While moralists declaimed on the perennial topics of avarice and ambition, lawgivers laid down practical guidelines for the influential and well-to-do.

So the arbitrary nature of governmental intervention, which was immediately apparent to Polyarchus, was founded on a presupposition on the part of the Roman authorities that they possessed a right, indeed a duty, to restrain individuals from disposing of their material wealth or from forming personal relationships *ad libitum*; in short, people were expected to conduct their private lives in the interests of the community as a whole. The gratification of desire could not automatically be assured. Indeed many pleasures were denied. Of course sound reasons may be adduced to support a supervisory policy. It is reasonable to maintain that, in any populous group, a person's freedom to do as he likes be limited by due respect for the rights of his neighbour.⁵⁵ Today, legal restrictions are justified in terms of the maximisation of happiness in society. But legal intervention in Ancient Rome was not founded upon an enabling philosophy. Its preoccupation was with the preservation of a social and economic structure which conferred signal privileges on members of its own order.

The fact is that sumptuary rogations brim with interest for the historian of ancient society. They serve to reveal the fundamental principles and premises on which political authority is based. They preserve intimate details of everyday practice, fashion, cross-cultural contact and so forth which otherwise may have vanished from the historical narrative.⁵⁶

Moreover, since public law forms an integral part of the political process, changes to its scope or mode of operation will supply important insights into what is happening in society at large. The criminalizing of particular types of behaviour by the introduction of new legislation, the neglect of old statutes with the consequent need for repetition or updating can serve not only to indicate the

pace and direction of economic and social change but also to highlight the existence of wider social tensions.

NOTES

I

1

οἱ δὲ νομοθέται ὁμαλίζουσιν βουλευθέντες τὸ τῶν ἀνθρώπων γένος καὶ μηδένα τῶν πολιτῶν τρυφᾶν, ἀνακῦσαι πεποιθήκασιν τὸ τῶν ἀρετῶν εἶδος· καὶ ἔγραψαν νόμους περὶ συναλλαγμάτων καὶ τῶν ἄλλων ὅσα ἐδόκει πρὸς τὴν πολιτικὴν κοινωσίαν ἀναγκαῖα εἶναι καὶ δὴ καὶ περὶ ἐσθῆτος καὶ τῆς λοιπῆς διαίτης, ὅπως ἦ ὁμαλῆς.... μετὰ ταύτην [Δίκη] δὲ καὶ Σωφροσύνην καὶ Ἐγκράτειαν ἐπεισεκόμισαν καὶ πλεονεξίαν ἐκάλεσαν τὴν ἐν ἀπολαύσειν ὑπεροχὴν·

Polyarchus apud Athenaeus Deipn. 546b

Aristoxenus records that Polyarchus was one of the envoys sent by Dionysius the Younger to Tarentum. An uncompromising adherent of hedonism - corporeal pleasure, in particular - Polyarchus questioned the whole fabrication of moral codes as being at variance with the course of nature, citing the unretained sensual indulgence of potentates in support of his theory; see id. 545b-f. This is the only extant reference to Polyarchus in classical literature. His impatience or restraint belies Fabricius' identification of him with Polemarchus, a confirmed Pythagorean.

- 2 The scope of the term 'social legislation' is potentially vast and this thesis does not attempt to be exhaustive. It will concentrate principally on financial constraints, e.g., *leges sumptuariae*, *leges aleariae*, *leges funerariae*, *leges de sumptu ludorum*. But it will also include *leges theatrales* and those formal measures regulating marital and sexual relationships, testamentary disposition and so forth.
- 3 Although a decline in morality forms the focus for this discussion, degeneration was perceived on a series

of dimensions: in physical stature (Pliny *N.H.* 7.73); in religious observance (Cic. *Div.* 28; Hor. *C.* 3.6.1); in artistic and rhetorical standards (Pliny *N.H.* 35.5-6; 14.3; Petron. *Sat.* 88); in the fortunes of specific political groupings (Pliny, *N.H.* 16.8; 15.119); in military discipline, standards of warfare (Polyb. 13.3.2); in racial composition (Dion.Hal. 4.24.6); in law and order (Pliny *N.H.* 19.59; Dion. Hal. 4.24.4 in contrast to the situation in Piso's day 12.9.3); in standards of commercial dealings (Pliny *N.H.* 23.33-4); in the acceptance of bribes (Polyb. 18.35.1); in judicial standards (Cic. *Clu.* 107; Val. Max. 8.1.8 *damn.*); in parental authority (Livy 26.22.15) and note Virgil's striking simile on the natural tendency of things to decay (*G.* 1.199-202).

- 4 For references to moral defects as the cause of civil war at Rome, see P. Jal *La Guerre Civile à Rome.* (Paris, 1963) p.360f.
- 5 For a recent example note Sir Keith Joseph's observation that: 'Rome itself fell, destroyed from inside.' *The Guardian* 21st Oct. 1974 quoted by Geoffrey Pearson in *Hooligan. A History of Respectable Fears.* (London, 1983) p.5, who examines the attitudes on the complex question of 'law and order' in the United Kingdom over the last century and a half. In particular, he explores the persistent belief held by prominent figures of the British establishment over successive generations that their age was witnessing a catastrophic increase in crimes of violence and disorder. This in turn led to the creation of a series of 'golden-ages' and myths about the inherent 'stability' of the British way of life. His book is one of the most suggestive in any language on this topic although he fails, in my opinion, to explain why social development should have been cast so doggedly in the idiom of ruinous change.
- 6 J. Marquardt *Das Privatleben der Römer*² (Leipzig, 1886); Th. Mommsen *Römische Geschichte*, ed. 12. (Berlin, 1920) L. Friedländer *Roman Life and Manners under the Early Empire* 4 vols. (New York, 1908-13); L. C. Tulga *Imperial Regulation of Morals and Conduct in the Early Principate*

- (Ohio, 1967). G. Ferrero *Greatness and Decline of Rome*. 5 vols. (New York, 1907-9); D. C. Earl *The Moral and Political Tradition of Rome*. (London, 1967); L. Lange *Römische Altertümer*³ 3 vols (Berlin, 1876-9).
- 7 J. Suolahti *The Roman Censors* (Helsinki, 1963) with full bibliography; E. Schmähling *Die Sittenaufsicht der Censoren Ein Beitrag zur Sittengeschichte der römischen Republik* (Stuttgart, 1938); R.V. Cram 'The Roman Censors' in *HSCP*. 51 (1940) 71-110.
- 8 H. Rech *Mos Maiorum, Wesen und Wirkung der Tradition in Rom* (Diss. Marburg, 1936); L.R. Lind 'The Tradition of Roman Moral Conservatism' in *Latomus Collection* 164, 1979 examines many of the individual concepts that comprised the *mores maiorum*.
- 9 U. Knoche 'Der Beginn des römischen Sittenverfalls' in *Neue Jahrbücher für antike und deutsche Bildung* (1938) places the blame squarely on the behaviour of Roman officials in the provinces where they were freed from the normal magisterial restraints. Followed by F. Adcock in 'The Character of the Romans in their History and their Literature' in A.J. Dunston ed. *Essays on Roman Culture* (Toronto & Sarasota, 1976), 95-118).
- On the subject of decline in general see the comments of D. C. Earl *The Political Thought of Sallust* (Cambridge, 1961) chs. 1 & 4. R. E. Smith *The Failure of the Roman Republic* (Cambridge, 1955) accepts the sources' picture of a wholesale moral and political disintegration of Roman society. G. Schörner *Sallust und Horaz über den Sittenverfall und die sittliche Erneuerung Roms* (Erlangen 1934); A. Lintott 'Imperial Expansion and Moral Decline in the Roman Republic' in *Historia* 21 1972, 626-38; More recently, P. Widmer *Die Unbequeme Realität* (Stuttgart, 1983) & *Niedergang. Studien zu einem geschichtlichen Thema* (Stuttgart, 1980) eds. R. Koselleck and P. Widmer.
- 10 G. Rotondi *Leges publicae populi Romani* (Milan, 1912), 98 for bibliography; J.F. Houwing *De romanis legibus sumptuariis* (Lugd. Bat., 1877); E. Penning *De luxu et legibus sumptuariis* (Lugd. Bat., 1826); I. Sauerwein *Die leges sumptuariae als römische Maßnahme gegen der Sittenver-*

- fall (Diss. Hamburg, 1970). E. Giraudias *Etudes historiques sur les lois somptuaires* (Poitiers, 1910);
- 11 The remarks of R. E. Smith (1955) p. 87ff are typical of a great deal of scholarly comment on this subject.
- 12 L. Edelstein *The idea of Progress in Classical Antiquity* (Baltimore, 1967), Intro. XXVII and R. Starn 'Meaning-Levels in the Theme of Historical Decline' in *History and Theory* 14, 1975, 1-31 are examples of this "History of Ideas" approach.
- 13 On this point I differ with G. Pearson's otherwise stimulating discussion (1983). He makes copious reference to the immovable, unchanging vocabulary of complaints (e.g. pp. 48 & 211) and the immemorial, continuities present in social history (p. 208 history's "formidable stability"). This involves a swing in the opposite direction - almost a static conception of history, despite his disclaimer on p.207. The fact is that concepts, complaints, traditions and so forth experience important changes, re-definition, development - they too are dynamic. To be sure, certain features in the political dialogue and in social practice do recur. But repetition is not the same as continuity. Just as there is neither constant change nor is there unvarying sameness.
- 14 *ambitio multos mortalis falsos fieri subegit, aliud clausum in pectore aliud in lingua promptum habere...*
Sall. *Cat.* 10.5.
- 15 See G. Colonna in 'Un aspetto oscuro del Lazio antico. Le tombe del VI-V secolo a.C.' in *La Parola del Passato* 32 1977, 131-65 who has explored and rejected alternative explanations for the absence of such objects in contrast to the exceptional wealth of tombs in the preceding century, and has firmly concluded that a change in funerary ideology is responsible. In 'L'ideologia funeraria e il conflitto delle culture' in *Archeologia Laziale* 4 (= *Quaderni centro archeologia Etrusco-Italico*) 5 1981, 229-32 he notes the coincidence between the reduction in funerary goods and the erection of important religious buildings and he suggests comparisons with the political and ethical values present in Greek archaic societies.
- T. J. Cornell in 'Rome and Latium Vetus.

1974-9,' in *Archaeological Reports 1979/80 no. 26*, 71-89 has examined the flowering of a rich aristocracy during the late Orientalising period 4B and dismissed economic reverses as a reason for this alteration in funerary practice. Carmine Ampolo has also discussed the sumptuary restraint featured in the *leges regiae* and the Decemviral code as well as epigraphic and literary evidence for similar laws in Greek city-states in '*Il lusso funerario e la città arcaico*' *Archeologia e storia antica: Annali del Seminario di studio sul mondo Classico* 6 1984, 71-102.

- 16 E.g. L. Calpurnius Piso Frugi Fr. 8 *Peter*. On the validity of the tradition see now J. Poucet *Les Origines de Rome: Tradition et histoire* (Bruxelles, 1985).
- 17 See *FIRA.*, *leges Regiae*, Romulus 7; 9. and note the concern about the growing independence of women evident in the Elder Cato's speeches Frs. 157, 218 *Malc.* and in the legislation of this period.
- 18 Pliny *N.H.* 32.20.
See G. Clemente in 'The Debate on Luxury in the Third and Second Centuries B.C. in Republican Rome', *Univ. of Princeton seminar*, p. 4. (= '*Le leggi sul lusso e la società Romana tra III e II secolo A.C.* in *Società Romana e Produzione Schiavistica* 3 vols. (Bari, 1981), 3.1-14). He acutely observes that the appearance of the first commentary on the Twelve Tables by Sextus Aelius Paetus may have awakened interest in this subject. It is instructive to note that Numa's concern to check the activities of the *praemercatores* is paralleled by second century B.C. polemic against spendthrifts and lawbreakers who were held responsible for the spiralling rise in the cost of living. (cp. *Ath. Deipn.* 246B). See *Dion. Hal.* 2.74.1f on Numa's measures, written and unwritten, to inspire frugality and moderation. E. Gabba in '*The Collegia of Numa: Problems of Method and Political Ideas*' *JRS* 74 1984, 81-6, demonstrates how the political struggles of the first century B.C. influenced Plutarch's account of Numa's life.
- 19 Although A. Watson in '*Roman Private Law and the Leges Regiae*' *JRS.* 62, 1972 p.100-105 argues for the general

plausibility of such laws in the Regal period, much is conjectural.

- 20 Tab. 5.7 (all citations to Tab. refer to *FIRA*). Cp. Ath. *Deipn.* 168a-b for the Areopagites' censure of prodigals for living beyond their means.
- 21 Tab. 8.18. Note the sumptuary device recommended by Ps. Sallust *Or. ad Caes.* 5.4-8.
- 22 Tab. 8.26.
23. See especially Cic. *Leg.* 2.58f who held that these measures were closely modelled on Solonian legislation. Cp. Tab. 10.4 with Plut. *Sol.* 21.4; Dem. *In Macart.* 1071; Strabo 14.1.25. Tab 10.3 shows similarities with Plut. *Sol.* 21.4. Notice the law of Pittacus of Mytilene which reduced the number of participants at a funeral to 10. Tab. 10.9 & 10.5 ensured a maximum of one bier per funeral and prevented repetition of the funerary spectacle while at the same time forbidding costly sprinkling, long garlands and incense boxes. Despite our incomplete knowledge of the restrictions on funeral pyres and monuments specified in Tab. 10.9, it is worth noting that Demetrius of Phalerum, who claimed to be reenacting Solonian legislation, strictly enforced measures on this subject (Ath. *Deipn.* 542; & the discussion of S.C. Humphreys 'Family Tombs and Tomb Cult in Ancient Athens' in *JHS* 100 1980, p.96-126). His establishment of special officers *γυναῖκονόμοι* both to oversee the correct behaviour of women and to uphold his sumptuary restrictions on *luxus mensae* was celebrated in antiquity. (Pollux 8.112 s.v. *γυναῖκονόμοι*; Hesychius s.v. *platanos*; Philochorus in *F.G.H.* 328 fr. 65; Ath. *Deipn.* 245a-c; Arist. *Pol.* 1299a).
- 24 Tab. 10.2 calls to mind the Lycurgan injunction on the use of simple instruments in house construction (Plut. *Lyc.* 13.3). His rhetra also enjoined simplicity in food and clothing and imposed restrictions on the possession of gold and silver while cumbersome iron bars were used as coinage (Plut. *Lyc.* 9.3; Arist. *Pol.* 1273b; Ath. *Deipn.* 233a-b). Cretan law-codes bore many similarities with Laconian statutes (e.g., the public messes Ath.

- Deipn.* 186b; Strabo 10.4.16; 10.4.20). For the restraint of the Lacedaemonians see Athen. *Deipn.* 657; 687.
- 25 For the contrast between the Ionians and Dorians note Plut. *Lyc.* 4.3; Diod. Sic. 8.18.1; 9.1.4; cp. Athen. *Deipn.* 524f; 526d.
- 26 Zaleucus of Locri, supposed by some authors to be a pupil of Pythagoras, encouraged simplicity in apparel and restricted the number of personal attendants (Diod. Sic. 12.20.1-21.3). Strabo 6.1.8 citing Ephorus points to the influence of Cretan, Laconian and Areopagite usages on Zaleucus and commends this lawgiver for framing his statutes in simple language (see Arist. *Pol.* 1274a). He forbade anyone on pain of death to drink undiluted wine except by order of a physician according to Ath. *Deipn.* 429a-b. The Massiliotes and Miletians penalised women by allowing them to drink water only.
- 27 For the activities of Charondas of Thurii see Diod. Sic. 12.11.4-19.3; Plut. *Mor.* 519B. See Arist. *Pol.* 1274a; 1297a for the tradition of Charondas at Catana.
- 28 The Syracusans too prohibited respectable women from wearing garish raiment and restricted their freedom of travel (Ath. *Deipn.* 521B). For funeral restrictions, see Diod. Sic. 11.38.1f.
- 29 Notice the connection made by Seneca *Ep.* 90.6. The virtual consensus amongst philosophical schools in antiquity on the evils of luxury and personal extravagance makes it quite impossible to pinpoint the exact source of inspiration for these codes. As is pointed out on chapter 6, the exceptions to the rule, e.g. Aristippus and the Cyrenaic school, Eudoxus and the (much misrepresented) Epicurean thinkers, were cast as the intellectual deviants of the ancient world.
- 30 The earlier of the attested laws in 432 B.C. (Livy 4.25.13) is considered by some scholars to be a mere duplication of the *lex Poetilia de ambitu* of 358 B.C. (Livy 7.15.12-13). They were concerned to prohibit any form of self-advertisement during canvassing and were the precursors of a succession of enactments designed to combat electoral malpractice (see G. Rotondi (1912) pp.105-6 for a full list and for references).

- 31 See Pliny *N.H.* 33.153 and chapter 5 for my contention that neither censorial nor aedilician action was arbitrary. It rested on legally circumscribed powers.
- 32 The Oppian law was repealed by the *lex Valeria Fundania* of 195 B.C. Detailed discussion of, and source references to, each of these measures will be given in the appropriate chapters below.
- 33 See G. Rotondi (1912) p. 100 for a list of *leges de alea* and various related legislation, *de sponsu* etc.
- 34 For early senatorial attempts to limit the cost of games note Livy 40.44.11-12 and the *s.c. de feris*.
- 35 Provoking the indignant claim of Portunianus that the law led to more money being squandered on fewer people (John of Salisbury *Polycraticus* 8.7).
- 36 It also prompted M. Duronius' stinging attack on statutory-imposed frugality (page 73 below).
- 37 Misinterpreted as an invitation to promote luxury (Macrob. *Sat.* 3.17.11).
- 38 Supplemented under Tiberius by the *lex Iunia* (A.D.19) and the *lex Visellia* (A.D. 24). The first known measure on reserved seating at public spectacles was promulgated by L. Roscius Otho in 67 B.C.
- 39 The plethora of contradictory edicts regulating the appearance of members of privileged status at pantomimes, theatrical and gladiatorial shows testifies to the personal caprice of the emperors. Caligula and Nero took a notoriously relaxed view. Tiberius, Claudius and others strictly enforced these measures.
- 40 Note especially the suppression of the Bacchic cult throughout Italy in 186 B.C. and see chap. 7 on the various expulsions in the late Republic.
- 41 But Caligula checked the sale of hot water at taverns.
- 42 In a digression on the elaboration of culinary arts, Pliny remarks that the subject of pig's meat alone had provoked *ensoriarum legum paginae* (*N.H.* 8.209).
- 43 See, for example, F. Schulz *Principles of Roman Law* (Oxford, 1936) pp. 160-1. G. Williams 'Poetry in the Moral Climate of Augustan Rome' *JRS* 52 (1962), p. 28. and the observation of D. Nörr 'The Matrimonial Legislation of Augustus: an Early Instance of Social Engineering'

IJ 16 1981, p.358. However, the *paterfamilias* was, in the first instance, the preferred corrector of *mores* amongst members of his family. Yet even his extensive theoretical powers were customarily exercised in conjunction with a group of senior friends who formed a sort of *domesticum iudicium*. Cp. Suet. *Tib.* 35.1.

- 44 M. I. Finley *The Ancient Economy* (London, 1985) p.159, points out that such measures had to be passed in a legitimate fashion.
- 45 Cass. Dio 60.6.7.
- 46 Plato *Rep.* 372c; Cic. *Leg.* 2.22; 2.58; 2.62f; for Cicero's disapproval of extravagant largesse see *Off.* 2.55-6.
- 47 Dion. Hal. 2.24.2; cp. 2.3.5; 2.28.1; 2.74.1.
- 48 For comparative material on sumptuary legislation see F. E. Baldwin *Sumptuary legislation and Personal Regulation in England.* (Baltimore, 1926); J. Sempere Y Guarinos *Historia del Luxo, y de las leyes suntuarias de España* (Madrid, 1788); K. R. Greenfield's *Sumptuary Law in Nürnberg: A study in Paternal Government.* (Baltimore, 1918); Wilfred Hooper 'The Tudor Sumptuary Laws' *English Historical Review* 30 (1915), 433-49; M. M. Newett 'The Sumptuary Laws of Venice in the Fourteenth and Fifteenth Centuries', in *Historical Essays* eds. T. F. Tout and J. Tait (Manchester, 1907) 245-78. N. Baudeau *Principes de la science morale et politique sur le luxe et les loix somptuaires.* (Paris, 1767); D. H. Shively's interesting discussion 'Sumptuary Regulation and Status in Early Tokugawa Japan' in the *Harvard Journal of Asiatic Studies* 25 (1964), 123-64; T'ung-Tsu CH'Ü *Law and Society in Traditional China* (Paris, 1961); Above all, Diane Owen Hughes' stimulating study 'Sumptuary Law and Social Relations in Renaissance Italy' in *Disputes and Settlements: Law and Human Relations in the West.* ed. J. Bossy (Cambridge, 1983) 64-99.
- 49 Besides, the universal nature of these principles would have been unpalatable to the guardians of hierarchical privilege. The highly developed political democracy of, e.g., Classical Athens, was exceptional in antiquity.

- 50 On this aspect and the ramifications of the rise of legal individualism in the late Republic see the stimulating article by R.A. Nisbet 'Kinship and Political Power in First Century Rome' in *Sociology and History: Theory and Research* ed. W.J. Cahnman (1964), 257-71.
- 51 Market forces, in the shape of the inexorable laws of supply and demand will, it is professed, ensure the optimum allocation of resources in production, consumption and distribution. Note the pastiche of The Secretary in 'The Sumptuary Manifesto' *Journal of Law and Economics* 2 1959, 120-23.
- 52 See the comments of T'ung-Tsu CH'Ü (1961) p. 133f.
- 53 For the ever-present and volatile social tensions present in sharply divided societies see chapter 3 below. While it is true that some city-states had recourse to liturgies or *munera* - often compulsory levies imposed on the rich for the provision of indispensable services - their effect was to sustain rather than to remedy the root cause of economic inequalities. For the motive behind C. Gracchus' frumentary measure see chapter 3.
- Thales put it in a nutshell when he perceived that democracy could prosper only in that state which had citizens who were neither immoderately rich nor inordinately poor; Plut. *Mor.* 154e.
- 54 A perusal of Athenaeus' *Deipnosophistae* reveals the prevalence of this feature in classical thought; for instance 186b (Peripatetic); 161b; 164a (Pythagorean); 186, 233a contra 509 (Academic); 233b (Stoic); 422d (Cynic).
- 55 See *DHI* s.v. Freedom, legal concept of 2.249.
- 56 As M. M. Newett (1907) observed p.246.

II

'FOR YOUR OWN GOOD': THE VOCABULARY OF PATERNALISM

Moral presentation of legal enactment

For such striking imposition special explanation was required. The *loci classici* of Roman sumptuary laws, faithfully reflecting the preoccupations evident in other sources, emphasize the moral imperatives behind their promulgation.

They play dice ardently, besmeared with unguents, encircled by strumpets. When the tenth hour arrives, they order a boy to be summoned to go to the *comitium* that he might ascertain what is happening in the forum; who is advocating, who dissuading the measures, how many tribes voted for or against. Then they make their own way to the *comitium* to avoid any charges. As they progress through the alley-ways with their bladders full of wine, no vessel is left unfilled. They enter the *comitium* and glumly start the proceedings. The suits are stated, the judge demands the witnesses and then spends a penny. On his return, he claims to have heard everything. He beckons for the *tabulae* and inspects the documents: his eyelids, heavy through drink, he can barely keep open. He retires with his advisers and protests: "Why am I burdened with such triflers? How much nicer to drink *mulsum* mixed with Greek wine, or to feast on a plump thrush and a good fish, a genuine pike hooked between the two bridges!"¹

Thus lamented C. Titius in his memorable indictment of aristocratic behaviour, delivered as part of an oration in favour of the *lex Fannia* in 161 B.C. Sammonicus Serenus' comment on the same law is particularly telling. It was carried by an *ingens consensus* of all the orders in accordance with the design and advice of all good men: ... *cum res publica ex luxuria conviviorum maiora quam credi potest detrimenta pateretur...*

Macrobius appends his own comments to the subject, stressing the beneficial effects of a reduction in gluttony and extravagance.³ It was probably in the context of the debate on the *lex Fannia* that the Elder Cato reiterated his fears for the condition of the state and its citizens: that boy favourites, at one talent, could fetch more than arable land, that a jar of Pontic caviar, at 300 Attic drachmae, could exceed the price of ploughmen was the surest sign of decadence.³

Aulus Gellius too affirms that these laws were inspired by a desire to preserve *parsimonia* and *...victus atque cenarum tenuitas...*: patrimonies and family fortunes were being dissipated in an abyss of luncheons and banquets; barriers were required to stem the high tides of *luxuria*.⁴ Favonius' speech, composed in support of the *lex Licinia*, captures the full flavour of this anti-luxury moralising and is worth quoting in full:

These masters of cook-shops and of luxury deny that a dinner is elegant unless, while you are in the middle of eating, your plate is snatched away and another morsel, tastier and more succulent, is fetched from the reserves. Now, this is held to be the true glory of a dinner amongst those to whom prodigious fastidiousness is preferable to good taste. They pronounce that: no bird ought to be consumed in its entirety except a becafico: a banquet is paltry unless so many birds and fatted poultry are served that the guests take their fill from the hinder parts alone: those who eat the upper parts of birds have indiscriminating palates. If luxury proceeds to grow at its present rate, what is left but that they shall direct others to consume the food in their stead, lest they should be wearied by eating when the couches are more gorgeously bedecked in gold, silver and purple for some humans than for the immortal gods?⁵

In a similar vein the Elder Pliny, whose moral strictures on the subject of extravagance are too numerous to catalogue, counts the cost to the Empire of imported allurements, wryly remarking: One hundred million *sestertii per annum*. This is the amount our women and our luxuries run through!⁶

Inebriation, gaming, sexual depravity, gourmandizing - a veritable roll-call of hedonistic pursuits - furnished the moral cornerstone of intervention. The commentaries were not

alone in recording this message. Explicit appeal was made to the *mores maiorum* or to *virtus* in the very texts of magisterial pronouncements.⁷

The closure of the Latin rhetors' schools by the censors of 91 B.C. was justified as follows:

*renuntiatum est nobis, esse homines qui novum genus disciplinae instituerunt, ad quos iuventus in ludum conveniat; eos sibi nomen imposuisse Latinos rhetoras; ibi homines adolescentulos dies totos desiderare. maiores nostri, quae liberos suos discere et quos in ludos ire vellent instituerunt. haec nova, quae praeter consuetudinem ac morem maiorum fiunt, neque placent neque recta videntur.*⁸

Weighty senatorial *sententiae* or *consulta* offered explanations for the public at large. Several decrees, which probably prefaced the anti-dicing statutes (*leges aleariae*), specifically exempted from the orbit of their prohibition games ... *ubi pro virtute certamen fit, virtutis causa.*⁹ The consideration *virtutis causa* provided the basis for individual grants of citizenship to Latins and to allies who had displayed exceptional merit in the service of the republic.¹⁰ Other honorific distinctions like chaplets were awarded to inspire feats of courage and manliness.¹¹

Contiones did not just provide the context for discussion of *rogationes*. They were, on occasions, the setting for bitterly contested electoral campaigns where individual rivalries and even policy differences were fought out. In his bid for the censorship of 184 B.C., the Elder Cato stressed the need for Rome to be thoroughly purified and likened himself to a devoted physician who would sever and cauterize the hydra-like luxury and softness of his age. Thirty years later, Scipio Aemilianus, as censor, declaimed before the assembled populace on the need to maintain the *mores maiorum*.¹²

Senators, exercising the right to air their views on any pressing subject, inveighed against the moral perils of their era with a frequency and urgency. Cassius Dio, for example, records how Q. Hortensius Hortalus eloquently foiled an attempt to introduce sweeping restrictions on luxury on one such occasion in the first century B.C.¹³ From

Tacitus' *Annales*, it is clear that the subject continued to provoke strong passions during the early Principate.¹⁴ Tiberius had recourse to the *mores maiorum* to sanction some of his policies.¹⁵

Centuries later, grave economic problems were explicated in similar terms. Moral delinquency called for one of the most celebrated acts of sumptuary restraint, Diocletian's Price edict. ...*avaritia, quae velut campis quadam immensitate diffusis teneri non poter(at), statuti nostri finibus vel moderaturae legis terminis stringeretur.*¹⁶

Thus a powerfully consistent picture emerges from this consideration of a variety of sources. There was a clear understanding that these laws were designed to suppress activities which were morally injurious. The moral argument may not have been the sole reason adduced at their promulgation but there can be no doubt as to its preponderance. The same message was tirelessly hammered home.

In the public interest

Through this chain of legislative activity, as successive governing authorities endeavoured to bridle or to debar novel and divergent social practices, certain features emerge which betoken the recurrency of political discourse.

One notable characteristic is the vigorously paternalistic presentation which so forcefully underpins such intervention. It is justificatory in function, containing a keen persuasion to the uncommitted, a palliative to dissenters. Over two millenia of European society, sumptuary laws have been persistently prefaced by an appeal which is often bifurcate - to personal and to societal interests. 'For your own good' has provided the needed sanctification which astutely combines an address to one's individual well-being or to a loftier *summum bonum*, the public welfare.¹⁷

In the former case, the avowed intention of the legislator has been to protect the person from harming himself or his immediate family. This explains the legal impotence of the *prodigus* and the severe punishments of adulterers and gamblers whose deleterious example might lead others astray,

too. It is an assumption which continued virtually unchallenged for centuries until, in a classic essay, John Stuart-Mill disclaimed the right of governments to interfere in the sphere of private morality except in the conduct of those who threatened actual harm to other members of the community.¹⁸ Despite innumerable counter-attacks and refinements on the benefits of moral paternalism, no adequate riposte has ever been advanced.¹⁹

*nam publicae rei causa quicumque id facit
magis quam sui quaesti, animus induci potest,
eum esse civem et fidelem et bonum.*²⁰

The Roman authorities' characterisation of the public-spirited nature of the *quadruplator*, upon whose assistance they relied for the implementation of their social legislation, contrasts with the popular distaste for their activities which is so striking in the plays of Plautus.²¹

The promulgators of an early sumptuary law considered it profoundly shocking that the *plebs Romana: ...vino madidi in comitium venirent et ebrii de rei publicae salute consulerent.*²² Antius Restio's law was proposed ... *bono publico.*²³ Indeed the national interest lay at the heart of senatorial deliberations from an early period. It was expressly mentioned in the decree of 161 B.C. concerning the expulsion of the Latin rhetors and philosophers.²⁴ Over two centuries later, Flavius Aper, enraged at the flagrant circumvention of the Cincian law, compelled the proposer of a contrary motion to swear that he had moved it 'for the sake of the Republic', in accordance with time-honoured senatorial procedure.²⁵ The writings of Cicero are studded with references to this justification. The murder of the Gracchi and their many followers was exonerated *e re publica*, the same consideration that called for the condemnation of Verres.²⁶

In a startling extension of this idiom, the *mores maiorum* were commended by the representatives of Pergamum as underpinning Rome's policy of universal benevolence.

'As the Romans, in pursuance of the practices of their ancestors have accepted dangerous risks for the common safety of mankind and strive emulously to place their

allies and friends in a state of happiness ... Hyrcanus I made representations to the Romans ...'
Loeb trans. of a decree of Pergamum in Josephus *AJ* 14.247

Seldom has Roman expansionism been presented in so favourable a light.

*Sunt quidem cuncta sub unius arbitrio, qui pro utilitate communi solus omnium curas laboresque suscepit.*²⁷ It comes as no surprise that the common good was a burden publicly shouldered by the *princeps*, while even private benefaction could flow from this bountiful source.²⁸

In fact similar claims recur through the course of later history, from the regal statutes of Mediaeval England and the municipal charters of continental Europe to the parliamentary journals and political manifestoes of the twentieth century.²⁹

'The public welfare' has furnished a useful cover-all term which has been left conveniently vague and undefined in stark contrast to the precision of legal formulae on, e.g., contractual obligation.³⁰ Frequently, the interests of a few have been furthered by actions pursued ostensibly for the benefit of the people as a whole. Paternalistic concern has been advanced for that which was essentially self-regarding.

A rectis in prava: the debate on decline.

Another characteristic, a shared perception both on the direction and causality of social change, was embodied in a central theme of Roman historiography - namely, a theory of moral decline. It had an exegetic role: its negative interpretation of historical development served to explain the existence of, and need for more, legislative bulwarks. Idleness, avarice, ambition, extravagance and a host of moral vices, the distinctive products of luxury, were invoked as evils whose effects sumptuary laws were ostensibly designed to repress and dominated the prooemia of historical narrative and statute alike. 'Things have gone seriously astray' was the almost invariable lament of embattled governing orders as they grappled to overcome the formidable difficulties of an uncertain present.³¹

This catalogue of fears, complaints or prophecies takes its inception with the emergence of connected literary records in ancient Rome.

Q. Caecilius Metellus' apprehensions on the pernicious results that victory over Carthage (202 B.C.) might exert on the *virtus* of the Roman people,³² advanced a concept - the need for a *metus hostilis* to combat the enervating effects of *res secundae* or *otium* - which pervaded later annalistic accounts.³³ The first half of the second century B.C. witnessed the ostentatious platform of the Elder Cato. His colourful strictures on almost all forms of luxury and immorality and his glorification of the rustic simplicity and piety of Roman *maiores* were to encapsulate the major motifs of the debate on decadence and to receive the highest accolade from contemporary and later generations of Romans.³⁴

Of particular significance is the fact that much of his comment was pronounced either during the passage or repeal of sumptuary laws - the *lex Valeria Fundania* (195 B.C.) and the *lex Orchia* (181 B.C.) - or during his campaign for, and tenure of, the censorship, two spheres of activity which thenceforth were to provide the foci for discussion on this subject.³⁵ C. Titius' diatribe on the moral and political standards of the oligarchy powerfully supported the promulgation of the Fannian law,³⁶ while Scipio Aemilianus employed his censorial office to make his celebrated plea for a return to ancient ways.³⁷ The Gracchi, too, despite the novelty of their political technique, utilised the familiar anti-luxury dialogue.³⁸ The dire prognostication of C. Calpurnius Piso Frugi whose use of turning-points proved so popular with subsequent historians,³⁹ the mounting misgivings of Polybius,⁴⁰ the famous opposition of Scipio Nasica to the overthrow of Carthage⁴¹ and Rutilius Rufus' bold stance in accordance with Stoic precepts,⁴² all testify to decline as a central preoccupation of both Roman statesmen and Greek intellectuals of this period.

The debate received elaboration in the first century B.C. The disintegrating world of the senatorial aristocracy is nowhere more tellingly captured than in the writings of Sallust. With his eclectic blend of all its diverse

components - golden-age idealisations, turning-points, images of corruption, the prime causative agents of *avaritia* and *ambitio* acting upon the substance of luxury - he was acknowledged in antiquity as the consummate exponent of this discourse.⁴³ But although he couched his criticisms in traditional terms, employing vocabulary and concepts long popularised by his predecessors, the use to which he put this discourse was markedly different. Whereas earlier politicians had been concerned to admonish their peers and contemporaries with a view to upholding or improving moral and political standards Sallust's mordant strictures were aimed at undermining the very credibility of the nobility - that inner core of senior senators who dominated the government of Rome.⁴⁴ Moral corruption was ubiquitous. It affected the *pauci potentes* and *plebs* alike. His characterisation of Catiline and his followers served to epitomise the depravity of his times. This generalised critique was eagerly adopted by later writers who found in it a plausible explanation for the civil bloodshed of the first century B.C. and for subsequent carnage.⁴⁵ Decadence featured strongly in Varro⁴⁶ and Cicero⁴⁷ while like fears were officially expressed in the gravity of senatorial *sententiae* and in the regularity of sumptuary proposals.⁴⁸ The insistent call for moral conservatism, which was reflected in the deeply pessimistic sections of Livy and Horace,⁴⁹ was a pronounced feature of Augustus' political project. Degeneration provided the secular reason for what had gone wrong. The fact that his regime was supposed to have heralded a turning-point - the dawning of a new golden-age - did nothing to lessen the popularity of this idiom. Tacitus has charted the growing anxieties on ostentatious spending amongst the old aristocracy⁵⁰ as well as making his own contribution⁵¹ yet he did show, at times, considerably more perspicacity on the subject than his predecessors.⁵² Velleius Paterculus with more than faint echoes of Sallust,⁵³ Valerius Maximus,⁵⁴ Columella⁵⁵ and, above all, the Elder Pliny⁵⁶ added their voices to the swelling chorus on moral decline.⁵⁷

Pagan writers such as Macrobius and Zosimus,⁵⁸ and Early Christian Fathers like St. Augustine and Tertullian, albeit

from different perspectives and reasons, continued the debate into late antiquity and beyond.

Luxus: Foreign Pleasures.

The concepts of *luxus* and *luxuria* merit special attention since they were widely operative both as a cause and a symptom of decadence. Indeed, the Roman historian's search for an explanation of decline centred not upon any functional debility (for social and political privileges were too closely embedded in the constitutional arrangements) but upon a departure from the *mores maiorum* brought about principally by the introduction of luxury which acted like a solvent, loosening the bonds that had kept the community together so successfully in the past. In particular, it released two psychological traits latent in the Roman character, *avaritia* and *ambitio*, against whose combined effect legal remedy was to prove futile.⁵²

The causative role bestowed on luxury facilitated the expression of deep-rooted anxieties and prejudices. The vocabulary and imagery by which ideas of decline were transmitted almost invariably placed the blame on exogenous factors or external agents.

The Greeks, those parents of all vices, had supplied the language of luxury.⁵³ Striking verbal forms in early Latin reinforced this identification. To revel was a Greek pastime:

*dies noctesque bibite, pergraecamini,
amicas emite liberate, pascite
parasitos, obsonate pollucibiliter.*
Plautus *Most.* 22-4.

The Hellenistic kingdoms such as Asia and Syria were singled out as targets for reprobation.⁵²

The entry into Rome from abroad of particular objects marked successive stages in the degeneration of domestic *mores*.⁵³ *Luxuria* or *divitiae* were seen to have immigrated (*immigrare*) or to have been brought in (*invehi*);⁵⁴ *mores*

like foreign merchandise were imported (*inportare*).⁶⁶ They experienced reification. In the manner of a hostile army, the corruption caused by luxury invaded (*invadere*)⁶⁶, assailed (*adflixere*)⁶⁷ and laid waste (*vastare* or *prostare*) even plundered (*populari*) that which had originally been wholesome.⁶⁸ Metallic imagery was employed to represent the corrosion of *virtus*, which, analagous to a sharp-edged sword, had become blunted (*hebescere*, *occalluere*) or rusty. The *mores* of the Roman People were even likened to soiled or debased coinage.⁶⁹

Figures to describe its effects were drawn from all spheres of life. The most common was the medical metaphor of the corruption of the body politic. As mentioned above, the Elder Cato undertook his task in the spirit of a medical practitioner. The *civitas* was widely depicted as having fallen physically sick (*aegrotare*)⁷⁰ through disease (*morbus* or *pestes*)⁷¹ which spread like an infection (*contagio*) or poison (*venenum*) to waste away the entire body.⁷² Similar to a mental disorder, this turbulent, raging madness (*furor*, *insania*) escalated like the untameable motion of a storm-tossed sea or an incoming tide.⁷³

Furthermore, its progress was portrayed in botanical terms. *Luxuria*, like overlush vegetation, had shot up (*pullulare*) and required pruning.⁷⁴ *Mali mores* multiplied like watered weeds.⁷⁵ Ideas of pollution and corruption suggesting religious contamination or dysgenia were prevalent, too.⁷⁶

Most metaphors suggested a unilinear descent without any hope of redemption.⁷⁷ After the fashion of an unsteady edifice, the moral fabric of Rome was veering (*inclinare*)⁷⁸ and tottering to its collapse (*ruina*).⁷⁹ Both speed and direction were evoked by a favourite word in this context, *praecipites*, as decadence was compared to a racing torrent or rock-fall, sweeping away everything in its wake.⁸⁰

Anti-Hellenism

Do these tirades against foreign influences represent in any way a cultural reaction? Some scholars have detected the

spirit, if not an actual policy, of anti-Hellenism amongst certain sections of the Roman aristocracy. Just as prominent figures like Scipio Africanus ostentatiously adopted certain Greek manners and customs, so politicians such as Q. Fabius Maximus and the Elder Cato became identified as guardians of traditional Roman values.⁸¹

Specific activities provoked censure. M. Claudius Marcellus was amongst the earliest to be accused of encouraging luxury and ease by importing Greek artefacts into Rome following the capture of Syracuse (212 B.C.). The Elder Scipio's addiction to *palaestra* and theatres in Sicily incited fierce criticism at home while the adoption of Greek modes of dress, e.g. the *chlamys*, *tunica*, *crepida*, continued to carry a stigma to the end of the Republic and beyond.⁸² *Medici*, especially Greek doctors, and cooks were singled out for criticism by the Elder Cato, whose roving eye little seems to have escaped.⁸³

Indeed, in the first half of the second century B.C. several punitive measures were taken against what can, on the surface, be interpreted as disruptive alien influences. In a notoriously authoritarian action, the senate decisively suppressed the Bacchanalian "conspiracy" in Rome and Italy in 186 B.C.⁸⁴ It foreshadowed a series of other steps. In 173 B.C. Athenaeus informs us that the Romans, ...the most virtuous of men in everything... expelled from the city two Epicurean philosophers, Alcaeus and Philiscus,' because of the pleasures that they had introduced.'⁸⁵ Forty years later the censor Q. Caecilius Metellus Macedonicus had to remind the Romans that *voluptas* should take second place to family obligations.⁸⁶ In 161 B.C. philosophers and rhetors were banished in accordance with a decree of the senate.⁸⁷ During the same period, the visit of the Athenian delegation, comprising the three heads of philosophic schools, the Stoic Diogenes, the Academician Carneades and the Peripatetic Critolaus, was cut short after many of the senators, notably the Elder Cato, objected to their disturbing impact on Roman youth (154 B.C.).⁸⁸ Furthermore, the first stone theatre at Rome, contracted by the censors Messala and Cassius (154 B.C.) was demolished when, on the advice of Scipio Nasica, a senatorial decree cautioned ...*ne quis in urbe propiusve*

*passus mille subsellia posuisse sedensve ludos spectare vellet.*²⁹ Fifteen years later a praetorian edict expelled from Rome and Italy the Chaldaeans who were reaping large profits from false divinations. It was not merely the *aliena scientia* of astrologers that provoked action: *idem Iudaeos, qui Sabazi Iovis cultu Romanos inficere mores conati erant, repetere domos suas coegit.*³⁰

In typically aphoristic style, the Elder Cato pinpoints the correct attitude of a Roman aristocrat towards Greek culture - dabbling (*inspicere*) rather than immersion (*perdiscere*).³¹

Even in Cicero's time, it was considered unwise to exhibit publicly too much familiarity with Greek cultural artefacts. The polite disclaimers of interest in fine arts in his published speeches contrast strongly with his enthusiastic appreciation of Greek sculpture evident in his private letters.³² Tiberius continued the fiction by making an ostentatious effort to maintain the purity of the Latin tongue by expunging Greek words such as ἐμβλήμα and μονοπώλιον from his edicts.³³

So the close correspondence between the actual legislation on the one hand and the views and comments preserved in the sources argues, superficially, for a coherent and consistent policy on the part of the Roman aristocracy. The reality, of course, was very different. Nowhere were the ambiguities between attitude and practice more apparent. In fact, the rate of adoption of Greek linguistic and cultural accomplishments seems to have risen in proportion to the vehemence of the anti-luxury harangues.³⁴

Moribus antiquis stat res Romana virisque ³⁵

A decadent present decreed a virtuous past. Explicitly or by implication those who proclaimed a decline posited points of departure from an age of unsullied rectitude. Two sets of moral standards, temporally distinct, had been evaluated - superiority conferred on the antecedent. Intervening periods were marked by atrophy, sudden or gradual.³⁶ So strong was this preference for antiquity that adjectives such as

vetus, priscus, antiquus and *pristinus* bestowed, almost automatically, a positive value on the object of their description.⁹⁷ Anything that was old was good.

No shortage of anecdotes, no lack of *exempla* to illustrate their beliefs hampered the classical authors.⁹⁸ Indeed there were few spheres of historiography more productive of invention than the evocation of Roman ancestral tradition.⁹⁹

Many authors felt compelled to locate for their readers a definite point in time as the setting for their halcyon epoch.

While Regal Rome was the object of considerable romantic moralising,¹⁰⁰ for most writers a nebulously-defined era around the late fourth and early third century B.C. provided the basis for their fanciful elaboration.¹⁰¹ Others pinpointed the golden-age to the interval between the second and third Punic wars.¹⁰² A fourth group, mainly under Greek philosophical influence, relapsed into a primitivistic sentimentalism.¹⁰³

The overwhelming sense of transience and gloom which enveloped these authors' assessment of the present and of future prospects contrasted starkly with the assured stability conferred on the past. A belief in the endogenous purity and goodness of the native Roman and Italian stock was bolstered by an idealised picture of rustic simplicity associated with the lives of their ancestors.¹⁰⁴ Heroes of the early Republic such as M'. Curius Dentatus,¹⁰⁵ C. Fabricius Luscinus,¹⁰⁶ L. Quinctius Cincinnatus¹⁰⁷ and C. Atilius Regulus Serranus were inseparably linked with the solid virtues of an agricultural livelihood. Indeed they became the *exempla*, the actual embodiment of qualities and attributes against which all other generations were to be matched.¹⁰⁸ To recall the Elder Cato: *et virum bonum quom laudabant, ita laudabant, bonum agricolam bonumque colonum.*¹⁰⁹

As tradition related, a hard, thrifty existence, eked out on a small plot of land,¹¹⁰ was characterised by a life of unremitting toil with scant time for *otium* and was punctuated by fierce, military campaigns to ward off the enemies of Rome and her allies. Contented with little, these early Romans neither envied their neighbour's property nor dissip-

ated their own *res familiaris*. Their wants were proportionate to their means. Personal frugality was contrasted with magnificence, where appropriate, in public worship or construction.¹¹¹ Scrupulous in their religious observance,¹¹² chaste in their marital relationships,¹¹³ honest in their dealings with their fellow citizens, obedient and respectful to their superiors and elders, the Roman nation could not help but flourish.¹¹⁴ An unimpeachable moral superiority conferred a sort of inevitability on their rise to power.¹¹⁵ As the Elder Pliny could boast: *gentium in toto orbe praestantissima una omnium virtute haud dubie Romana extitit.*¹¹⁶

Consonant with these exceptional standards of conduct, shared by the citizen and highest magistrate alike, the classical authors detailed the outstanding individual qualities exhibited by their illustrious forbears. A cluster of nouns and epithets gave concrete expression to this glorious past: *labor*,¹¹⁷ *industria*,¹¹⁸ *parsimonia*,¹¹⁹ *frugalitas*,¹²⁰ *strenuus*, -a, -um, *disciplina*, *continentia*,¹²¹ and *gravitas* were resonant with all that was considered best about the daily life of the early Romans.

In the laments of later writers, these concepts were juxtaposed with their opposites: *desidia*, *socors*, *inertia* had supplanted the energetic application to work; *continentia* had given way to *lubido*, *avaritia*; *superbia* and *ferocia* held sway where *iustitia* once reigned.

These qualities were supplemented by others which were of primary relevance to aristocratic conduct: *gloria*, *honor*, *auctoritas*, *dignitas*, *nobilitas*.¹²² Moreover, it is clear that this discourse was not simply descriptive. In line with the general tenor of ancient historiography, a pronounced exhortatory, even didactic, function is evident. What is preserved is the ideology of the ruling orders. For these attributes were exercised in the service of the *Res Publica*. It drew the lines for correct participation in the organs of government. The immortality of fame, and the glorification of one's family were the reward of actions like those of the Decii whose devotions were often represented as the apex of aristocratic achievement.¹²³ The practical, patriotic

flavour of the Roman ideal of *virtus* is tellingly captured in an unassigned fragment of Lucilius:

*virtus id dare quod re ipsa debetur honori,
hostem esse atque inimicum hominum morumque malorum
contra defensorem hominum morumque bonorum,
hos magni facere, his bene velle, his vivere amicum,
commoda praeterea patriae prima putare,
deinde parentum, tertia iam postremaque nostra.*¹²⁴

The *mores maiorum*, then, furnished the touchstone by which later contact was adjudged. Such paradigms tend to assume an absolute aspect. They become prescriptive - articles of faith, as it were, permitting little scope for re-interpretation even under the impact of far-reaching socio-economic changes. The self-regulating endeavours of the Roman aristocracy keenly lacked the practical guidance that a more relative set of standards would have offered.

Myth in Roman Historiography

What should be made of this heavily lop-sided dialogue? One possible approach is to jettison the whole tradition as nostalgic retrospection, worthless fabrication of a past that has long since disappeared without hope of recovery. The very existence of the Twelve Tables in the mid fifth century and the archaeological evidence for an earlier period affirms that extravagance, economic exploitation and common malpractices such as theft, arson and assault were sufficiently general to require legislative restraint. Prostitution stretches back to the origins of the city.¹²⁵ *Matronae* erred from an early epoch.¹²⁶ Neither violence nor civil bloodshed commenced with the Gracchi.¹²⁷

Total rejection is unnecessary. Unlike fables, myths do contain a germ of historical truth.¹²⁸ Facts, values and events of singular importance are preserved in their discourse. However, the evaluation of myth has long been a subject of intense scholarly controversy. Various theories - functionally, psychologically or structurally based -

abound.¹²⁹ One powerful dimension has been adumbrated by B. Malinowski who focused on the functional role of myth as a 'charter,' which served to justify a set of social values or institutions in the present by reference to a narrative located in the past.¹³⁰ The shaping of myth by the careful selection, or in some cases invention, of 'traditional' material bears a direct relevance to the social context in which it was framed. Thus the express aetiological interest of influential Romans often coincided with direct political concerns. Antiquity lent grandeur to newly formulated programmes, ethical values and even institutions. It is not hard to understand why the senatorial aristocracy in the second century B.C., alarmed at the impact of sudden, unlimited possibilities of enrichment that imperial expansion opened up, would wish to validate a policy of sumptuary restraint by appealing to the weighty examples of its forebears. With such a polemical purpose certain features of the past were magnified out of all proportion to their importance while other, more balancing, aspects were ignored and omitted. Typicality was conferred on chosen paragons of ancestral virtue. The identification of individuals like C. Fabricius and Curius Dentatus with homely agricultural activities was generalised into the belief that all Roman leaders, senators and citizens lived a life of rustic simplicity. Thus the tradition surrounding the way of life and character of the early Romans offers interesting insights into the preoccupations and anxieties of the senatorial aristocracy in the late Republic. Subsequent treatment of this theme - particularly the elaboration of Regal Rome - reflects later political developments.¹³²

The Role of Law

It is important to set this specific study of Roman sumptuary and social legislation in the context of the wider discussion on the role of law in society - in particular, the fierce contemporary contention between the liberal legalists and radical or Marxist scholarship. Their posit-

ions have been polarised by their opposing conclusions on the nature and function of the legal process stemming from their contrasting premises, methodologies and fields of enquiry.

Celebrated legal practitioners and liberal philosophers such as Judge Hart and Roscoe Pound as well as many functional anthropologists and sociologists of law¹³³ have been concerned to bestow a positive value on the role of law. Above all, they stress its importance as an integrative mechanism, conferring an indispensable stability on society by binding together its disparate and diverging elements. The phrase 'social control' contains, for this school, a distinctly approbatory connotation, indicating those devices by which life in a complex, politically organised society is made possible.¹³⁴ Thus, Cleobulus' image of law as a 'weaver',¹³⁵ representative of its universal commendation in classical literature can be paralleled by its metaphorical characterisation as 'cement' or 'glue', so popular in the legal handbooks of today.

This interpretation is founded upon several important premises: (1), an observational value-judgement that legal rules rest upon, or reflect, a consensus of values. Indeed, some have even proposed that law embodies the actual expression of a universal or shared morality¹³⁶ for its normative statements encapsulate general beliefs on the desirable ordering of society and offer a much-needed guide to behaviour.¹³⁷ (2), law's functional role as a conciliator between contradictory and potentially divisive claims - in short, its capacity for conflict-resolution - should immediately commend it to all right-minded citizens.¹³⁸

Their methodological approaches were highly conducive to such conclusions. In reaction to the 'natural law' school which traced the origin of legal rules to the authority of a sovereign or to divine ordinance,¹³⁹ legal positivists, shunning all speculation on ulterior motives or hidden meanings, concentrated on the sheer data of observable facts and claimed a scientific validity for their findings.¹⁴⁰ Some of these largely untenable propositions were superseded by firm assumptions on the internal coherence and rationality of law. Law, with its tradition of highly

skilled practitioners, its peculiar idioms, formulae and semi-autonomous institutional frameworks, had developed a logic of its own which set it apart from the ordinary channels of governmental self-interest.¹⁴¹ The fact that legal discourse could be counted upon to find a reasonably fair solution to problems of conflicting claims on consistent and rational principles justified the position of legal studies as comprising a discrete subject of enquiry.

This supposition on the neutrality and autonomy of legal principles has been powerfully challenged by radical scholars, who have been concerned to highlight the coercive features of law. The methodologies of case-law,¹⁴² positivism or of pure legal analysis were discarded as masking more fundamental structures and forces by imposing unacceptable limitations on the appropriate field of study.¹⁴³ In a famous passage, Marx described legal and political institutions as comprising the superstructure which merely expressed or reflected the real, economic foundations of society.¹⁴⁴ Although this base-superstructure metaphor, which is prone to lead to a simple determinism or economism, has been extensively modified or even abandoned by more recent Marxist legal scholars,¹⁴⁵ the social relationships established by the forces of production are held to be of central importance and to have exerted a decisive effect on the development both of legal and political institutions and of ideological attitudes.¹⁴⁶

Law's major role was perceived to have been the maintenance of the structural elements of class domination so ensuring, as far as possible, the reproduction of the economic system.¹⁴⁷ (1), it helped to establish conditions that were conducive to a particular mode of production. For example, the dual process of sanctioning land-enclosure and tightening the Vagrancy Acts in eighteenth-century Britain served to swell the pool of reserve labour which was indispensable for capitalist production. (2), of great importance too was the development of the tripartite nexus of property-title, contractual obligation and torts which provided the regularity and stability for private ownership and commercial transactions that lay at the heart of all 'free-market' enterprise.¹⁴⁸ Further, so vital was this

legal role in the formation of modes of production that some Marxist scholars considered law to be part of the material base.¹⁴⁷ This ignores the fact that the initial stages of economic transformations have often been characterised by widespread defiance of existing statute, for example, in the agricultural system of second century B.C. Roman Italy or in seventeenth century Britain during the inception of the enclosure movement.¹⁵⁰ In short it is argued that law ultimately falls in line with fundamental economic and technological changes. (3), law obscures the true nature of the relationship between worker and employer by imbuing in the subordinate classes a false consciousness, e.g., by disguising the unequal basis of wage-contracts or by stressing the individuating aspects of concepts such as 'freedom', which were congenial to novel forms of capitalist labour.

Since access to, and control of, the private ownership of the means of production was legally defined by the ruling-class, it was held that the process of law as a whole not only reflected the interests of this group but underpinned their very political ascendancy. In addition radical scholars dispute the claim that legal rules express a consensus of values and beliefs amongst society's members. Modern research suggests that the content of legal rules is shaped by well-positioned and influential pressure-groups rather than by an identifiable common agreement amongst all sections of society on questions of morality, economic policy or foreign relations.¹⁵¹ Ideological as well as repressive functions are ascribed to legal machinery.

In a remarkable study on the role of the criminal law in eighteenth century England, Douglas Hay has shown how the governing order, by their practical manipulation of the prerogatives of justice, mercy and majesty, sustained the ties of obedience and submission over the mass of poor people, reinforcing its own authority and protecting its propertied interests without necessitating a large and costly police force.¹⁵²

The class instrumentalist approach, i.e., that law, as part of the state apparatus, upheld not just the economic interests but also the views of the dominant class, was

emphasised by Lenin and has held a firm grip on Marxist approaches to the subject.

A judicious evaluation of these dichotomous positions must appraise in turn the diverse elements that comprise our wide notion of the word law.¹⁵³ Several principal foci of interest deserve consideration: the methods by which legal rules are framed, promulgated and ratified in the first instance; the mechanisms for their implementation; adjudicatory procedures.¹⁵⁴ Access to, or control of, each stage of the process can decisively influence the partiality or application of legal doctrine.

Legal discourse

In Rome public law progressively defined and encompassed acceptable forms of political power, creating a framework through which authority, and if need be physical force, could be wielded to maximum effect. Civil law exerted a crucial bearing on the productive processes.¹⁵⁵

The lawgiver assumes that freedom is the consummate boon of a state since this alone confers property on those who have procured it, while in the case of slavery, ownership falls to those who govern and not to the ruled. However, those who enjoy freedom must protect it; for concord flourishes when sedition, which springs from greed and luxury, is banished. Indeed when all live in a temperate and simple fashion, there arises neither envy nor insolence nor hatred against those who are like them.

Ephorus *apud* Strabo *Geog.* 10.4.16.¹⁵⁶

Few classical commentators so explicitly acknowledged the significance of the legal confirmation of property-rights from the possession of which flowed degrees of economic power and social standing which, in turn, underpinned the strongly timocratic constitution of many city-states in antiquity.¹⁵⁷ But here, as elsewhere, the blessings of citizenship status were coupled with an admonition. In the interests of domestic harmony, the exercise of self-restraint was a must. The Cretan legislators, in the pursuit of their egalitarian ideals, were particularly alert to the

fact that where signal disparities emerge social tensions are engendered. Arrogant self-display or greed spelled conflict.

The authorities of ancient Rome too, although they eschewed all notions of equality, were faced with serious dilemmas. Their problems were compounded, as the following chapter seeks to demonstrate, by the formal hierarchical structuring of Roman society. It is the way in which civil policy impinged on moral standards that forms the core of this thesis. Two major considerations require comment. Firstly, the imposition of these formal restraints was concerned to bestow practical guidance on its citizens with a view to regulating expenditure habits and family relationships in order to sustain discernible divisions throughout the population of Rome. While it cannot be denied that it was the intention of the legislators, by orientating consumption patterns, social behaviour and expectations, to promote cohesion and stability, it was the cohesion of the privileged groups and the ossification of sharp social inequalities that formed their ultimate goal, rather than a peaceful and prosperous general welfare.

Moreover, these laws were far more than mere prescriptive statutes, i.e., technical rules inscribed on bronze tablets enjoining what individuals could, or could not, do. They formed a powerful series of normative statements, the authoritative declarations of what the governing order deemed wise and proper.¹⁵⁸ During the Republic, direct popular endorsement of any measure was a significant requirement.

For the oligarchy, exercising their preferential access to, and control of, the channels of public discussion, disseminated those ideas and values by which their authority was sustained. Through a tirade of anti-luxury harangues at the *contiones*,¹⁵⁹ by impassioned senatorial debate and weighty *sententiae* and by the quinquennial, awe-inspiring rituals of the censors,¹⁶⁰ the *populus Romanus* was repeatedly reminded of the ever-present dangers posed by the massive influx of foreign goods and practices that threatened to undermine the sober virtues and political

stability of their native land. At one and the same time, the senatorial aristocracy steered the behaviour of its own members and informed a wider audience of its grave concern for their well-being. In sum, the passage of sumptuary codes, with its coterminant strictures on moral decline, evinces the hegemonic function of legal discourse as a principal avenue for the legitimating ideology of the ruling class.¹²¹ For this categorisation, by the senatorial aristocracy in the first instance, of the reasons for domestic turmoil as moral failures - as being due to the behavioural delinquency of individuals - was tendentious. The official version served to obscure the true sources of tension arising from the defective political and economic structures in Roman society. It occasioned, as will be seen, serious unintended consequences.

NOTES

II

- 1 *ludunt alea studiose, delibuti unguentis, scortis stipati. ubi horae decem sunt, iubent puerum vocari ut comitium eat percontatum quid in foro gestum sit, qui suaserint, qui dissuaserint, quot tribus iusserint, quot vetuerint. inde ad comitium vadunt ne litem suam faciant. dum eunt, nulla est in angiporto amphora quam non impleant, quippe qui vesicam plenam vini habeant. veniunt in comitium, tristes iubent dicere. quorum negotium est narrant; iudex testes poscit; ipsus it minctum. ubi redit, ait se omnia audivisse; tabulas poscit; litteras inspicit: vix prae vino sustinet palpebras. eunt in consilium. ibi haec oratio: 'quid mihi negotii est cum istis nugatoribus? quin potius potamus mulsum mixtum vino Graeco, edimus turdum pinguem bonumque pisces, lupum germanum qui inter duos pontes captus fuit?' Macrob. Sat. 3. 16.15f. See 3.17.4 for Sammonicus Serenus' remarks.*
- 2 *Sat. 3.17.1f.*
- 3 *Delivered before a contio, Diod. Sic. 31.24.1; in a public address according to Polybius 31.25.5.*
- 4 *N.A. 2.24.1f & 20.1.23.*
- 5 *praefecti popinae atque luxuriae negant cenam lautam esse, nisi cum lubentissime edis, tum auferatur et alia esca melior atque amplior succenturietur. is nunc flos cenae habetur inter istos quibus sumptus et fastidium pro facetiis procedit, qui negant ullam avem praeter ficedulam totam comesse oportere; ceterarum avium atque altilium nisi tantum adponatur, ut a cluniculis inferiore parte saturi fiant, convivium putant inopia sordere, superiorem partem avium atque altilium qui edint, eos palatum parum delicatum habere. si proportionem pergit luxuria crescere, quid relinquitur, nisi ut delibari sibi cenasiubeant, ne edendo defetigantur, quando stratus lectus auro, argento, purpura amplior aliquot hominibus*

quam dis immortalibus adornatur? Gell. *N.A.* 15.8.2f, c.p.
Pliny *N.H.* 10.140.

6 Pliny *N.H.* 12.84.

7 The preambles to laws, so illuminating in the case of Mediaeval and Renaissance statutes, were not a feature of the *leges publicae populi Romani* although to some extent this role was filled by the *senatus consulta* which preceded many of the laws.

8 Suet. *Rhet.* 1.

9 Paul 19 ad Ed.; D. 11.5.2§1; 11.5.4§2. Cp. K. R. Greenfield (1918) ch.5 for fourteenth century restrictions on cards and dice and other games, with the exception of running, in Nürnberg; F. E. Baldwin (1926) pp. 56; 118 for interesting parallels in 1363 & 1477.

10 Notice the Asculum inscription recording Cn. Pompeius Strabo's grant to a Spanish cavalry unit; Cic. *Balb.* 26, 41, 65; *Verr.* II 3.80.187.

11 Polybius 6.39.9.

12 Gell. *N.A.* 4.20.10f. Cp. *id.* 5.13.4 for the Elder Cato's invocation of the *mores maiorum* before the censors.

13 Cass. Dio 39.37.3 (55 B.C.). Discussed in ch. 6.

14 *Ann.* 2.33f, 2.57.

15 Tac. *Ann.* 6.29; Nero *id.* 13.17.

16 See *Dickletians Preisedikt* ed. S. Lauffer (Berlin, 1971), l. 15; cp. l.7.

Compare also the beginning of the surviving text of the *s.c. de sumptibus ludorum gladiatorum minuendis* (c. A.D. 176-7), Bruns (1909), p.207f (1) ...*tantam illam pestem nulla medicina sanari posse.* & (24) ...*labentem ciuitatum statum et praecipitantes iam in ruinas principalium uirorum fortuna<s> restituerunt:*

17 Concern for the rich and poor alike is explicitly expressed in the Mediaeval statutes, e.g., *Statutum de cibariis utendis* Oct. 15, 1336.

18 The passage, contained in a useful collection of extracts concerned with the problem of the legal enforcement of morality entitled, *Law and Morality* ed. by L. Blom-Cooper and G. Drewry (London, 1976) p.9, is worth quoting in full: 'That principle is, that the sole end for which

mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.' 'On Liberty' (1859).

Notice its striking reaffirmation in the Wolfendon Report on homosexual practices: 'Unless a deliberate attempt is to be made by society, through the agency of law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business.'

- 19 Note the polemic of Sir James Fitzjames Stephen's essay on 'Liberty, Equality, Fraternity' (1873) and Lord Devlin's 'The Enforcement of Morals' (London, 1965) whose main ideas are contained in L. Blom-Cooper & G. Drewry *op. cit.* See especially H. L. A. Hart *Law, Liberty and Morality* (Oxford, 1962); C. L. Ten 'Paternalism and Morality' *Ratio* 13 (1971) p.56f.
- 20 Plautus *Persa* 65-7.
- 21 *Persa* 71f. Saturio wonders quite rightly why the magistrates were not entrusted with this duty. For an explanation, see ch.5 below. By the first century B.C. the term *quadruplator* had become synonymous with *delator*.
- 22 Macrob. *Sat.* 3.17.4.
- 23 Macrob. *Sat.* 3.17.13.
- 24 They decreed: *ut M. Pomponius praetor animadverteret curaretque, uti ei e republica fideque sua videretur, uti Romae ne essent.* Gell. *N.A.* 15.11.1. For the texts of *s.c.* which preserve this formula, see R. K. Sherk, *Roman Documents from the Greek East* (Baltimore, 1969) Nos. 6, 9, 10, 14, 15, 16, 18, 22, 23, 26.
- 25 Ygr. Pliny *Ep.* 5.13. C.p. the Elder Cato fr. 143 *Malc.*
- 26 Cic. *Mil.* 14. For the approbation of the scholiasts on this point, see T. Stangl *Ciceronis Orationum Scholiastae* (Hildesheim, 1964) pp. 115, 116; and pp. 129, 132 on *Sest.* 29. C. Gracchus at a *contio* proclaimed that he had acted in his province Sardinia ... *ex usu vestro...* Gell. *N.A.* 15.12.2.

27 Ygr. Pliny *Ep.* 3.20. Cp. Tac. *Ann.* 12.5 for the sanctioning of the incestuous relations between Claudius and Agrippina 'in the public interest'; cp. *Ann.* 12.53.

28 See the Ygr. Pliny *Ep.* 4.13 where he proudly attests his liberality with regard to the foundation of alimentary institutions. Diocletian's Price Edict repeatedly invokes the common safety, public good, general happiness etc.

29 See e.g. 37 Edward III ch. 8-14 (1363) 'Item for the outrageous and excessive apparel of divers people against their estate and degree, to the great destruction and impoverishment of all the land.'; and *id.* (1336);

3 Edward IV ch. 5 (1463); and notice the Report from the Select Committee on Luxury Duty, on the Chancellor of the Exchequer's desire '...to discourage in the national interest expenditure which can properly be classed as luxuries.' *B.P.P.* 4 (1918), p.20f. Further sanctification, if needed, was based on divine ordinance, e.g. 3 Edward IV ch. 5 (1463).

In a hilarious prohibition on the *inhonesta consuetudo* of wearing *zoccoli* (*platform shoes*), a statute of the Maggior Consiglio in March, 1430 warned of the public danger of pregnant women falling over and aborting their children; cited in M. M. Newett (1907), p. 274

For an amusing admission that governmental interference can sometimes be "over-paternalistic", observe the concern of members of the Royal Commission on Gambling on a proposal to prevent '...housewives from being deflected into prize-bingo establishments during their morning shopping in the high street.' *Final Report* July, 1978.

30 In its very lack of specification, its usage resembles that of the legal construct of *maiestas*; Pliny *Pan.* 42. There is no need to tabulate the numerous instances of present-day applications of this principle which seek to dress up under a specious parade of virtue all manner of criminal misdeeds. Thus, notoriously, the explanation offered by the French Prime Minister M. Fabius of his government agents' activities against the Greenpeace organisation. Sept. 1985.

A refinement of this position, 'in the interests of national security' litters the statutes and legal judgem-

ents of contemporary Britain and Europe. Note the caveat on the freedom of expression in Article 10 of the *European Convention of Human Rights*.

In an acute critique of a schematic list of minimal elements of the "public interest" put forward in the *Legal Process. An Introduction to Decision-Making by Judicial, Legislative and Administrative Agencies* by C. Auerbach etc. (San Francisco, 1961), p. 661f, W. J. Chambliss & R. B. Seidman in *Law, Order and Power* (Reading, Mass., 1971) p. 58 point to the impossibility of defining or achieving a national value-consensus.

31 In stark contrast to their perception of the distant past whose steadfast traditions conferred an enviable stability.

32 See Val. Max. 7.2.3. Significantly his speech contains an assumption that decadence had already set in. If more literary evidence had survived for the fourth and third centuries B.C., I have little doubt but that similar ideas would have found expression.

33 Two related aspects were stressed: (1), the beneficial and cohesive effect on social and political behaviour exerted by the need for constant, disciplined vigilance, (2), the removal of such threats created opportunities both for factional discord and for the leisured enjoyment of wealth which was held to undermine the simple *mores maiorum*. It is instructive to note that the Spartans erected a Temple to Fear as a definite part of their civil policy; Plut. *Cleomenes* 9.1.

For the *metus Punicus*, see Sall. *Hist.* 1.12; *Iug.* 41.3; Vell. Pat. 2.1.1; Polyb. 36.9.4; Oros. 4.23.9; Florus 1.31.5; & for Scipio Nasica's involvement, Plut. *Cat. Mai.* 27.2; Diod. Sic. 34.33.5; App. *Lib.* 69; Livy *Per.* 48. W. Hoffman 'Die römische Politik des 2 Jahrhunderts und das Ende Karthagos' in *Historia* 9 (1960), p.320 questions, unconvincingly in my opinion, the veracity of the tradition about decline at the end of the second Punic war. For the *metus hostilis* in Greek thought, see Polyb. 6.18; Thuc. 1.23.6.

On *res secundae*, the *locus classicus* is the Elder Cato's speech *Pro Rhodiensibus* in Gell. *N.A.* 6.3.14f. His

attitude changed remarkably with respect to Carthage less than two decades later.

- 34 For a remarkable epigraphic testimony to his achievements see Plut. *Cat. Mai.* 19.3 "...that when the Roman state was tottering to its fall, he was made censor, and by helpful guidance, wise restraints and sound teachings, restored it again." (Loeb trans.), inscribed, at popular request, in the Temple of Health. For his attack on a whole series of vices, e.g., *avaritia*, *ambitio*, *imperii cupido*, see Malcovati's collection of fragments.
- 35 Cato Maior frs. 141-5, 107, 109 *Malc.*
- 36 Macrobian *Sat.* 3.16.14f.
- 37 See Scipio Aemilianus fr.6 *Malc.*; fr. 20 for his shocked outburst on visiting a *ludus histrionum*. On the need for humans to exercise moderation in prosperity, Panaetius (*apud Cic. Off.* 1.90) records Scipio's striking analogy. Notice the express deference that Scipio Africanus Maior paid to the laws and customs of the Republic when, despite his signal military success, he refused to act unconstitutionally in the face of the fierce attacks of his political adversaries (Seneca *Ep.* 86). Contrast his conduct with the lack of restraint shown by the politician-generals of the 1st century B.C.
- 38 Plut. *Ti. Gracch.* 9.5; *C. Gracchus* fr 25 *Malc.*: *nulla apud me fuit popina, neque pueri eximia facie stabant, et in convivio liberi vestri modestius erant quam apud principia.* Notice especially fragments 47-9 *Malc.*
- 37 A wide choice of turning-points is offered by classical authors:
- 197 B.C. Following the defeat of Philip of Macedon, Val. Max. 9.1.3;
- 190 B.C. L. Cornelius Scipio's success in Syria, Pliny *N.H.* 37.12; 33.148;
- 187 B.C. Return of Cn. Manlius Vulso's army from the East, Livy 39.6.7; L. Calpurnius Piso Frugi fr.34 *Peter*;
- 168 B.C. Victory over Perseus, Val. Max. 9.1.3, Polyb. 31.25.4, Diod. Sic. 31.26.2.
- 154 B.C. The date of the overthrow of *pudicitia*, L. Calpurnius Piso fr. 38 *Peter*;

- 146 B.C. Destruction of Carthage, Sall. *Cat.* 10.1; *Jug.* 41.2; *Hist. fr.* 12; Oros. 5.8.2; August. *De civ. Dei* 1.30; Pliny *N.H.* 33.150; Vell. Pat. 2.1.1; Diod. Sic. 34/5.33.3 (possibly following Poseidonius). On Mummius' devastation of Corinth, see Pliny *N.H.* 37.12.
- 133 B.C. First political bloodshed at Rome, App. *B.C.* 1.2; Vell. Pat. 2.3.3; Plut. *Ti. Gracch.* 20.1;
- 121 B.C. Activities of C. Gracchus, Dion. Hal. 2.11.3;
- 83 B.C. Return of Sulla's army from the East, Sall. *Cat.* 11.6;
- 66 B.C. Triumph of L. Licinius Lucullus over Mithridates, Ath. *Deipn.* 274e, 543a (Nicolaos the Peripatetic),
- 60 B.C. Formation of the 'First Triumvirate', (Cato Minor) Plut. *Caes.* 13, *Pomp.* 47. Commencement of Asinius Pollio's *Historiae*.
- 40 See especially Polyb. 31.25.3; 36.9.5f; 38.21.1; & 38.22.1 for Scipio Aemilianus' prediction on the fall of Rome.
- 41 See note 28 above and M. Gelzer 'Nasica s Widerspruch gegen die Zerstörung Karthagos' in *Philologus* 40 (1931), p.261f. On Cato's brutal determination to uproot Carthage, see F. Hampl 'Römische Politik in republikanischer Zeit' *Hist. Zeitschr.* 188 (1959) p.497f
- 42 Ath. *Deipn.* 274c
- 43 Sall. *prooemia* to *Cat.* & *Jug.* and *Jug.* 41, *Hist. frs.* 11-17 Maur.
- Attempts to pin down the exact source for his ideas have proved inconclusive. The general preference is for Poseidonius, e.g. L.R. Lind (1977), and H. Werner in *Der Untergang Roms. Studien zum Dekadenzproblem in der antiken Geistesgeschichte* (Stuttgart, 1939), ch.6. A. Grilli, however, prefers Antiochus of Ascalon, 'Cultura e filosofia nel proemio della 'Catilinaria' di Sallustio' in *Scripta Philologica* 3 (1982) 133-166.
- Others attribute the idea to Dicaearchus but, in my opinion, it is fruitless to speculate on the origin of an idea of such common currency.
- 44 Especially *Cat.* 10.6; *Jug.* 3.1f; 41.5; *Hist. fr.* 11.

- 45 Pliny *N.H.* 33.145; Diod. Sic.35.2.1; See Appian *Ill.5* (bribery); cp. Plut. *Galba.* 1.4-bribery and greed of the soldiers; held responsible for civil wars of A.D. 68; in general P. Jal (1963).
- 46 Varro *De Vit. Pop. Rom.* fr. 125 Rip.; *Rust.* 2.2.1.
- 47 Cic. *Verr.* II.2.3.7; 3.84.207; *Rep.* 5.1; *Font.* 42; *Fam.* 2.5.2; *cum luxuria nobis, cum amentia, cum scelere certandum est*, Cic. *Cat.*2.11.
- 48 See Cassius Dio 39.37.1f for the debate in 55 B.C.; 54.16.3 for 18 B.C..
- 49 It has plausibly been argued that the deep pessimism in Livy 1 *praef.* 9 and Horace *C.* 1.2.21 & 3.6.1 reflect the initial setback to this colossal programme of moral and social reform in 28 B.C. See the discussion of G. Williams in 'Poetry in the Moral Climate of Augustan Rome' in *JRS* 52 (1962), p.28f.
- Other perceptions of decadence in this period include Dion. Hal. 4.24.4; 10.7.6; 3.21.7; Diod. Sic. 31.26.2; 35.2.1; 37.3.1; in standards of craftsmanship, Vitruv. *De arch.* 7.5.7.
- 50 Tac. *Ann.*2.33; 3.52; 14.20.
- 51 *Ann.* 1.4; 1.54; 6.16; 14.15; 16.5; *Hist.* 2.37f; cp. *Ann.* 3.26; 3.65-6; *Hist.* 2.69; 2.73; 3.51.
- 52 Tac. *Ann.* 3.55.1f.
- 53 Vell. Pat. 2.1.1; 2.10.1; 2.11.3; 2.22.5.
- 54 Val. Max. 9.1.3; 4.3.7; 8.1.8; 9.1.6.
- 55 Columella *Rust.* 1. *praef.* 12f; 8.16.6; 12 *praef.*9; notice 10. *praef.* 1 for his conviction that *luxuria* had led to a deterioration in the diet of the Roman people.
- 56 Pliny *N.H.* 26.43; 33.148; 33.150; 35.162; 36.8; 36.113; 37.12; 22.14; 24.4; etc.
- 57 Another noteworthy example is the poem inset into Petr. *Sat.*119f; see Lucan *B.C.* 1.490f.
- 58 See W. Goffart 'Zosimus, the First Historian of Rome's Fall' in *AHR.* 76 (1971), 412-42.
- 59 On *avaritia* see the Elder Cato *Carmen de Moribus* 1; & fr. 26 *Malc.*, Sall. *Cat.* 5.8; 11.3; 52.7; 12.2; *Hist.* fr. 16 Maur.
- For *ambitio* see the Elder Cato frs. 139, 140 *Malc.*; Sall. *Cat.* 10.3; 10.5; *Iug.* 13.6; 15.2; 16.1; 28.1; 40.1;

Hist. fr. 11 Maur.

Fundamental political alternatives or even proposals to broaden the base of power were conspicuous for their absence. The activities of figures such as C. Gracchus or the damning criticisms of Sallust were highly exceptional and were fiercely rejected by the senatorial oligarchy. When political theory was discussed at all, e.g., by Polybius or by Cicero, the Roman constitution was described in almost Panglossian terms.

- 60 Pliny *N.H.* 15.19. For Greek loan-words see Varro *Rust. 2.intro. 1.2*; *Ling.* 5.133; 5.124; 5.168; 7.47; Diod. Sic. 31.26.5. Cp. Tac. *Ann.* 14.20 on *externa studia*.

Homosexuality was regarded by many as a quintessentially Greek practice. See Polyb. 31.25.3; Cic. *Tusc.* 4.70; 5.58; cited by R. Mac Mullen in 'Roman attitudes to Greek Love' *Historia* 31 (1982), p. 484f who explores the diversity of views on the subject but too readily accepts foreign influences as the source for this urge.

- 61 Plautus *Most.* 64; *Bacch.* 813;
- 62 Syria is blamed by Florus 1.47.7; Asia by Pliny *N.H.* 34.34; Varro *De Vit. Pop. Rom.* frs.112-3. Sallust *Cat.* 11.5.
- 63 See appendix 4.
- 64 Livy 1 *praef.* 1.11; 1.12.
- 65 Cic. *Rep.* 2.7; Livy 39.6.7 *luxuriae peregrina origo...* Strabo 7.3.7 observed that the morals of the Scythians were corrupted when they took to sea-faring; cp. Athen. *Deipn.* 526e.
- 66 Sall. *Cat.* 10.6; *Iug.* 41.9.
- 67 Pliny *N.H.* 33.148
- 68 For the conquering (*vincere*) of Roman *mores* see Pliny *N.H.* 36.8; Macrobian 3.13.6 for the all-conquering Romans' subjugation by luxury; Pliny *N.H.* 5.12 where luxury ransacks the forests for ivory and citrus wood. Sall. *Iug.* 31.9.
- 69 Cato *Carmen de moribus* 3; Sall. *Cat.* 12.1; Columella *Rust.* 8.16.6. Dion. Hal. 4.24.4.

Others suggested that *optimi mores* had grown out of use

- or out of date (*exolescere*), see Columella *Rust. 1.praef. 12; 12 praef. 10*; Augustus *Res Gestae 8.5*; Ygr. Pliny *Ep. 3.21*.
- 70 Plaut. *Trin. 30-1*; Varro *De Vit. Pop. Rom. fr.66 Rip.*
- 71 For *morbis* see Plaut. *Trin. 28*; for *pestes*, Livy 34.4.2.
- 72 Livy 38.17.18; 34.4.3; Sall. *Cat. 10.6; 36.5*; Petron. *Sat.119*; Plut. *Cat. Mai. 23*
- 73 For *insania* see Pliny *N.H. 13.91; 36.113*; for *furor* Pliny *N.H. 2.157*; Petron. *Sat. 119.39*.
- 74 See Corn. Nepos *Cato 2.3*; luxury ... *crescit in dies*. Pliny *N.H. 37.18*.
- 75 Plaut. *Trin. 30-1*.
- 76 Horace *Carm. 3.6.18*.
- 77 Contrast is immediately sparked with the prevalence of cyclical ideas and imagery in Greek thought. See appendix 1 Theories of Decline.
- 78 For *inclinare* see Pliny *N.H. 35.162*. His remark that morals were subsiding in Fenestella's day suggests that the process of decline was staggered. Notice also *N.H. 37.12*.
- 79 For *labari* see Livy 1 *praef. 9. Cp. Plut. Cat. Mai. 18.3*. For the idea of dilapidation see Petron. *Sat. 55*. On the limitations of the use of this metaphor, common in ancient and modern historiography see D.Kagan's introduction to the *Decline and Fall of the Roman Empire* (Boston, 1966).
- 80 Vell. Pat.¹ (2.1.1) figure of the morally vicious straying from the path of virtue implies a rectilinear conception of goodness.
The rate of deterioration is suggested by the word *praecipites*; Plaut. *Bacch. 1077*; Livy 1 *praef. 9*; Vell. Pat. 2.1.1; 2.10.1. Sall. *Hist. fr. 16 Maur. & n.16 above*. Cic. *Rep. 5.2f* likens the decline of morality in the Roman Republic to the fading colours of a beautiful painting.
- 81 This view is developed in H. H. Scullard *Roman Politics 220-150 B.C.* (Oxford, 1973), p. 113f.
- 82 See Plut. *Marc. 21.5* for criticisms of Marcellus' overfondness for Greek culture. Plut. *Cat. Mai. 3.7*; c.p. Varro *Rust. 2.1.1*. The wearing of Greek clothing such as

- the *chlamys*, *crepida*, *pallium* etc provoked censure throughout the Republic and early Empire, e.g. Livy 29.19.12; Cic. *Cat.* 2.2. Such diverse people as the Elder Scipio, Sulla and Catiline were criticised.
- 83 Pliny *N.H.* 29.14; 29.26-7; Plut. *Cat. Mai.* 23f.
On cooks, see Livy 39.6.7 and Cato Carm. de mor. 2;
 Pliny *N.H.* 9.67 and J. C. B. Lowe 'Cooks in Plautus' *Cl. Ant.* 4 (1985) 70.
- 84 Livy 39.8.1 ff. For the inscription of the letter of the two consuls of 186 B.C. see *CIL* I.² 581
- 85 Ath. *Deipn.* 547a-b.
- 86 Gell. *N.A.* 1.6.1ff.
- 87 Suet. *Rhet.* 1.
- 88 Plut. *Cat. Mai.* 22.2f; As H. H. Scullard (1973) p. 223-4 points out it was the scepticism of Carneades and especially the proposition that justice was merely a convention (reflected in Cic. *Rep.* 3.13) that alarmed the Roman aristocracy.
- 89 See Val. Max. 2.4.2; Vell. Pat. 1.15.3; Livy *Per.* 48; Oros. 4.21.4; Appian suggests that the theatre was pulled down in order to avoid new seditions and that the Romans might not become accustomed to Greek pleasures, *B.C.* 1.28. W. Hoffman (1960), p.338 suggests that the senate disapproved not so much of theatre-building in itself but the secularisation of art, i.e., loosening its connection with religious worship.
- 90 Val. Max. 1.3.3. For discussion of the two manuscript traditions see F.H. Cramer *Astrology in Roman Law and Politics* (Philadelphia, 1954), pp.234/5.
- 91 Pliny *N.H.* 29.27. Notice the Elder Cato's mocking of A. Postumius Albinus' apologetic introduction to his history composed in Greek. Plut. *Cat. Mai.* 12.5. Cp. Cic. *Rep.* 1.30 for correct uses of Greek philosophical learning.
- 92 Cic. *Verr. II.* 4.2.4; *contra Att.* 1.7. See *Arch.* 12f; *De Or.* 2.154-6.
- 93 Cassius Dio 57.15.2; 57.17.1.
- 94 See A. Momigliano in *Alien Wisdom; The Limits of Hellenization* (Cambridge, 1975) 13ff on the energetic attempts on the part of the Roman aristocracy to master Greek learning and practices.

- 95 Ennius *Annales* 156 Sk.
- 96 See n.80 above.
- 97 See H. Rech (1936) pp. 3-18. Tacitus' *Annales* 1.4 runs thus: *Igitur verso civitatis statu nihil usquam prisci et integri moris*. See also R. Syme *The Roman Revolution* (Oxford, 1939), p.315f.
- 98 H. W. Litchfield in 'National *Exempla Virtutis* in Roman Literature' in *H S C P* 25 (1914) 1-71 makes an extensive collection of references to these examples and on p. 62 he lists the known handbooks compiled in antiquity by scholars such as Varro, Nepos, C. Iulius Hyginus, Valerius Maximus etc. He also contrasts the status of the great patriotic heroes of the Roman Republic with that of the saints and martyrs of Judaeo-Christian religions.
- 99 For an interesting modern discussion of tradition, see E. Hobsbawm and T. Ranger ed. *The Invention of Tradition* (Cambridge, 1984) especially the introduction p. 2: '... the peculiarity of 'invented' traditions is that the continuity with it is largely factitious. In short, they are responses to novel situations which take the form of references to old situations...' See Cicero *Brut.* 61-2 & *Att.* 1.19.10 for the unreliability of the funeral eulogies; Livy 8.40.4 on the mendacious bias of family archives.
- 100 Livy, Dion. Hal. and Plut. *Lives* are the main sources for this tradition.
- 101 Precision is offered only by Livy 9.16.19: *haud dubie illa aetate, qua nulla virtutum feracior fuit, nemo unus erat vir [L. Papirius Cursor] quo magis innixa res Romana staret.* (319 B.C.) and by Plutarch *Cor.* 14.4 (425 B.C.).
- 102 E.g. Sallust *Hist.* fr.11 Maur.; Cicero *In Q. Caec.* 69; Plut. *Sulla* 12.7; *Paulus* 2.3; *Comp. Tim. et Paulus* 2.1; Macrob. *Sat.* 3.13.16. (Polybius 6.11ff held that the Roman constitution was at its peak during the Hannibalic War).
- 103 E.g. Dicaearchus. The most famous of all golden ages - the Saturnian age - is frequently mentioned in the poets, too. See Appendix 1.
- 104 E.g. Plut. *Cat. Mai.* 16.2-4.
- 105 Plut. *Cat. Mai.* 2f preserves the quaint story of his

- rejection of Samnite gold as he roasted turnips over a fire; Cic. *Sen.* 55; Val. Max. 4.3.5; Athen. *Deipn.* 419.
- 106 On his incorruptibility, see Cassius Dio 8.40; Dion. Hal. 19.15.1.
- 107 See Cassius Dio 5.23.2; Cic. *Sen.* 56; Dion. Hal. 10.17.4.
- 108 Livy 1 *praef.* 11: ... *aut nulla umquam res publica nec maior nec sanctior nec bonis exemplis ditior fuit, nec inquam civitatem tam serae avaritia luxuriaque inmigraverint, nec ubi tantus ac tam diu paupertati ac parsimoniae honos fuerit.*
- 109 *Agri. praef.* 2; cp. Columella *Rust.* 1. *praef.* 13 & 19.
- 110 Pliny *N.H.* 18.18 records that M'. Curius stigmatized as a dangerous citizen the man who was not satisfied with seven *iugera*. Columella 1 *praef.* 13 talks of four *iugera* farms; Val. Max. 4.4.6f. For Pliny (*N.H.* 18.7, two acres of land were deemed sufficient! Particular emphasis was laid on the influence of their Sabine ancestors who in turn were linked to the ancient Lacedaemonians. See Dion. Hal. 2.49; Cato fr. 69 *Malc.* For the ideology of the new men, see T.P. Wiseman *New Men in the Roman Senate* 139 B.C.-A.D. 14 (Oxford, 1971), esp. p.77f on the discrepancy between Roman attitudes and practice on socially acceptable methods of making money; & p.107f.
- 111 On their preference for *fictilia* (except for the *salinum* the silver salt-cellar) see Val. Max. 4.3.7; and the anecdote about Q. Aelius Tubero in Plut. *Paulus* 28.7. They were not averse to wealth so long as it was gained ... *bono modo...* (Pliny *N.H.* 7.139) e.g. by booty but *avaritia* was unheard of. The *loci classici* for frugality include Ath. *Deipn.* 274a (Poseidonius); Dion. Hal. 10.17.6.
- 112 E.g. Cic. *Nat. D.* 3.2; Camillus' speech in Livy 5.51.1ff. Public calamities were often explained in terms of divine displeasure while the Vestal Virgins were the objects of brutal expiation. On the so-called decline in religious belief and observance in the late Republic, see the judicious comments of J.A. North in 'Conservatism and Change in Roman Religion' in *PBSR* 44 1976, 1-12 and the balanced discussion of J. H. W. G. Liebeschuetz *Continuity and Change in Roman*

Religion (Oxford, 1979) esp. p.20f & p.51 for the dedication of temples and altars to public moral virtues from the mid fourth century onwards, e.g. *fides*, *honos*, *pietas*, *pudicitia*, *virtus*. *Fides* was especially important in a society where much was transacted according to convention, see D. C. Earl (1967). See also my comments in ch.7.

113 Columella *Rust.* 12 *praef.* 7-8 for the marital bliss of the early Romans. L. Annius and Spurius Carvilius were the earliest examples of divorce.

114 Polyb. 9.10.4.

115 Dion. Hal. 1.5.2; Plut. *Rom.* 28.2; Livy 1 *praef.* 9:
...*quae vita, qui mores fuerint, per quos viros quibusque artibus domi militiaeque et partum et auctum imperium sit;*

116 Pliny *N.H.* 7.130; cp. 7.139 for the ten most highly-prized qualities attributed to L. Caecilius Metellus by his son in a funeral oration.

D. C. Earl in *The Moral and Political Tradition of Rome* (London, 1967) pp. 20f & 35f emphasises two aspects of *virtus*, (1) its stress on actions and deeds; (2), its connection to the family and Republic. Although *virtus* may have originally denoted 'manliness', (cp. the Scipionic epitaphs), this concept, like so many, underwent considerable alteration and came to incorporate a whole cluster of positive moral attributes. New men such as the Elder Cato, Cicero and Marius stressed the personal nature of *virtus*, e.g. Sall. *Iug.* 85.4. See also T.P. Wiseman (1971), 107-116 on the tactics that new men adopted to break into the tightly-drawn political circle at Rome.

117 The Elder Cato frs.20, 120 *Malc.*; Sall. *Cat.* 7.4; 37.7; *Iug.* 4.3; 85.30.

118 The Elder Cato frs.23; 176; 69 *Malc.* Sall. *Cat.* 52.21; *Iug.* 1.2; 4.7; Val. Max. 8.7.1; Cic. *Rep.* 1.1.

119 Cic. *Off.* 2.84; the Elder Cato fr. 69 *Malc.*; Sall. *Cat.* 9.2; Cassius Hemina fr. 13 *Peter.*

120 Cic. *Verr.* II.1.101; *Tusc.* 3.16; 3.18; the Elder Cato fr. 173 *Malc.*; Varro *Rust.* 3.2.3.

- 121 Cic. *Verr.* II.4.115; Sall. *Cat.* 54.6; 12.2. It paralleled the Greek *σωσποσύνη* Ath. *Deipn.* 273.
- 122 Tremendous weight was placed on inherited factors. Moral qualities were transmitted automatically like genes from one generation to the next. As L. R. Lind (1979) p.52 pointed out 'The effects of *mos maiorum* were displayed most significantly in the senatorial tradition and its political life; *mos* had an immense power and enveloped the Senate in a nimbus of authority and prestige.' On how this value system of the aristocracy reinforced the warlike propensities and policies of the senate, see W.V. Harris *War and Imperialism in Republican Rome 327-70 B.C.* (Oxford, 1979) ch.1f.
- 123 Cic. *Sen.* 43; 75.
- 124 For the whole quotation see Lucilius 1333-38 Marx.
- 125 For *scorta* in Ancient Rome see Livy 2.18.2; on usury, Tac. *Ann.* 6.12.; On the tradition of Acca Larentia see Gell. *N.A.* 7.7.5-8.
- 126 On the trials of *matronae*, see chapter 5.
- 127 Note the assassination of the tribune Siccius by the supporters of the *Decemviri* in 447 B.C. in Dion. Hal. 11.25.2.
- 128 G. Pearson (1983) pp.205 quotes Gilbert Ryle *The Concept of Mind* (London, 1949) p.8 "To explode a myth is not to deny the facts but to re-allocate them." Cp. p.212f. Pearson suggests that to make sense of the 'Law and Order Myth' in contemporary Britain the facts of crime should be allocated in the historical "idiom of continuity" rather than in that of change. On my reservations about 'continuities' in history, n.13 chapter 1.
- 129 *The MacMillan Student Encyclopedia of Sociology* ed. M. Mann (London, 1983) has a valuable introductory entry on the concept of myth.
- 130 See 'Myth in Primitive Psychology' in *Magic, Science and Religion and other essays* (New York, 1954), 93-148.
- 131 On this aspect and other diverse elements in Roman mythology see M. Grant *Roman Myths* (London, 1971), ch.7.
- 132 The use of myth in contemporary societies as a tool to reinforce widespread compliance with manifestly iniquitous political orders has been penetratingly analysed by

J.M. Edelman (1964), 16-18. He highlights the unquestioned assumptions contained in myth as one of its distinctive features.

133 For a survey of this approach, see M. Krygier in 'Anthropological approaches' in *Law and Social Control* ed. E. Kamenka & A. Tay (London, 1980) p.28f who reviews early exponents such as Maine, Durkheim, Malinowski and highlights divergent anthropological positions. See also K. Ziegert 'A Sociologist's View' in the same volume.

134 An expression popularised by E. A. Ross *Social Control: a survey of the foundations of order* (Cleveland, 1901). In addition, see T. Parsons 'The Law and Social Control' in *Law and Sociology* (Glencoe, 1962) ed W.M. Evan 56-72; Roscoe Pound too is an eloquent exponent of this view, see *The Ideal Element in Law* (Calcutta, 1958).

The presumption that a partial or complete disintegration of society would result if legal restraints were not in place is contraverted by M. Krygier *op. cit.* p. 33 who points to studies of societies such as the Nuer in S. Sudan which have no formal legislative, judicial or administrative institutions. Instead there are '...highly intricate principles of kinship, locality, marriage and descent...' which yet manage to maintain 'a relatively ordered existence secured by alliances of groups ...and counter-alliances.' S. F. Nadel in 'Social Control and Self-Regulation' in *Social Forces* 31 (1952/3), p.265 has a sober discussion of other, non-legal forms of social control.

For ancient views on the indispensability of 'social control', see Cic. *Rep.* 1.49; *Leg.* 3.3; Polyb. 6.14.4.

135 Plut. *Nor.*157d 'Yes, for the law, my good sir, like a weaver, assigns to each of us so much as is fitting, reasonable and suitable.' Loeb trans.

Dion. Hal. 2.24.2 employs the nautical metaphor - a favourite in antiquity. Prudent law-making will ensure for the ship of state a safe and calm voyage.

136 E.g. Lord Devlin. R. Cotterrell *The Sociology of Law: An Introduction* (London, 1984) p.106 offers a perceptive critique of this position.

137 This also gives rise to the characterisation of law as a

'social contract', e.g. Arist. [*Rh. Al.*] 1422a:
νόμος δ' ἐστὶν ὁμολόγημα πόλεως κοινόν, διὰ γραμμάτων
προστίκτον πῶς χρὴ πράττειν ἕκαστα.

- 138 E.g. E. Kamenka & A. Tay (1980), p.14f.
- 139 Thus Pericles in Xen. *Mem.* 1.2.42.
- 140 R. Cotterrell (1984) p.10 criticises the arbitrary separation between fact and value.
- 141 For a useful corrective to this view and a sceptical appraisal of the possibilities of using the legal system as a redistributive mechanism see M. Galanter 'Why the "Haves" Come out ahead: Speculations on the Limits of Legal Change' *Law and Soc. Rev.* 9 1974, 95-160
- 142 Such ideas have enjoyed wide currency in this country because of the importance of the supposedly pragmatic nature of case-law judgements in the development of the English judicial system. Much attention is focused on 'survivals' but on this and related matters, see the incisive critique of H. Collins in *Marxism and Law* (Oxford, 1982) p.52f. *Contra*. E. Kamenka's insistence on the 'historical integrity' of law in *Law and Social Control* (London, 1980) ed. E. Kamenka & A. Tay, part 1.
- 143 Another influential approach has been to focus on 'trouble cases' see e.g. K. Llewellyn and E. A. Hoebel in *The Cheyenne Way* (Oklahoma, 1941).
- 144 K. Marx in 'Preface to a Contribution to the Critique of Political Economy' *M.E.S.W.* (3) 1.503 :
'The sum total of these relations of production constitutes the economic structure of society, the real foundation, on which rises a legal and political superstructure and to which correspond definite forms of social consciousness.' See also *Capital* vol. 3 p.793.
- 145 Despite later passages which may suggest a refinement of this position Marx, in my opinion, never retreated from his basic stand. However, see M. Cain and A. Hunt *Marx and Engels on Law* (New York, 1979) for a comprehensive collection of their writings on the subject and a good commentary. On p.49 they warn of the dangers of reductionism by which one element, the superstructure, is conceived as a necessary consequence of another, the base.
- 146 Louis Althusser, adopting a structuralist approach, dep-

icted society as consisting of a series of relatively autonomous layers - legal, economic and political - whose configuration is ultimately derived from the relations of production: see *Lire le Capital* (Paris, 1968) & *For Marx* (London, 1969). For a critique of his views, see M. Kelly 'Louis Althusser and the problems of a Marxist Theory of Structure' in *Proceedings of the Royal Irish Academy* 78 1978, 199-212. For an orthodox defence of the base/superstructure metaphor see G. A. Cohen *Karl Marx's Theory of History. A Defence* (Oxford, 1978) ch. 8.

147 So C. Sumner in *Reading Ideologies: an Investigation into the Marxist Theory of Ideology and Law* (London, 1979) 246f.

148 On the legal components of this nexus see R. A. Epstein in 'Private Property and the Public Domain' in *Ethics, Economics and the Law* (New York, 1982) J. R. Pennock and J. W. Chapman (eds.), who describes the nature of the law of property as being concerned with the ownership of specific things; the law of contracts as facilitating the transfer of the title of such property rights; the law of torts as safeguarding 'both the things reduced to ownership and the rights of transfer associated with those things from the unacceptable interference of others'.

K. Marx *Grundrisse* (London, 1973) p. 109 notes that modern capitalist production relations found legal expression in property relations whose content owes much to the laws of Ancient Rome. M. Weber, too, traced Roman Law as the source for the law of contract, a vital component of capitalism.

149 Criticised by H. Collins *Marxism and Law* (Oxford, 1982) p. 74f.

150 If reliability can be placed in ancient sources such as Appian *B. C. 1. 7* the activities of the rich Roman and Italian landed-proprietors were essentially illegal. The 1562 Statute of Artificers 5 Eliz 4 was designed to ensure a sufficient supply of labourers for husbandry and other apprenticeships through legal compulsion. In the seventeenth century, landowners were to transgress brutally the feudal rights of access to, and grazing on, common and pasture land. So, too, a *Lex Agraria* of second

century B.C. made land-holdings inalienable. App. B.C. 1.27.

151 See W.J. Chambliss & P. Seidman (1971), 73.

152 In 'Property, Authority and the Criminal Law' in Albion's Fatal Tree: Crime and Society in Eighteenth Century England ed. D. Hay et al: (London, 1975); p. 24f where he acutely observes that despite the proliferation of statutes enjoining capital sentences and the growth in the number of convictions for several categories of crime, there was no increase in the incidence of hangings. The power of the death sentence lay as much in its potential to instill fear and deference as in its actual application. Indeed, the ideology of law assumed some of the compelling, psychic aspects of religion. The discretion of pardon was merely an extension of the power of patronage.

153 The following scheme has been developed (with one significant variation) from R. Cotterrell's stimulating attempt to find a working concept of law (1984), p.46.

154 See J.M. Kelly *Roman Litigation* (Oxford, 1966) for an interesting examination of the deficiencies in the availability of legal remedy in Rome.

155 Especially important was its sanctification of property interests in land, thereby controlling access to the most important natural resource in antiquity. Its definition of the juridical standing of persons such as slaves freedmen, coloni, women etc had an important bearing on the supply of labour.

156

δοκεῖ δέ, φησὶν, ὁ νομοθέτης μέγιστον ὑποθέσθαι ταῖς πόλεσιν ἀγαθὸν τὴν ἐλευθερίαν· μόνην γὰρ ταύτην ἴδια ποιεῖν τῶν κτησαμένων τὰ ἀγαθὰ, τὰ δ' ἐν δουλείᾳ τῶν ἀρχόντων, ἀλλ' οὐχὶ τῶν ἀρχομένων εἶναι· τοῖς δ' ἔχουσι ταύτην φυλακῆς δεῖν· τὴν μὲν οὖν ὁμόνοιαν διχοστασίας αἰρομένης ἀπαντᾶν, ἢ γίνεται διὰ πλεονεξίαν καὶ τρυφήν· σαρρόνως γὰρ καὶ λιτῶς ζῶσιν ἅπασιν οὔτε φθόνον οὔθ' ὕβριν οὔτε μῖσος ἀπαντᾶν πρὸς τοὺς ὁμοίους·
Strabo 10.4.16

The context was Ephorus' discussion of Cretan legal codes.

157 For Aristotle's hostility to democratic states whose

eagerness to redistribute the property of the rich he deplored see *Pol.* 1281a and the comments of G.E.M. De Ste Croix *The Class Struggle in the Ancient Greek World* (London, 1981), p.76

158 Linguistically, their projection of how people ought to behave was expressed by verbs such as *oportere* contained in the concluding remarks of senatorial decrees. See the discussion of D. Daube *Forms of Roman Litigation* (Oxford, 1956), p. 8f

159 For the mode of operation of the *contiones* (informal assemblies) see Gell. *N.A.* 18.7; 13.6.1; the consuls and the praetors were empowered to break up any *comitiatus* or *contio*. So sensitive were the Roman authorities to the expression of divergent views on the subject of personal expenditure that the *prodigus* was forbidden to articulate his opinions on such occasions; Quint. *Inst.* 3.11.13.

160 For the symbolic elements in ritual activities and the importance of political 'settings', see J.M. Edelman (1964), p.16 & p.45.

161 I would characterise ideology as a discourse - a set of beliefs - which systematically attempts to further sectional interests within any social formation. (Adapting P. Beirne 1982, p. 60).

It is essentially goal-directive, seeking to orientate consciousness, and so conduct, around a set of common, if nebulously defined, objectives. It is often bifurcate in nature, elaborating a programme of actions and values to ensure the cohesion of group members, the immediate beneficiaries, and propagating other, though related, ideas to persuade a wider audience.

For a good discussion of Marx's evaluation of the term see *A Dictionary of Marxist Thought* s.v. ideology. On the concept of legitimation see ch.7.

III

THE SOCIO-ECONOMIC SIGNIFICANCE OF ROMAN SUMPTUARY LAWS

Fetters have been cast around you, citizens, which are in no way to be endured. You are bound and constricted by the bitter chains of servitude: for a law has been passed which orders you to be frugal. Let us throw off this injunction, encrusted with the rust of uncultured antiquity. For what is the use of freedom if those who so wish cannot ruin themselves by luxury? ' 1

So pronounced Marcus Duronius in his spirited derogation of the *Lex Licinia* whose repeal typified the fate of so many sumptuary laws.

It has become something of a commonplace to remark on their historical inefficacy. Neglect, transgression or the need for constant repetition argue, superficially, for their uselessness, for the absence of any serious social or economic significance. However, the persistence of this legislative phenomenon in a variety of states over such a wide historical span requires explanation. Their very ubiquity quickly dispels the myths of scholars like Montesquieu and Roscher who held that these laws were the product either of a particular type of constitution or of a stage in the cycle of a nation's economic evolution. 2

The fact is that different types of sumptuary legislation correspond to differences in political statecraft. Five broad categories, varying with regard to scope, objective or application, are discernible. A common form is the 'diacritical' sumptuary law which is designed to fix gradations within the social structure. Certain symbols are reserved for particular groups in the community - legal statute enjoining the exclusion of those whose economic, social or racial attributes disqualify entrance. Hierarchical ordering in one form or another is a feature of

most pre-industrial European societies. A second type is the 'flat-limit' restriction, often observable in states which are notionally republican but which are governed in practice by a tightly-knit oligarchy. In this case a maximum or 'ceiling' in respect of price or quantity is imposed on specified goods and services. Although no social category may be explicitly invoked in the text of the law,³ such a regulation is often designed to maintain the delicate balance of aristocratic power-sharing by bridling luxury spending.⁴ Thirdly, tyrants or dictatorial regimes may impose 'anti-ostentation' measures aimed at suppressing forms of display amongst leading families whose lavish expenditure threatened the preeminence of the monarchical figurehead.⁵ Enforcement is selective. While the autocrat might engage both in sumptuous popular largesse and in personal splendour the possibilities of, for instance, funerary luxury, costly banqueting are precluded to members of the aristocracy.⁶ In addition, there are 'austerity' measures, passed during periods of national calamity - wartime or pestilence - whereby consumer spending is rigorously curtailed in the interests of rationing, maintaining popular morale and so forth. Lastly, 'levelling' ordinances may be inspired from genuinely egalitarian motives. Such truly democratic or republican prescripts stem from a desire to remove artificial barriers and inherited privilege from the citizen body with the aim of extending personal rights and promoting greater equality. The entire absence of sumptuary laws can be equally as revealing. In industrialized West-European countries the concerted moves to abrogate such statutes marked the advent of capitalism and the progressive abandonment of coordinated economic planning. Variants or combinations of these types reflect shades of aristocratic, democratic or autocratic rule.⁷ Each restriction has to be located as far as is possible in its historical context for a complexity of immediate objectives, long-term calculations, intended or unforeseen consequences may be involved in its promulgation as this chapter seeks to demonstrate.

In Ancient Rome, a remarkable number and diversity of financial constraints are evidenced in the Republic, Princ-

ipate and late Empire alike. They attest to the recurring anxieties of government about the pace and direction of social development as manifested in changing or intensified wants and cultural innovation. However, there was no distinct body of *leges sumptuariae* - a term which was employed rather vaguely by ancient commentators.⁶⁹ In this thesis the phrase 'sumptuary law' is used to designate all those enactments which decisively influenced personal expenditure. Thus not only traditional categories such as limitations on modes of dress, transport, funerary outlay and convivial entertainment but also luxury tariffs, anti-dicing laws and so forth are included.

Social Considerations

Since the uneven distribution of material goods and services has invariably constituted a powerful basis for varying degrees of social advantage and prestige, it is clear that sumptuary regulations were interlocked with the root problems of inequality in ancient society.⁷⁰

The method followed in this chapter is to examine briefly those types of regulation which have a direct bearing on structural features. Then an attempt will be made to explore the complex nature of legal restriction by examining the interplay between various social forces and the formal framework imposed on Roman society.

A primary function of one important category of sumptuary regulation was the reinforcement, or even creation, of social divisions. Such legislation was used to differentiate between individuals or family groups by conferring an exclusive entitlement to a particular type of clothing, food, mode of transport (i.e. the most visible, outward manifestations of status), on the basis of specified criteria, e.g., lineage, occupation, property-ownership, magisterial office.

In seventeenth century Japan and Imperial China, and throughout Mediaeval England, such laws detailed minute gradations in the amount and type of consumption permissible to citizens according to their degree.⁷¹ In Rome of the

Republic and early Principate, although such overtly diacritical measures were less common - as far as our knowledge goes¹¹ - statutory privileges (*iura*) prescribing the monopolisation of distinctive attire, ornamentation etc displayed the basically hierarchical arrangement of juridically defined orders.¹²

Apparel, as one of the most immediate and striking indicators of social position, was subjected to legal regulation from an early period.¹³ Although little can be said for certain about the origin and nature of the ancient distinction between patrician and plebeian, one superficial difference survived in the crescent attached to the shoes which senators of the former rank might wear - a privilege which was later extended to all holders of curule office.¹⁴

Political and social preeminence was entrenched in these regulations. Members of the senatorial order were instantly recognisable by the broad purple stripe (*latus clavus*) woven onto their *tunica* while additional insignia helped to exhibit seniority in office or hereditary prestige within the aristocratic group. Curule officials were marked out by their purple-bordered outer garment (*toga praetexta*) - an honour which was explicitly conferred on the *tresviri epulones* by a *lex Licinia* of 196 B.C.¹⁵ - and were immortalised by the wax masks (*imagines*), bearing a close resemblance to their actual features, worn by actors at their funerals and those of distinguished members of their line.¹⁶ A passage in Polybius suggests that the censors, the official custodians of the morality of the Roman state, might have been clothed in full purple, if not during office then on their pyre.¹⁷

Originally of vital military importance as cavalry - perhaps known at first as *trossuli* - the *equites* sported the distinctive accoutrements of *trabae* and *mullei* while their horses were decked with *phalerae*.¹⁸ But it was the narrow purple stripe (*angustus clavus*) on their tunics which became the most obvious signifier of the *ordo equester* - the second most privileged order in Roman society. It was formally separated from the senatorial order, with which it continued to have close links at all levels, by the *plebiscitum equorum reddendorum* (c. 129 B.C.) which obliged senators to hand back their public horses.¹⁹ Although the origin of the

ius anuli aurei is unclear, it developed into a device of signal importance in marking off the senatorial and equestrian orders from other members of the Roman populace. In theory too, the toga itself was the mark of a *civis Romanus* which differentiated his status from that of a *peregrinus* or *dedificius* but in practice it was difficult to discern the difference between members of the Roman plebs and slaves.²⁰ Prominent individuals who had been forced into exile adopted the Greek *pallium* as they were denied the *ius togae*.²¹

The Roman authorities made concerted attempts to check the general adoption of purple cloth, which seems to have become particularly fashionable in the first century B.C. especially in its more vivid, reddish coloration.²² Augustus, who had restricted the use of this colour to higher magistrates while triumvir in 36 B.C., is recorded to have complained to his tailor when the clothes he had ordered appeared to him too dark a shade of purple.²³ While Tiberius was content to set an example, Nero issued a sumptuary edict prohibiting the widespread use of Tyrian and amethystine dyes, reserving it exclusively for imperial use.²⁴

Dress-regulation can be employed to achieve a variety of ends. Indeed it has often been employed to push people into disreputable as well as illustrious categories. One interesting aspect is the historical use of sumptuary law to marginalise groups like courtesans or actors whose existence was tolerated but carefully circumscribed, so as not to disturb the integrity of important social relationships such as family units so crucial to the stability of patrilineally organised communities. In the city-states of Magna Graecia, e.g. Syracuse and Locri, statutes forbade any honourable woman from wearing gold ornament and gaily-coloured or purple embroidered garments, the hallmarks of a prostitute. In short, it was felt desirable to enforce a clear distinction between *meretrices* and *matronae*.²⁵ There may have been an element of this in Julius Caesar's sumptuary restrictions concerning the wearing of scarlet robes and pearls by women, otherwise unexplained in the sources. Conversely, as Diane Owen Hughes has observed in the case of

certain civic authorities in Renaissance Italy, expensive fashions might be deliberately conferred on prostitutes in the hope that the powerful social *mores* of modesty and shame might help to restrain other women from the adoption of ostentatious or garish attire.²⁶

On occasions the Roman government attempted to direct the whole mood of the state. Communal merry-making or grief were enjoined as part of a policy. Cassius Dio relates that the triumvirate enforced the celebration of Julius Caesar's birthday by compelling people to wear laurel and appear cheerful.²⁷ Everyday customs might be affected. For instance in 30 B.C. the senate decreed that a libation was to be poured in honour of Augustus at all banquets, public and private. On the other hand, citizens were obliged to adopt mourning garb for set periods. An inscription from the cenotaph of Gaius Caesar at Pisa records details of dress regulations and the closure of taverns and public baths.²⁸ Predictably, universal mourning was enjoined on the death of Augustus.²⁹

Conversely, political protest might surface in the form of unfashionable apparel or habits. Thrasea Paetus' conspicuous display of old-world severity was interpreted as a jibe at Nero.³⁰ In other epochs too disaffected nobility have deliberately opted for austerity and even marasmus. The curious behaviour of the Lithuanian aristocracy in the last century who chose dilapidation rather than ostentation has been the subject of scholarly investigation.³¹

The standing of the *matrona* in Ancient Rome was enhanced positively in a variety of ways. Tradition records that the senate bestowed privileges in personal transport on matrons from an early period. Livy and Diodorus Siculus relate how, as an act of gratitude for their contribution of jewellery for the public good in the 390's B.C., a senatorial decree allowed them to ride in a four-wheeled carriage (*piletum*) to *sacra* and a two-wheeled vehicle (*carpentum*) on *festi* and *profesti dies*.³² This privilege was temporarily suspended during the austere days of the Hannibalic war by the *lex Oppia* (215 B.C.)³³ At a later date, women of a notorious character were debarred from travelling in a *lectica*.³⁴ In Horace's survey of debauchery in *Satires* 1.2, the varying

targets of male lubricity are indicated metonymically, so well-established was a woman's *habitus* as a pointer to her social status. The *stola*, a long robe usually in white, which covered the body from neck to ankle, was the mark *par excellence* of a *matrona* although freedwomen of outstanding character might be permitted this dress too.³⁵ *Meretrices* were *togatae*.³⁶

Accordingly, this type of sumptuary law, in the shape of a *ius*, served to give concrete expression to fundamental, formally imposed structural inequalities.

leges teatrales

Other legal means were at hand to make visible divisions within the Roman populace. The Elder Scipio is said to have had second thoughts when, on his suggestion, the senators were segregated from the people for the first time at the *ludi Romani*. (194 B.C.). As Livy, the source for this information recognised, this sort of discrimination was double-edged. In proportion as it enhanced senatorial prestige, so it detracted from the dignity of the Roman populace. National solidarity or even *libertas* might be impaired.³⁷ This measure was a forerunner of a series of statutes on the seating arrangements at public shows and, as K. Hopkins has pointed out, the history of this type of segregation reflects the increasing 'stratification' within Roman society.³⁸ It testifies to the growing economic and political strength of emergent social groups.

In a celebrated act, a tribune of 67 B.C., L. Roscius Otho, who was probably re-enacting previous legislation repealed by Sulla, conferred on the equestrian order the signal privilege of occupying the first fourteen rows (*quattuordecim ordines*) of *subsellia*, immediately behind the orchestra where the senatorial members sat, at theatrical entertainments.³⁹ A Iulian law of uncertain date assigned separate sections to a plurality of categories.⁴⁰ Suetonius records that a *decretum patrum* ensured the senators the first row at public shows in any region, while at Rome Augustus separated the soldiers from the civilians, married

men from bachelors and assigned special seats for boys (whose paedagogues were in an adjacent block) and for Vestal Virgins.⁴¹ Women were debarred from watching athletic contests and restricted to observing gladiatorial combats from the upper-most benches. Augustus might view the proceedings from the gazebo of his imperial box (*pulvinar*).⁴² Claudius and Nero are both credited with the innovation of allotting a special section to the senators at the Circensian games.⁴³

Once this distinction had become established promiscuous mingling of the Roman populace was held to menace the very morality of the state. Augustus put an end to the *confusissimus ac solutissimus mos* of mixed viewing at the games by the restrictions mentioned above while his touchiness at the possible contamination of the senatorial order by contact with foreign envoys of mean birth led him to exclude the latter group completely from the orchestra.⁴⁴ But throughout the first century A.D. the privilege of the first fourteen rows became an especial target of symbolic usurpation.⁴⁵ It might be wondered why so much controversy should have arisen over details of seating arrangements at what were, after all, simply leisure activities provided for common enjoyment. One aspect is the very visibility of social gradations that was displayed on such occasions. For those who perceive themselves to be socially superior, the mere possession of a privilege is not enough. An honour requires to be offset by its corollary - lack of privilege. A select vantage-ground offered the snobbish ample points of comparison with other, less fortunate members of the Roman populace. Hence the strenuous efforts to usurp this equestrian privilege on the part of those like wealthy freedmen who were legally incapacitated.⁴⁶

What were the implications of all this legislative activity? Its principal objective is not hard to define - the careful ranking of citizens according to a complex blend of factors, principally property-ownership although lineage was a factor in certain circumstances. Tangible and psychological barriers were erected to remind citizens of their place and role in society. This type of segmentation,

by fragmenting solidarity amongst the mass of people, facilitated the operation of the rule of the few in their endeavour to instill deference and obedience to their authority. Distinctions between social groups are a perennial source of friction, engendering all sorts of divergent rivalries and conflicts which often divert attention from the salient sources of inequality in society. It should be remembered that some of the most serious outbreaks of violence in Roman Italy during the late Republic took the form not of a revolutionary struggle but of a competition for either existing privileges, e.g., *civitas* or its basis - land ownership. Movement between the orders was permitted but strictly regulated at Rome. The authorities stepped in decisively to marshal the boundaries between the orders when powerful social pressures tended towards heterogeneity. As a rule, intergenerational mobility was preferred in the case of those entering the citizen body where the Roman government operated a relatively generous policy - ex-slaves being eligible for *civitas* with voting rights but suffering exclusion from political office.⁴⁷ During the early Principate the increasing incidence of manumission led to the formation of new legal categories for emancipated people and to stringent restrictions on the capacity of masters to free their slaves.⁴⁸ Nor was the aristocracy itself impenetrable to the outsider. Radical perspectives on social mobility have emphasised the conservative implications of the limited opportunities for advancement offered in modern capitalist societies whereby apparently meritocratic recruitment is used both to improve the efficiency of political and economic institutions and to diminish class antagonisms.⁴⁹ Indeed social mobility, far from mitigating gross disparities in economic conditions and political representation serves to reinforce, both physically and ideologically, iniquitous regimes. Artificial targets are constructed which help to obfuscate the pressing need for progress in other areas. Immobility is the norm.

However, the formal separation of the Roman people into a hierarchical arrangement of juridically defined orders entailed a complexity of difficulties for the authorities.

Indeed many sumptuary laws were promulgated to tackle problems which were endemic to the very structure of Roman society. Social boundaries might be easily drawn by legal statute but policing them was an altogether different matter. Consumption patterns might be supervised with extreme difficulty, but the rate of wealth accumulation, the ultimate determinant of social position, proved even more intractable.

Foremost was the formidable task of preserving a positive correlation between status and expenditure throughout society.

Social imitation is a behavioural phenomenon widely observable in almost every society. During the late Republic, by far the majority of extant sumptuary laws were of the 'flat limit' type, laying down guidelines which were purportedly to be observed by all citizens. In fact many were designed to cope with intra-group emulation amongst the aristocracy by curtailing outlandish standards of extravagance. In conjunction with a spate of other restrictions on the provision of public entertainment and canvassing expenses, these measures fulfilled the acute need for regulation felt by the senatorial order during the period of intense political rivalry that imperial expansion promoted.⁵⁰

Vying with one's peers was only one dimension of the problem perplexing ancient authorities. Imitation of the outward signs of the more highly privileged by the less favoured groups is a common occurrence in sharply graded societies.⁵¹ Any serious disjuncture between the possession of wealth and social position was manifested in the rejection of normal societal restraints - illegal assumption of symbols was one effect, another graver consequence was political unrest. Suppression of the wealthy parvenu was only part of the problem. Emblematic usurpation was a danger besetting all social orders. In periods of swift economic change, old distinctions between groups often become blurred. Illicit mobility might be checked in several ways. Readjustments to the timocratic structure was one;⁵² another

strategy involved raising the thresholds of consumer spending on luxury goods;⁵³ a third involved aggressive enforcement of legal restraint.

In the early Principate, for instance, intense senatorial clamour for sumptuary restraint was provoked by the combined effect of its diminished political importance and the elevation to influential secretarial posts of slaves and freedmen - a group, moreover, whose administrative skills and business acumen commanded large fortunes.⁵⁴ They demanded and got regulations on a whole series of objects of conspicuous expenditure, on participation in gladiatorial games, on insignia of order (especially the gold ring), reserved seating at public spectacles, i.e., in all the most tangible signs of a status that was in such danger of erosion. Similarly, restraints on high rates of manumission which graduated entry into the citizen body may have been designed to counter popular disapproval on the cheapening of privilege. In general these laws would also regulate inordinate aspirations and expectations whose unfulfilment might lead to further tensions or dissatisfactions.⁵⁵

Roman politicians were quick to exploit the electoral advantages that bestowing block favours could bring. Periodically, censors (an early example is Appius Claudius Caecus) attempted to redistribute the urban landless amongst all the tribes or to admit the sons of freedmen into the senate. The plebeian tribunes C. Gracchus and L. Roscius were noted for their sympathy towards the *equites* while Sulla and Julius Caesar used their power to attenuate the standing of that order.⁵⁶

One interesting angle on the possible motivations of the Roman sumptuary lawgiver is provided by what David Daube has termed 'the protection of the non-tipper'. On this view, Augustan restraint on testamentary manumission, Sullan restriction on the standing of surety and most of the major anti-luxury statutes of the second century B.C., while ostensibly being designed to protect the generous from the effects of their own liberality, were really motivated by a desire to shield the miserly.⁵⁷ Laws arrested the development of social customs which threatened to enjoin

gratuities as a matter of course rather than depending on the special benevolence of the giver.

Livy, in his dramatic narrative on the repeal of the *Lex Oppia* concerning feminine extravagance attributed to the Elder Cato sentiments emphasizing the attractions of prohibitions which relieved citizens equally of the fear of being considered stingy and of the danger of impoverishment:

'The keenest shame is that which stems from meanness or poverty; however, this law frees you from both since you do not have what is not permitted to you to have.'⁵⁰

Cato queries the justification for female ostentation: 'Is it your desire to begin a tournament amongst your wives, citizens, in order that the rich may possess what no other women may have, while the hard-up, lest they be scorned for their poverty, spend beyond their means?'.⁵¹

However, this view should not be pushed too far. As Diane Owen-Hughes perceptively noted in her discussion on sumptuary laws in Renaissance Italy, the authorities were well aware of fashion as a device of differentiation.⁵² While most fifteenth century preambles to Italian laws might lament that women were the ruin of men, legislators knew that splendour in female clothing and ornamentation could reflect their own privileged status. It was when fashions became too ludicrous or inordinately expensive that they began to lose their emblematic significance and threatened the cohesion of privileged groups. In such cases uniformity in dress amongst certain social categories, often facilitated by the *iura* discussed above, promoted integration as well as being a useful anti-tipping device.

I feel that this non-tipping interpretation is especially relevant to those measures, like the Publician and Cincian laws, which regulated such socially delicate matters as gift-exchange - transactions which most tellingly reveal those who can afford but are reluctant. If there is any truth in the glimpses that Polybius offers us of the tight-fisted nature of the Roman aristocracy, avoidance of uncomfortable personal embarrassment may have been a powerful element here.⁵³

Subject communities too welcomed the release from onerous obligations to compliment eminent persons or Roman state-

officials.⁶² The fact is there must always have been a multiplicity of factors, immediate circumstances and longer-term objectives which lay behind each rogation.

Perceptions of inequality both in absolute terms and in respect of a worsening position relative to other members or groups in the community could occasion serious social tensions. One major problem for ancient city-state authorities was the containment of envy. Prejudice might be awakened both amongst aristocratic circles by threats to their traditional preeminence or amongst lesser privileged groups unsettled either by their increasing disparity of condition with respect to those traditionally more fortunate or by the newly-found prosperity of hitherto disadvantaged, proximate social groups. Indeed, as H. Schoeck has pointed out, envy is most prominent among groups which are socially propinquous.⁶³ Furthermore, it is an emotion which is aggravated as much by an inability to compete as by a sense of inferiority with the persons against whom the malevolence is directed. The opulence and prosperity of the successful is made unpalatable by the combination of unattainable desires and acute destitution.

Diodorus Siculus, perhaps following Poseidonius, criticised the luxury and cruelty of the Sicilian landlords as being responsible for exacerbating the envy of the poor, which he likened to a gnawing cancer - proof of which was strikingly revealed in the Servile war.

When these great many troubles fell upon the Sicilians, the common people were not only unsympathetic, but actually gloated over their [the Sicilian landlords'] plight, being envious because of the inequality in their respective lots, and the disparity in their modes of life...the populace, making the runaway slaves a pretext, made sallies into the country and with the malice of envy not only plundered the estates but set fire to the buildings as well.⁶⁴

Loeb trans. of Diod. Siculus 34/5.2.48.

Vulgar displays of wealth offended against canons of good taste but there may have been other, more compelling, reasons for discreet refinement. Plutarch observed that the reckless

extravagance of people like Lucullus was reminiscent of the newly enriched and excited popular envy. Magnates like Sulla and Crassus dedicated a tenth of their fortunes to Hercules. Yet these grand gestures of public largesse may have been designed as much to reduce odium of their riches in the opinion of their fellow citizens as to court popular favour.⁶⁵ In the case of Sulla, the resentment was aggravated by the contrast between the poverty of his youth and the enormous riches he later amassed. 'How can you, who have acquired so much although your father left you nothing, be an honest man?' queried a Roman nobleman.⁶⁶ Sudden wealth provoked intense suspicion in the Roman mind.

Do not, by always making our fare more ample than lentils throw us all into discord.

Loeb trans. of Crates apud Plut. *Mor.* 125f.

The iocose admonition of Crates testifies to the perspicacity of Greek political theorists, ever alert to the grave implications of luxury which they identified as a prime source of political instability and authoritarianism.

The Greek historian Ephorus praised the prudence of the Cretan legislators for taking steps to eradicate greed and luxury which he identified as the root causes of dissension in society: "...for when all live in a temperate and simple fashion there occurs neither envy nor insolence nor hatred against those who are like them."⁶⁷

Criticism of ὕβρις was usually couched in terms of mitigating divine anger but legislation could be counted upon where ideology failed.⁶⁸

In a perceptive discussion on the potency of *invidia*, Cicero recognised that it was an emotion that required as much strength to repress as to evoke: 'Now people are especially jealous of their equals, or of those once beneath them, when they feel themselves left behind and fret at the others' upward flight.'⁶⁹ Indeed Roman attitudes towards the success of people whom they perceive to be in some way socially inferior is strikingly revealed in the poetry of

the early Principate. Nowhere is this resentment between proximate social groups more virulent than in the satires of Juvenal and of Horace, who was himself the object of considerable spite.⁷⁰ The theme of the poor Roman citizen ousted by the corrupting riches of an immigrant Crispinus or a servile pander supplies the cutting edge to much of Juvenal's writings.⁷¹ Social prejudice surfaces in Horace's *epode* 4 where the upstart is reminded that: *licet superbus ambules pecunia, fortuna non mutat genus.*⁷²

In the early Empire the problem had become inflamed partly because of the diminution in the value of civic honours and duties, consequent upon the elimination of the *comitia* and partly because of the spectacular advance of freedmen either through prestigious appointments in the Imperial civil service⁷³ or in financially remunerative positions, access to which was debarred to the Roman citizen who, in general, lacked the requisite skill, inclination or favour. Accordingly, the authorities' desire to maintain a reasonably stable social structure coincided with a groundswell of opinion demanding the preservation of privilege and the profit-capping of lucrative professions.

In times of national crisis reduction of these tensions was a necessity. During the Hannibalic war we know of several statutes, e.g., the *lex Metilia de fullonibus* and the far-reaching *lex Oppia* on female luxury which, I believe, should be largely interpreted in this light - the authorities fearing perhaps lest another outburst like that of Claudia in 246 B.C. might prove to be the final straw for a hard-pressed populace.⁷⁴ After the disaster of the Pontine Forks senators temporarily abandoned the use of the purple-striped tunic and feasts and marriages were banned for a year.⁷⁵

Interestingly jealousy is felt to be quenched if it can be established that one's prosperity or superiority was the product of *virtus*.⁷⁶ In fact a hierarchy of moral worth was projected in tandem with gradations in the social structure. The apex was occupied by the senatorial aristocracy, the *optimi*, whose *boni mores* set them apart from the general run of men and whose membership was to be recruited, according to the *lex Ovinia*:...*ut censores ex omni ordine optimum*

*quemque curiatim in senatum legerent.*⁷⁷ Certain types of *quaestus* were given a decidedly negative moral rating. The *Tabula Heracleensis* contained clauses debarring from local magistracy auctioneers (*praeconia*), beadles (*dissignationes*) and undertakers (*libitinae*)⁷⁸ as well as the familiar categories of prostitutes (*queiue corpore quaestum fecit fecerit*), procurers (*lenones*), trainers of gladiators (*lanistae*) and those who had performed in *ars ludicra*.⁷⁹ The *senatus consultum de Larino* penalised those who:

5 ...*contra dignitatem ordinis sui in scaenam ludumule*
prodirent operasue suas local

6 [*rent*]...⁸⁰

Libertini were specifically excluded from the ranks of the decurionate by the *lex Visellia de libertinis* of A.D. 24⁸¹

Ostensibly senators were supposed to eschew sordid money-making pursuits as the *lex Claudia* and a clause in the *lex Acilia* makes clear.⁸² Perhaps the censors indicated a person's *quaestus* at his registration.⁸³

Distinctions of moral worth were even preserved amongst bankrupts. *Decoectores*, those from highly-privileged orders who had lost their patrimonies through no fault of their own, were assigned a special seating area at the theatre to distinguish them from the profligate.⁸⁴

It is worthwhile considering strategies that governments of other epochs are known to have pursued with regard to luxury consumption in order to shed light on the activities of Roman authorities about whose motives the historical record is largely silent. Regulation of high spending patterns was often used as a device to maintain distance between social groups. But luxury spending was not always curtailed. It might even be heightened to increase the political dependency of certain social groups on central authority. Louis XIV, for instance, astutely manipulated the fashions and expenditure habits of the French nobility in order both to weaken its independence and to strengthen the rivalry between the estates of the bourgeoisie and the aristocracy.⁸⁵ Regal patronage was extended as many families

succumbed to the financial pressures, unable to reduce their consumption habits for fear of disgrace on the one hand, while unable to engage in remunerative commercial enterprises on the other for similar reasons. The regent's prerogative of ennobling nouveaux riches and of ailing-out impoverished nobility gave him a high degree of control over social mobility and access to positions of influence. Is there any evidence that the imperial administration of the early Principate adopted similar tactics in its political rivalry with members of the old Roman aristocracy? Some ancient commentators detected an indifference, if not a reluctance, on the part of Tiberius to respond to senatorial pleas for sweeping sumptuary restraint. Conflict between the emperor and vestiges of the Roman nobility was serious at times. During the early Principate the authorities progressively raised the senatorial census causing many families to fall back on imperial favour which was not always forthcoming. This factor undoubtedly gave the emperors significant political leverage.²⁶

It is conceivable that some sumptuary laws and anti-tipping measures might be imposed for genuinely egalitarian reasons. One thinks of the Lycurgan rhetra, the prudent endeavours of the ancient Cretan lawgivers, contemporary East European codes or the tragically short-lived outburst of popular enthusiasm in Republican Barcelona in 1936 when tipping was prohibited by law and deferential bonds and gestures were renounced.²⁷ Devout religious orders decry distinguishing marks. Above all, the ancient Essenes, who renounced all forms of private ownership, promoted equality and virtue amongst their brethren by uniformity in dress, common messes, anti-gift laws and the wholesale suppression of market mechanisms.²⁸ But in ancient Rome there was no such attempt at *exaequatio*, no attempt at bridging the glaring gulf between rich and poor or at levelling social distinctions as Polyarchus claims was the motive behind the Pythagorean inspired codes of South Italy.

Law and Social Practice

One of the striking features about public intervention in Ancient Rome was the consciously archaising purpose with which it was expedited. While most governments have been content to arrest or to contain those social practices that it considered deleterious, the Roman authorities took the process a stage further. An explicit appeal was made to past customs both as a justification for imposition and as a policy goal. They openly sought to restore obsolescent values. Such an ambitious programme prompts summary consideration of several questions: how did classical authors view the delicate relationship between law and morality? to what extent did law modify behaviour and attitudes? what circumstances were propitious for the success or failure of legal restraint? how accurate an indicator of wider social and economic changes is the history of social legislation?

The overriding assumption of classical authors was that legal injunction ensued from, indeed was provoked by, injurious alterations in social behaviour. "Bad habits breed good laws" was a favourite maxim of Roman legal commentators.⁸⁹ Vices required correction:

sic oratorum licentia Cinciam rogationem, candidatorum ambitus Iulias leges, magistratuum avaritia Calpurnia scita pepererunt; nam culpa quam poena tempore prior, emendari quam peccare posterius est.

Tacitus *Annales* 15.20.

Tacitus' excursus on the sociology of law (*Ann.* 3.26-9) incorporates many assumptions that were general amongst classical commentators. Primordial man, he held, being innately virtuous, required no legal supervision.⁹⁰ But once equality had been laid to one side, and moderation and propriety had been supplanted by ambition and force, despotic regimes abounded. In the case of Ancient Rome the Twelve Tables were the last examples of fair regulation.

Thereafter political self-seeking prevailed. The proliferation of laws marked the degeneracy of the state.³¹

Response to moral atrophy rather than active pursuit of self-interest was indicated. Sumptuary laws conformed to this pattern.

Few adopted a neutral stance: that what had altered was not human nature as such but the economic and social context in which personal conduct was located; that a quantum increase in the wealth of the state, consequent upon sustained imperial expansion, offered wider opportunities for the satisfaction of basic human propensities and aspirations which straitened circumstances had hitherto precluded; that the growing taste for comforts and luxuries might argue more for a deep-rooted drive for material and social advancement than rampant avarice, ambition or libidinosity. Divergent was the opinion of Asinius Gallus who, in a famous rejoinder to calls for severe sumptuary restraint, expounded on the relative nature of luxury. Personal opulence should be adjudged according to the economic criteria of the age.³² Aulus Gellius, too, recognised that there was no absolute standard of wealth but while he was alert to the influence of social and political factors on the framing of statutes (which like the aspect of the sky and sea, varied according to the seasons of circumstances and fortune) he clung to the characterisation of law as a moral cure.³³ Exceptional was the assertion of Seneca who could detect neither progress nor deterioration in social morality:

itaque sic finiamus, ne in nostro saeculo culpa subsidat. hoc maiores nostri questi sunt, hoc nos querimus, hoc posterī nostri querentur, eversos mores, regnare nequitiam, in deterius res humanas et omne nefas labi. at ista eodem stant loco stabuntque, paulum dumtaxat ultra aut citra mota, ut fluctus, quos aestus accedens longius extulit, recedens interiore litorum vestigio tenuit.

Seneca Ben. 1.10.1.

Save for fluctuations in fashion, depravity was a perennial feature of human society.³⁴

Unique was the insight of Polyarchus who divined that lawgivers might be concerned to construct a whole value-system in pursuit of ulterior objectives.³⁵

When ruling bodies actively seek to amend social manners a conflict between law and custom arises. Unfortunately, with the limited data at the ancient historian's disposal, it is impossible to make any confident assertions about how this conflict was resolved.³⁶ Did these enactments generate the desired changes in popular morality and conduct? Were they effectual even amongst the highly privileged sectors of society who were most nearly affected by them? Generalisations are problematic. Research into specific areas of control suggest that the legislator's efforts were often frustrated if not counterproductive.

Regulation of private expenditure formed the major target of sumptuary legislators but nowhere is the clumsiness of the judicial apparatus more apparent than in its attempt to grapple with the formidable intricacies of consumer behaviour. Indeed as a character in one of Franco Sacchetti's *Novelle* comments, in relation to sumptuary restraint in Renaissance Italy, legal imposition may have stimulated innovation and stylistic ingenuity.³⁷ In Ancient Rome the increased minuteness in detail of restrictions on, for instance, *luxus mensae* may in itself have been suggestive of invention. Legal elaboration was countered by further attempts at evasion. Other types of response led to unforeseen results. For example, as a consequence of legal enactment the knights' dignity became epitomised as much in the possession and exercise of prominent distinctions such as the gold ring or highly-prized vantage-points at public shows as in the attainment of the requisite property qualification. These visible honours became the target of usurpation on the part of those who were legally disadvantaged with little hope of remedy in their life-time. The law itself had become the focus of dispute. Far from clarifying boundaries between the social orders it had provoked increased competition and imitation, unleashing fierce social tensions and rivalries amongst proximate social groups. Indeed, perceptive statesmen and observers in antiquity were sensitive to the limitations of using legislation to engineer a change in social *mores*. The emperor Tiberius, for instance, anxious to avoid public

odium at excessive, heavy-handed intervention into personal affairs and aware of the dismal record of past sumptuary checks, promoted the benefits of private over public correction of morals.¹⁰³

Can it be argued, then, that such measures, paradoxically, far from retaining traditional practices or even forestalling social developments, provided a spur for further change? While it is true that peripheral developments did result from over-hasty statutory restraint, the initial impetus for alterations in social and economic practice should not be sought in the operation of law. As has already been noted, momentous economic transformations often occur in defiance of established legal precepts.¹⁰⁴ Many types of governmental intervention into popular morality take the form of reactions to pressing challenges to the status quo.

The efficacy of the social reformer will depend on a number of factors. Popular concurrence with the aims of the legislator is obviously crucial. General disapproval swiftly leads to dead-letter laws. Practicable enforcement procedures and suitable sanctions are indispensable. Adroit framing of statutes and the incentive to adopt alternative forms of behaviour are other considerations. But some areas of human activity are, by their very nature, impracticable to police. The perplexities of legislating on questions of consumer behaviour was recognised by Plato. He likened the process of emending the host of petty regulations governing commercial transactions to "cutting off the heads of a hydra."¹⁰⁵

Even more questionable is the assumption that a greater incidence of legal activity necessarily mirrors an acceleration in the pace of social change. Although the intensification or repetition of controls is always of considerable significance it is better regarded as an accurate barometer of governmental anxiety. Thus, in the early Empire imperial insistence on the suppression of astrologers, magicians, philosophers and so forth need suggest not so much a sudden wave of religious fervour sweeping over the Roman populace but a greater authoritarianism with regard to questions of knowledge and

belief. Political initiative rather than mere response might be recorded. Of course governmental intervention is often sparked by salient types of social change. For instance, in the late Empire the proliferation of barriers to mobility testifies to a considerable degree of movement amongst the population rather than a fixed social structure. In sum, as R. MacMullen correctly observed, the content of these legal rules reflect the frustrated intentions of the policymakers rather than social reality.¹⁰¹

Aspects of Consumer Behaviour

Over the last century, many sociologists have sought to highlight the importance of expenditure patterns in their analysis of social structure and change. For Thorstein Veblen, conspicuous consumption and the conspicuous use of leisure time testified both to an individual's claim to a superior standing and to the honorific value of wealth in a pecuniary culture and helped to give rise to invidious distinctions within society.¹⁰² Another highly influential theorist, Max Weber, stressed the importance of status and the striving for social honour in determining men's behaviour, especially in connection with the classical world.¹⁰³

Accordingly, attention has been focused on an examination of status defining life-styles. Different social categories are characterised and separated by different standards of expenditure, leisure activities, modes of speech and other behavioural patterns.¹⁰⁴ Economists have discerned distinctive types of consumer behaviour. Conspicuous consumption occurs where the demand for a product is increased because it carries a higher rather than a lower price.¹⁰⁵ In some cases the demand for a good can be increased due to the fact that many other people are consuming the same commodity, in marketing terminology the 'demonstration' or 'bandwagon' effect, while the extent to which the demand for a consumer good is increased because few people purchase it - the desire to be exclusive - is termed the 'snob' effect.¹⁰⁶ Obviously there are crucial

differences between Ancient Rome and modern consumer societies but some of these considerations are relevant to an understanding of important aspects of social life at Rome.

Thus the seemingly senseless squandering of patrimonies on costly but materially useless items which Roman writers like Sallust, Horace and the Elder Pliny attributed to some deep-rooted moral malaise, is today explained in terms of highly competitive levels of expenditure amongst status-conscious social groups. This provides a powerful basis for an explanation for the divorce between the attitude and conduct of the Roman aristocracy towards luxury and Hellenistic practices.¹⁰⁷

The functioning of conspicuous consumption is neatly illustrated by the enormous prices fetched, especially in the early Principate, by red mullet - a fish remarkable not so much for its flavour but for its generally small size and colouring. Indeed the rarity of specimens over two pounds in weight helps to explain the extraordinary value attached to heavier catches.¹⁰⁸ When Crispinus paid 6000 HS for one, the boast, ridiculed by Juvenal, was put about that he had paid 1000 HS for every pound of fish. Other passages recording figures of 6-8000 HS per fish or even 30,000 HS for three show how easily this phenomenon could get out of hand.¹⁰⁹ Such crude gestures often contained an element of *arrivisme*. Some people expressed their aspirations to exalted rank by donning the outward trappings of success. Parvenues wished to announce their arrival.

Flattery also played a role in this context. Plutarch treats extensively on this subject, cautioning his readers to beware of the subtle transformations of vices into virtues: for prodigality to be characterised as generosity; impetuosity as alacrity; or, conversely, for the laudable qualities of thrift and self-restraint to be termed meanness and pettiness. Κολακεία, he held, had served to undermine the character of the Romans. An instructive example was M. Antonius the *triumvir*, whose unrestrained ostentation and extravagance were excused as commendable liberality in the light of good fortune. Petronius pandered to Nero's penchant for luxury by rebuking him for his stinginess!¹¹⁰

It was just this sort of behaviour that compelled legislators to intervene with maximum limits on quantity or price, since the desire for ostentation on the part of a few was setting financially ruinous trends which others were reluctantly obliged to follow. As Thorstein Veblen observed,¹¹¹ only those of an aberrant temperament can resist the potent pressures of emulative consumption, a force concerning which Seneca protested bitterly:

*quod, si pauci facerent, nollemus imitari, cum plures
facere coeperunt, quasi honestius sit, quia frequentius,
sequimur... omnes iam sic peregrinantur, ut illos
Numidarum praecurrat equitatus, ut agmen cursorum
antecedat; turpe est nullos esse, qui occurrentis via
deiciant, aut qui honestum hominem venire magno pulvere
ostendant. omnes iam mulos habent, qui crustallina et
murrina et caelata magnorum artificum manu portent;*¹¹²

Few would share the indifference of the character in Persius' sixth satire:

*hic ego securus volgi et quid praeparet auster
infelix pecori securus et angulus ille
vicini nostro quia pinguior; et si adeo omnes
ditescant orti peioribus, usque recusem
curvus ob id minui senio aut cenare sine uncto
et signum in vapida naso tetigisse lagoena.*¹¹³

Thus an early second century B.C. senatorial decree limited the amount of silver tableware to 100 lbs;¹¹⁴ censorial edicts banned the importation of foreign perfumes or held down the price of choice Greek and Italian wines;¹¹⁵ the emperor Tiberius, in various edicts, put ceilings on the price of household furniture, gold vessels, Corinthian bronzes and mullet¹¹⁶ - welcome legal havens, one must suppose, for those experiencing straitened circumstances or liquidity problems.

There remains to be given a brief survey of other types of social legislation relevant to this discussion of sumptuary laws.

As in so many patrilineally organised communities every effort was made to ensure the stability and reproduction of the family unit, a fundamental institution of Roman society. Unlike its modern counterpart, the family in ancient Rome was conceived as a single, corporate entity. It did not

comprise individuals with separate legal capacities or rights. Power resided in its head, the *paterfamilias*, for he was its sole, fully legal representative and his extensive control over other members of the *familia*, theoretically extending to life and death, was of a distinctly proprietary nature.¹¹⁷ Here was an important source of autonomous authority, especially in matters of private morality, which complicated the scope of public intervention into the behaviour of individual citizens. In the late Republic, the progressive encroachment of state regulation into concerns which were originally the primary responsibility of the *paterfamilias* reflect partly the emergence of legal individualism and the inability of a somewhat cumbersome institution to cope with fast-altering socio-economic circumstances and partly the autocratic tendencies of the period.¹¹⁸ The preservation of the economic integrity of the household - the *res familiaris* - was a factor of signal importance. In addition to the regulation of expenditure patterns to counter the threats of profligacy or imitation, two major concerns dominated the approach of the Roman authorities on this question; firstly, the careful oversight of testamentary disposition; secondly, the strident emphasis on the sanctity of the marital bond and on the importance of child-rearing.

Early inheritance rules promoted the interests of direct agnatic descendants in the transmission of property.¹¹⁹

In the case of intestate succession, *sui heredes* (i.e. all those, male and female, who had been in the *potestas* of the deceased *paterfamilias* and who subsequently became *sui iuris*) were entitled to equal portions of the estate. In the absence of members of this category, the nearest agnates succeeded or, failing them, *gentiles*.¹²⁰

Even when a will had been drawn up the claims of close relatives might, in certain circumstances, nullify a testator's wishes. Importantly, *sui filii* had to be deliberately disinherited if the *paterfamilias* desired to exclude them from consideration.¹²¹

The *lex Furia testamentaria* (c. 183 B.C.) imposed a maximum limit of 1000 *asses* on bequests that testators could make to anyone outside the sixth degree of affinity. This

measure was intended to prevent significant portions of an estate falling into extraneous hands while at the same time enhancing the share that fell to the principal heir(s) in order to dissuade refusal of inheritances.¹²² The suggestion that this law was, in some way, a sumptuary restriction, preventing posthumous gifts or remuneration for services is not compelling.¹²³

A principal clause in the *lex Voconia* (169 B.C.) clearly discriminated against women for it legally incapacitated them from becoming the heir of a citizen of the first property class.¹²⁴ Further, it debarred anyone from receiving a legacy equal to, or more than, that of the heir(s).

As is the case with so many ancient statutes, it is difficult to reconstruct the exact context of the measure. As usual moral considerations are prominent in the sources. The Elder Cato, who firmly supported this bill, inveighed against what he perceived as the alarming degree of emancipation that women had achieved by this period, focusing on incidents of female presumption and ostentation:

*principio vobis mulier magnam dotem adtulit; tum magnam pecuniam recipit, quam in viri potestatem non committit, eam pecuniam viro mutuam dat; postea, ubi irata facta est, servum receptitium sectari atque flagitare virum iubet.*¹²⁵

His enthusiasm for this *plebiscitum* of the tribune Q. Voconius Saxa has been linked by many scholars to his known stand against female luxury. The assumption is that women who had inherited large patrimonies were dissipating their wealth in frivolous and destabilising ways. However, although such factors may have provided the rhetorical ammunition necessary to secure electoral backing for this measure, it is not an adequate reason for what is obviously a response to more complex social developments in this period. In particular, the growing popularity of marriages *sine manu* which meant that the wife's property was not combined with that of her husband (or his *paterfamilias*) while on the death of her *paterfamilias* she herself became *sui iuris*, may have been an important consideration.¹²⁶ It

is known that a *lex Maenia* (pre 162 B.C.) obliged the heirs of a deceased husband to restore in full the dowry to the widow's family.¹²⁷ Such a situation would not simply extend the influence of the wealthy *paterfamilias* but would give their daughters a considerable degree of independence. But, as John Crook has recently made clear, it is the ability of testators to dispose of their property as they wished that conferred power on their owners.¹²⁸ During the Republic, a woman who was not in *potestas* was under the *tutela* of her male agnates who could exercise a powerful influence over the disposition of her property. In whatever way this law may have affected the rights of women, it was surely prompted by senatorial concern to enhance the prospects of a secure succession by a principal male heir so that an adequate rate of replenishment might be assured amongst members of their own order.

The obvious ploy of fragmenting an estate by splitting it amongst numerous legatees was foreclosed by the *lex Falcidia* (40 B.C.) which ensured that the principal heir received at least a quarter of the estate. This measure has also been linked to the unpopular tax-raising activities of Octavian and Antony in 40 B.C. which placed a levy on each slave a person owned and on all those who received a legacy.¹²⁹

Testation was regulated by a major statute promulgated under Augustus. The *lex Fufia Caninia* (2 B.C.) confined testamentary manumission to a proportion of the total number of slaves a master possessed. In addition, the *lex Aelia Sentia* (A.D. 4) laid down complex arrangements governing the capacity of a master to manumit and the status of the emancipated slave.¹³⁰

The integrity of the family unit was promoted by various measures designed to control sexual and marital relationships.

Homosexual activity between *ingenui* was discouraged from an early date. A *lex Scantinia de nefanda venere* (226 B.C.?) penalised as *stuprum* an unnatural liaison between an adult male and a freeborn youth.¹³¹ Evidence for the enforcement of this law spans several centuries. Military discipline required the severe chastisement of those who were guilty of

this weakness.¹³² In forensic practice, advocates denigrated the homosexual proclivities of their adversaries.¹³³

Concern for minors (those under 25 years) is evidenced by the *lex Plaetoria de circumscriptione adulescentulum* (c. 193/2 B.C.) whose main provision seems to have guarded against the defrauding of young persons *sui iuris* and against the possible abuse of trusteeship.¹³⁴ Indirectly it might have been designed to hinder intemperance amongst high-spirited Roman youths by restricting their chances of obtaining credit.¹³⁵

Moreover, a *lex lenonia* (perhaps a *lex Titia* of the early second century B.C.) governed commercial dealings in sex and its sanctions were applied against both procurers and prostitutes. The plays of Plautus are studded with threats by jilted or disappointed lovers, eager to revenge themselves by informing on lawbreakers before the *tresviri capitales*.¹³⁶ The scope of this law is uncertain but male infidelity seems to have been readily countenanced in practice so long as it did not involve a married or freeborn woman. The lament of Syra in Plautus' *Mercator* 817-22 captures the injustice of the situation:

*ecastor lege dura vivont mulieres
multoque iniquiore miserae quam viri.
nam si vir scortum duxit clam uxorem suam,
id si rescivit uxor, impunest viro;
uxor virum si clam domo egressa est foras,
viro fit causa, exigitur matrimonio.*¹³⁷

Furthermore the trial and conviction of *matronae* on a charge of adultery during the mid Republic argues for the existence of a definite *lex de stupro matronarum*. (c.331 B.C.)¹³⁸

The mere existence of these trials and statutes casts doubt on the extravagant encomia of classical authors on the impeccable virtue of women in earlier periods of Roman history and calls into question their picture of a sudden moral collapse in the late Republic.

The authorities were not content with curtailing deviant types of sexual relations. Celibacy was a constant source of concern. Bachelors were repeatedly reminded of their obligation to marry by the insistent censorial question: *ut*

*tu ex animi sententia uxorem habes?*¹⁴⁰ Famous statesmen like Camillus and Q. Caecilius Metellus are recorded to have taken celibates to task publicly. The latter's speech *de prole augenda* was read out *verbatim* by Augustus in the senate.¹⁴⁰ Moreover married men were required to take an oath before the censors that they had married *liberorum procreandorum causa*. Sterility was one of the few legitimate grounds for divorce.¹⁴¹

As one would expect these legal measures closely reflect prevailing attitudes towards a healthy family life and the importance of child-rearing attested in epigraphic and literary sources. Inscriptions on tombs of women catalogue their virtues and the number of their offspring, especially sons.¹⁴² The fecundity and *pudicitia* of his wife conferred a special blessing upon the life of Q. Caecilius Metellus Macedonicus.¹⁴³ Cornelia, the mother of the Gracchi, described her children as her greatest ornaments. The faithful and loving wife of the author of the *Laudatio Turiae* was prepared to divorce her husband because of her infertility. Perceptions of falling birth-rates and of the increasing preference for celibacy especially amongst the aristocracy occasion pessimistic homilies from ancient authors like Varro while in an extreme form Horace links the causes of the civil wars with a decline in the standards of sexual morality and in particular with the pollution of the marriage bed.¹⁴⁴ Festivals and rites were instituted to encourage fertility and temples were dedicated to public moral virtues from the mid fourth century B.C.¹⁴⁵

It is in the context of this legal history that Augustus' extensive programme of moral and social reforms should be set. The emphasis should be placed as much on the striking scale and thoroughness of his reorganisation of basic social relationships as on its innovative content.¹⁴⁶

The case of the *lex Iulia de adulteriis coercendis* provides an instructive example. It is clear from the opening chapter to the law which refers to *...prioribus legibus pluribus...* that this statute was only the latest in a series of measures on this topic. The oft-repeated statement that it made adultery a public crime for the first time is highly questionable.¹⁴⁷

Several significant features require comment; (1), that while it is true that the latitude given to aggrieved husbands and fathers to inflict harsh retribution on adulterers surprised *in flagranti* was not in itself novel¹⁴⁰ the virtual compulsion on them to prosecute was. Those who neglected to act upon transgression of the marital bond were themselves exposed to moral infamy. Should a husband profit financially from his wife's misdemeanours or even fail to dismiss her promptly after the discovery of her crime, he himself risked categorisation amongst the *lenones*.¹⁴⁹ In the event that husbands and fathers were negligent in their duty outsiders might enforce the law within a period of 4 months after 60 days had elapsed.¹⁵⁰

In addition, culprits were to be publicly exposed since the law enjoined the husband not only to divorce his wife but to make general where and with whom the act had been committed.¹⁵¹ Augustus himself divulged the names and details of his daughter Julia's *amours* although he is said to have regretted it later.¹⁵²

Thirdly, heavy penalties were added to shame. After conviction at a *quaestio* specially constituted for the crime adulterers lost half their property, suffered relegation to an island and were incapacitated from performing as a witness in court or for a will, while women lost half their dowry, a third of their estates and were banished to a (different) island.¹⁵³

Another law, the *lex Iulia de maritandis ordinibus* passed at roughly the same time (18/17 B.C.) significantly stepped up the penalties for celibacy not only amongst men but amongst women, too.¹⁵⁴ It stipulated that unmarried men between the ages of 25-60 years, and unmarried women between 20-50 years were to be prohibited from accepting inheritances from anyone outside their agnatic family to the sixth degree. Childless couples were penalised at first, too. However, a 100 days grace was given to a prospective heir to acquire a child or spouse while a betrothal secured some legal privileges so long as marriage followed within two years.¹⁵⁵ On the other hand, paternal impediments to an offspring's marital wishes were lifted and patronal insistence on celibacy imposed on *liberti* nullified.

More importantly, the law laid strict injunctions on certain types of intermarriage, forbidding senators and their descendants to the third generation from marrying a freedwoman or a woman who herself or either of her parents was, or had been, in the acting profession. A senator's daughter, grand-daughter or great-granddaughter suffered from similar restrictions.¹⁵⁶ *Ingenui* were prohibited from marrying prostitutes, procuresses, actresses, women guilty of adultery, convicted in a public action or manumitted by a procurer.¹⁵⁷

Just as his earlier attempt had met with an unwelcome rebuff¹⁵⁸ so this follow-up endeavour required extensive modification despite strenuous efforts to carry opinion such as Horace's exhortation:

diva, producas subolem patrumque
prosperes decreta super iugandis
feminis prolisque novae feraci
lege marita, ...¹⁵⁹

Later in his reign Augustus adopted a different tack. Where penalties had failed to instill a proper sense of conjugal responsibility, positive inducements to encourage marriage and the rearing of children were increased.

The *lex Papia-Poppaea*, promulgated by the *consules suffecti* of A.D.9 who were, unhappily, not only childless but unmarried, elaborated the *ius trium liberorum*, allowing candidates to stand for election to public office as many years before the permitted age of the *cursus honorum* as they had children (up to three). Furthermore, priority was conferred in the assumption of the *fasces* and in the tenureship of prized governorships.¹⁶⁰

It was not male aristocrats alone who were affected by the provisions of the law. Enticements were held out both to *ingenuae* and *libertae* with several offspring.¹⁶¹ The provision for the latter category demonstrates the importance the authorities attached to increasing the birth-rate amongst the whole population.

Finally, relaxations were made with regard to the interval permitted for remarriage; two years for widows (instead of one) and eighteen months for divorcees (instead

of six) while childless spouses were enabled to inherit a proportion of their partner's property and a half of bequests made by others.¹⁶²

This legislation was to receive a negative press from contemporaries and later commentators. It was generally held to have been ineffective while Tacitus cynically drew attention to the increase in governmental authority and its fiscal objectives.¹⁶³

It is not easy to discern the motivations, goals or effects of this formidable array of statutes. No comprehensive coverage can be attempted in this short chapter. While only a cynic would completely rule out genuine moral concern for standards of conduct amongst the members of the most privileged sections of Roman society, especially women, the personal conduct of Augustus himself provokes scepticism.¹⁶⁴ It should not be forgotten that these laws, as an essential ingredient of Augustus' "restorative" policy, promoted the legitimating aspirations of his new regime. They had a high symbolic value.¹⁶⁵

In general the maintenance of a clearly graded social structure with distinct boundaries between the different orders required the superintendence of a basic component - the family. Conjugal responsibility was a paramount aim for only from a stable marriage might suitable heirs be produced who might preserve the family patrimony and name. Illicit liaisons and illegitimate offspring might confound the orderly transmission of property.¹⁶⁶ Ultimately it was hoped to regularise status not only amongst those ranks from whom Augustus drew to fill administrative and executive positions in his new order but throughout society.

Demographic policy had long been shaped by the perennial military requirements of the Roman state. The need for a regular and predictable supply of personnel for the most senior grades of public service was paralleled by the constant demand for recruitment to the legions. The process of colonisation served a variety of purposes but in Roman Italy, strategic and military manpower needs were always high on the agenda. Several of the *leges agrariae* enacted during the last two centuries of the Republic favoured those members of the Roman populace who possessed large families.

If Plutarch's account of Tiberius Gracchus' motives and inspirations are at all accurate, his far-reaching agrarian resettlement programme was largely designed to restore the old social fabric of the Roman state. The difficulties with recruitment for the arduous and unrewarding campaigns in Spain and the experience of the Servile wars must have been fresh in his mind. His *lex Sempronia agraria*, in its provisions on the legal tenure of *ager publicus*, made generous allowance for those families with offspring.¹⁶⁷ In the following century Julius Caesar chose 20,000 citizens who possessed three or more children to settle on the fertile Campanian land. Cassius Dio (43.25.2f) states that Julius Caesar, alarmed by the significant decrease in the population as evidenced in the census returns, handed out rewards to large families.¹⁶⁸ It is probable that politicians were influenced by a desire to increase the free-born Roman stock in order to counter the growing element of foreign blood in the population of Roman Italy. Augustus too was concerned to increase the birthrate amongst all sections of the community, making 1000 HS ad hoc grants to those of the plebs who could furnish proof of children as he toured the city.¹⁶⁹ Although modern scholars have doubted whether this legislation had any effect either in raising the general birthrate or in helping to boost recruitment of Italian peasantry into the legions, perceptions of manpower needs should not be lightly dismissed in any evaluation of the motivation behind these reforms.¹⁷⁰

But these laws were not without a strong element of contradiction as Juvenal (Sat. 6.38f) sharply observed:

*sed placet Vrsidio lex Iulia, tollere dulcem
cogitat heredem, cariturus turture magno
mullorumque iubis et captatore macello.*

It was not simply the flattering attentions of suitors or legacy hunters that led many Roman aristocrats to opt for bachelorhood.¹⁷¹ Financial provision for one's spouse and for the education of children was not negligible especially in the competitive cultural and political climate of the late Republic and early Principate.¹⁷²

Moreover, many scholars have remarked on the absence of a system of primogeniture in ancient Rome. If partibility was customary it would have compounded a complexity of problems, partly social, partly economic, partly biological, which made the reproduction of families of the highly privileged orders a difficult feat. In view of the formidable problems of accurately anticipating the number and gender of surviving children in the face of high infant mortality, pestilence, the rigours of military service, aristocratic families above all were beset by the twin evils of being left heirless or of dividing their estate amongst a plurality of heirs. Both scenarios could lead to the eclipse of all but the wealthiest families.¹⁷³ In a recent study K. Hopkins and G. Burton have investigated the difficulties facing members of the senatorial order in securing political succession and concluded that although the rates amongst the inner core were high, less illustrious families often failed to produce senatorial representatives for generations.¹⁷⁴ Classical authors regularly attributed the inability of families to reproduce themselves to moral failings. Polybius cited greed, laziness and pretention as the causes of widespread celibacy or childlessness amongst the Greeks in the mid second century B.C. But he does recognise that the low birthrate is linked to the desire of parents to provide amply for their offspring. His prescription of legal compulsion to ensure child-rearing may well reflect contemporary anxieties in Rome.¹⁷⁵

Hence Augustus' policy which both encouraged a high number of offspring and aimed to preserve the family patrimony appears essentially paradoxical.¹⁷⁶ The ignominious poverty into which M. Hortalus lapsed, after begetting four sons on the personal inducement of Augustus, was a fate which befell several senators. Imperial assistance was not always forthcoming.¹⁷⁷ There are strong indications that the imperial authorities did not fully understand the consequences of their measures.¹⁷⁸ The inheritance laws in particular by encouraging the quick remarriage of bereaved and by interfering with the exercise of patronal duty to honour *amici* cut across long-cherished social customs.

Were there more far-reaching designs contained in this programme of social reform? Was there a conscious effort to supplant old sources of family authority - namely the *patria potestas* - by public supervision either as a recognition that it had become an ineffective instrument to guard private morality and to prevent the diffusion of family wealth or as part of a strategy to centralize power in the social as well as political terrain? R. Nisbet has isolated three ways in which the *patria potestas* was diminished by Augustus: (1), in the sphere of marital relationships and the transmission of property; (2), by the institution of the *peculium castrense* which undermined the economic solidarity of the family unit; (3), by the insinuation of Augustus' *genius* into domestic religious worship. With the weakening of the *paterfamilias*' position, an increasingly direct relationship was established between the citizen and state authority.¹⁷⁹

The nature of the evidence available makes it impossible to determine the intentions of the first *princeps*. To a certain extent he was pronouncing tendencies which had developed long before. Yet as the later history of the Principate was to prove, these laws conferred considerable leverage with which the emperors could control the lives of prominent members of the senatorial and equestrian orders.

The overall goal of these laws was to ensure that the social orders would be as self-perpetuating as possible. In every person, a sense of his relative position, role and importance in society was inculcated to effect the elusive stability which might sustain the political authority of the few.

Plato had detected this almost universal human tendency toward inherited social privilege.¹⁸⁰ It could only be countered by an extreme measure. In his ideal republic he proposed the dispossession of children from their parents.¹⁸¹

Economic Considerations

Any attempt to evaluate the economic objectives behind sumptuary laws rests on decidedly shaky ground. The Roman authorities, one is often told, had little understanding of the workings of, let alone the means of controlling, economic forces. In the Republic, crucially important financial tasks were entrusted to officials like censors only as part of wider, and in their eyes, more urgent duties. Moreover, moral, political and economic judgements were inextricably fused.

Does this series of sumptuary laws reveal any form of economic policy or ideas? One way of exploring this question is to examine the persistent economic problems endemic to many of the city-states in antiquity.

One ever present focus of governmental concern was the need to control excessive profiteering since sudden economic enrichment had grave implications for the stability of the social order. Indeed novel or intensified opportunities for the acquisition and display of wealth have constituted a perennial source of apprehension for governing authorities worried about threats to their political and social preeminence from both within and outside their group.

Agricultural investment, traditionally favoured by oligarchies in antiquity for a complex of reasons, were encouraged by measures like the *plebiscitum Claudianum* (c.218 B.C.) which imposed maximum tonnage limits on the ships that senators and their sons might own - pitched high enough, as has often been pointed out, to allow for the transfer of products from their own estates but not to engage in long distance trade.¹⁶⁴ The same group was forbidden to bid for the lucrative tax contracts for the province of Asia by the *lex Sempronia*.

In seventeenth century France too, the nobility were legally debarred from commerce, participation in which carried a powerful social stigma and loss of title.¹⁶⁵ Roman attitudes towards the accumulation of wealth were complex. Inherited fortunes were most favourably regarded. Loss of

patrimony or swift acquisition of riches incurred criticism. Investment in landed property was attractive because of its stable returns and for the conservative implications of an agricultural livelihood.¹⁸⁴ Substantial profits were extracted from leasing city properties. Enrichment during military service was perfectly respectable. All menial occupations were out of the question.¹⁸⁵ Powerful ambiguities between attitude and practice are observable from an early period. The Elder Cato invested heavily in regions which included, among other things, workshops of fullers, whose catering for luxury tastes the tribune Metilius had attempted to restrain, while he used legal dodges to reap the rewards of usury.¹⁸⁶ Even less scruple was displayed by first century politicians such as Brutus whose Republican virtues were acclaimed by classical authors. A massive 48% interest rate was ruthlessly imposed on the people of Salamis in Cyprus.¹⁸⁷

In the second century B.C., a series of *leges Porciae* and extortion laws were promulgated as much to check the greed of governors and senior officials as to protect the interests of the provincials.¹⁸⁸

Attempts were made to curb unrestrained possibilities of gain amongst other groups. The private collection of taxes was partially controlled by the competitive tendering of contracts. The Elder Cato used his magisterial power so effectively that many contracts had to be renegotiated.¹⁸⁹ A limit of 6% was attached to the profit margin of tax collectors in Sicily.¹⁹⁰

The early annals recount how the exceptional productivity of the farm of C. Furius Chresimus, a freedman, aroused the envy of his neighbours who accused him of using magic spells to allure the fruits from other people's fields. He was indicted by the curule aedile Spurius Albinus but was acquitted when he proved that his success was due purely to sweat and toil - a fact which endeared him to Roman moralists.¹⁹¹ One can safely surmise that it was the lucrative gains accruing to Greek physicians that made them so unpopular amongst certain sections of the Roman populace.¹⁹² One of the disturbing features about the spendthrift activities of Catiline and his fellow rakes was

that their prodigal expenditures on festivals, banquets, *aedificatio* etc caused money to pour into the pockets of 'low-born' and humble men - a state of affairs that was conducive to revolution.¹³³

Censorial power and senatorial decree were active in bridling the exploitation of mineral wealth: restrictions were placed on the production of black lead from Britain and on the number of slaves that could be employed in the mines of Vercellae.¹³⁴ Pliny the Elder states that an early senatorial decree forbade mining in Italy while work at the gold mines in Macedonia was temporarily suspended in the mid second century B.C. Obviously fiscal considerations had a bearing on these regulations too.¹³⁵ In addition two *senatus consulta de aedificiis non diruendis* are preserved inveighing against the *foedum genus negotiation[is]* - property speculation in municipal towns.¹³⁶

The practices of deliberately sabotaging older buildings and the repeated sales of houses for quick returns are attested in the complaints of contemporaries.¹³⁷ Similar restrictions were laid down in the *lex Coloniae Genetivae Iuliae* with the additional qualification that tile factories can only produce a maximum of 300 tiles per day.¹³⁸

Legal hindrances neutralised the power of emerging, economically successful groups such as gladiators, auctioneers and *liberti* to whose occupations a moral stigma was attached. No doubt many of these statutes were side-stepped. Legal restraint encouraged ingenuity. But the degree of circumvention has often been exaggerated - most would have taken care to pay lip-service to the law since even a technical infringement might have been exploited by an adversary.

This profit-capping aspect helps to shed some light on some sumptuary laws which have been misinterpreted. Macrobius was not alone in roundly condemning the *lex Cornelia* for setting a maximum price on a whole range of culinary delicacies, accusing Sulla of actually encouraging luxury by lowering the cost of goods. His mistake was to examine these restrictions only from the point of view of the consumer and to ignore their consequences for the retailer or seller.¹³⁹

By deliberately pitching an artificially low price, not just overreaching but even the importation and sale of such items might be rendered economically impracticable. I am sure this was a strong factor in Diocletian's Maximum Price Edict which stressed the need to fix a *modus* - and explains why the price of certain non-staple goods is lower than one might have expected.²⁰⁰ Perhaps the maximum of 10 *aeris* to be spent on working days imposed by the *lex Fannia* and presumably repeated in the *lex Licinia* would have had much the same effect.

A censorial edict of 89 B.C. placed a ceiling of 8 *aes* per *quartarius* on Greek and Aminnian wines.²⁰¹

Customs and excise dues, transit tolls and similar levies could materially affect the amount and type of goods for sale, too. These points suggest to me that the Roman authorities' propensity to fix prices has been considerably understated. It was considered essential to stop the wrong type of people from making massive gains.

Of course, overriding political considerations necessitated intervention to ensure supplies of staple foods like grain and oil²⁰² but in addition to this we hear, e.g., that Tiberius handed direct control of the *annona macelli* to the senate in c.A.D.22. In fact, the whole debate on the advisability of imposing sumptuary restraint in that year was sparked off by protests from the aediles who were no longer able to enforce ceiling prices.²⁰³ It is unclear quite how they exercised their power. Certainly senatorial magistrates made a determined attempt to enforce sumptuary restrictions on the sale of cooked food in *popinae* and *tabernae* during this period. Caligula went further and levied a sales tax on all classes of commodities including food, occasioning tremendous popular protest.²⁰⁴

Excessive profiteering was linked with the formation of monopolies - another major source of concern to authorities in antiquity. A series of senatorial decrees and imperial edicts tried fruitlessly to prevent monopolies in commodities like hedgehog skins which were presumably used by fullers.²⁰⁵ Tiberius quarrelled with the inclusion of the Greek based word *monopolium* in one of his edicts, probably a sumptuary restriction.²⁰⁶ However, the Roman authorities

themselves were not averse to the formation and exploitation of state monopolies in such areas as balsam and Egyptian papyrus, ensuring that they were grown only in a limited number of places in order to maximise the revenue potential from the highest possible prices.²⁰⁷ When Messalina's sale of monopolies threatened to drive many goods off the market, Claudius was compelled to assemble the populace in the Field of Mars and specify fixed prices for commodities.

Many merchants and retailers must have capitalised on the demand for articles of conspicuous consumption amongst the aristocracy. Diodorus Siculus relates (37.3.4) that the growing taste for ostentation amongst Roman youth raised the prices of luxury goods to staggering heights. But it was not merely non-essential commodities which were affected.

*sicuti cum primos ficos propola recentis
protulit et pretio ingenti dat primitus paucos.*²⁰⁸

The activities of the *praemercatores* (forestallers or cornerers-of-the-market) exacerbated the situation. Checks on their activities are credited to Numa Pompilius who was concerned to ensure the adequate provision of scaleless fish at *pulvinaria*, but the source for this information, Cassius Hemina, may well simply be reflecting concerns of his own day - the mid second century B.C.²⁰⁹

Merchants and dealers could interfere with the price mechanism in a variety of ways. A *lex Iulia de annona* (18 B.C.?)²¹⁰ was specifically aimed at this category of profiteers. The Digest records that a fine of 20,000 H.S. was exacted from those who formed an association in order to raise the cost of corn by, for example, inhibiting the transportation of grain.²¹¹ The incorporation of a similar measure into the text of municipal and colonial laws shows how seriously the authorities regarded the problem of securing sufficient supplies of food at an affordable price. The recently discovered *lex Irnitana*, which preserves a Flavian charter, enjoins:

*ne quit coematur supprimatur.
ne quis in eo municipio quid coemito supprimito neue*

*coito con-
uenito societatemue facito quo quit carius ueneat quoue
quit ne ueneat setiusue ueneat.*²¹⁴

There are occasional reports of the prosecution of speculators. During Nero's reign a certain Demetrius was indicted before the consuls by the entire Seplasia.²¹⁴ The emperor Vespasian was not above such sharp practice himself, buying up certain provisions in order to raise revenue.²¹⁴ Cicero well understood the reason for the high price of corn. It was only partly due to crop failures in the corn-producing provinces. Sometimes grain was sent to places other than Rome, presumably to fetch higher prices there but on other occasions corn was deliberately held back in order to secure larger profits for the dealers in Rome.²¹⁵

The supply and cost of food was also affected by prodigious table luxury. Now Athenaeus, probably following Rutilius Rufus' *Historiae*, records, in connection with a discussion on the observance of the *lex Fannia*, that spendthrifts and lawbreakers were occasioning serious rises in the prices of commodities.²¹⁶

How far were these sumptuary laws actuated by a need to improve the general supply and cost of foodstuffs? Should any significance be attached to the Elder Cato's description of these laws as *cibariae leges*, translatable as 'rationing laws'?²¹⁷

It is conceivable that the huge demand for provisions at occasions such as the *ludi magni*, gladiatorial shows, inaugural banquets and private festivities like weddings led to a serious shortfall in supply or steep rises in price - both equally intolerable for those with limited means.²¹⁸ In the case of the *lex Aemilia* Gellius explicitly states that a ceiling was imposed on the type and quantity of certain foodstuffs.²¹⁹

The characters in Varro's treatise on agriculture reflect on the lucrative opportunities for gain offered by the college dinners which were so numerous that they sent the prices of provisions soaring:

quotus quisque enim est annus, quo non videas epulum aut triumphum aut collegia non epulari? sed propter luxuriam, inquit, quodam modo epulum cotidianum est intra ianuas

Romae.²²⁰

Major banquets of some description were a daily feature of life at Rome. During the severe famine of A.D.6-8, Augustus instructed all gladiators and all foreigners, except for teachers and doctors, and all slaves for sale to be sent away from the city a distance of 100 miles, simultaneously relaxing restrictions on the movements of senators. Not only were ex-consuls employed to ensure each person received a fixed amount of grain but the celebration of public banquets on the emperor's birthday was specifically forbidden.²²¹

In Mediaeval England sumptuary laws setting maximum prices were instituted precisely to ensure the adequate provision of basic foodstuffs as their preambles relate. In Nürnberg too constables ensured that necessaries were marketed in sufficient supply and at a just price.²²²

Now in modern Western-European countries rationing (i.e. the measured distribution of consumer goods) and its corollary, price-control, are rarely resorted to except in certain key public utilities or during wartime since such intervention is anathema to private enterprise, "market" philosophy.²²³ Unhampered as the ancient authorities were by such ideological constraints there is no reason to preclude the possibility that periodically the Roman government took decisive action to control cost or distribution from motives of political necessity or of profit-capping. Moreover, precedents for rationing can be found both in the case of the Roman army and of provincial governors who frequently made large profits from selling their surplus provisions when the price of corn was high.²²⁴

Various scholars have discerned the spirit of bullionist or even mercantilist ideas behind the imposition of high customs dues and the call for greater sumptuary restraint. Undoubtedly this was a prominent feature of many statutes in Mediaeval and Renaissance Europe. Was the importation of luxury goods ever curbed in the interests of Rome or, on a wider scale, the Empire?

Sundry pieces of evidence have been assembled in support of this view. In the late Republic, frequent senatorial decrees forbade the exportation of gold and silver. Cicero himself sent Vatinius as quaestor to Puteoli, the major port for the importation of luxury goods into Italy, for that purpose. Flaccus prohibited by edict the export of Jewish gold from Italy and all the provinces.²⁴⁵

Tacitus relates that Tiberius, despite his refusal to heed senatorial calls for sweeping sumptuary restraint, still voiced his fears about the profits accruing to the enemies of Rome because of the volume of imported luxury goods.²⁴⁶ In fact the Han Annals of Imperial China hint at the trade rivalry between Parthia and Rome.²⁴⁷ Reference is often made to two famous passages in the Elder Pliny, one stating that India, Seres and the Arabian peninsula took from the empire annually 100 million HS, the other that India alone was responsible for the drainage of 50 million HS per year.²⁴⁸ The very high tariff rates of 25% levied on the eastern boundary of the empire is seen as further proof of a policy to restrict luxury trade.

This ascription of mercantilist motives is, of course, seriously anachronistic. It presupposes a narrow, nationalistic conception of the Roman economy, organised pressure from a group of merchants whose interest lay in exporting goods of domestic manufacture and a perception of the national wealth in terms of precious metals.

As P.Veyne has pointed out, nowhere is there an indication of an adverse balance of trade. Pliny does not speak in terms of a trade deficit. His incredulity that so much money could be spent on such worthless objects contains a moral rather than a financial judgement.²⁴⁹

In fact several of the aforementioned measures were simply responses to vagaries in the money supply - in particular, the periodic but acute shortages of coin. At times, serious domestic disorder, national calamity and perhaps even sustained private extravagance precipitated grave financial problems, setting in motion a ruinous train of credit shortage, debt-recall and hoarding. It resulted in a steep inflation of the value of coinage while prices of real estate plummeted. In the late sixties and early forties

B.C. extreme measures were needed to tackle the liquidity problems which threatened the social as well as the financial order.²³⁰

So as to avoid the calamitous alternative of *novae tabulae* (cancellation of debts), the Roman authorities reacted with ceilings to the hoarding of money, forced investment in land and restrictions on the export of gold and silver coinage.²³¹ It is worth mentioning in this context another strategem for curtailing luxury spending - the squeezing of credit. Ps. Sallust (*Orat. Caes.* 5.4f) advocated an end to prodigality by clamping down on the usurers. Henceforth a person's *res familiaris* would fix the *modus* to his expenditure.

Protectionism was a powerful factor for centuries behind Mediaeval and Tudor sumptuary laws. Both Henry VIII and Elizabeth I fostered the native industries by prohibiting the general wearing of foreign cloth, permitting only personages of a distinguished rank to dress in material made outside England. Reference is made to two problematic measures. The first, a prohibition of uncertain date, forbade the Transalpine tribes from planting vines and olives - an action which the speaker in Cicero's *De Republica* specifically states was designed to increase the value of Roman vine-yards and olive groves.²³² The second, Domitian's vine edict, stipulated that no more vines were to be planted in Italy and ordered that half of those already growing in the provinces should be cut down.²³³ Protectionist motives have been discerned behind Julius Caesar's reimposition of *portoria* in 49/8 B.C. and the high tariff rates levied on the Red Sea ports has been interpreted in this light, too.²³⁴

But the protectionist view founders on the same grounds as the mercantilist approach. There is little evidence of a desire to stem the flow of imports.²³⁵ In the case of the first example, self-interest is not the same as protectionism. With respect to the heavy customs dues, fiscal imperatives - namely revenue-productivity - were always of paramount importance. Tacitus records the consternation of Nero's financial advisers when, in a sudden

impulse of generosity, the young emperor contemplated the abolition of all indirect taxes.⁴³⁶

One important economic effect of sumptuary laws, whether placed on ordinary commodities or on articles of conspicuous consumption was to release resources for expenditure on other objects.

Restrictions like the Oppian and Metilian laws promulgated during the Hannibalic war did not simply arise from considerations of social envy. Just as in previous wars wealthy citizens had been encouraged if not obliged to deposit their valuables for the public interest so here an injunction, tantamount to requisitioning ensured the maximum utilisation of resources for the war effort - the whole economy being geared towards what in modern terminology is termed a system goal.⁴³⁷ The total mobilisation of reserves for the war-effort, which involves a substantial transfer of labour and equipment to other sectors of the economy and depresses the output of a whole range of personal commodities, will often entail detrimental economic effects such as inflation since, by the operation of the law of supply and demand, the decrease in the availability of general consumer goods on the market will force price-levels to spiral. Panic-buying of essential commodities would not only exacerbate the economic situation but would strike a damaging blow at citizen morale unless counter-measures were taken in the form of rationing and price-control.⁴³⁸

As we have seen, sumptuary laws on public and private luxury provided the aristocracy with welcome guidelines on the expected level of consumption. But moderation in outlay on certain categories of ostentatious spending, e.g., on the provision of public festivities, may have been designed to allow the senatorial aristocracy to compete with other groups, who were not similarly burdened, on different items of conspicuous expenditure. In the late Republic, wealthy equestrians like Atticus must have enjoyed a distinct pecuniary advantage over their senatorial friends. Indeed it has been plausibly argued that the imperial supervision of public games and festivals in the early Principate was responsible for the marked increase in competitive spending

on other articles of invidious distinction - a decrease in political prestige making social preeminence a priority.⁴³⁷

Accordingly, overall consumption will not so much be curtailed but transferred to different objects unless legal imposition is comprehensive.

To conclude this section on economic objectives, although no sophisticated financial policy can be extracted from an examination of sumptuary laws there are indications that the authorities did apply restrictions as a response, albeit a short-term one, to crises involving the provision of food and the money-supply. What makes them rather more than a series of unrelated ad hoc measures is the propensity of the ruling class to look for remedies to economic problems, as in so many spheres of government, in past solutions. The increasing public intervention in the provision of basic foodstuffs shows how market-forces could not be depended upon to ensure the adequate supply or distribution of necessaries in a large metropolis such as Rome.

Can the evidence contained in the sumptuary laws be employed to uphold any assertions about the performance of the Roman economy in the late Republic? J. Bodin for example believed that the increasing amounts laid down in the series of laws on convivial entertainment supported his view that the huge influx into Rome of bullion from the East led to a steep rise in prices.⁴³⁸ Other scholars too have remarked on the inflationary consequences of Roman expansion in the second century B.C.⁴³⁹ However, to substantiate these assertions one would require some sort of cost-of-living index. Can the figures evidenced in these laws (see Table 1) on *luxus mensae* contribute usefully toward the construction of such an index? At first sight the recurrence of certain categories points to an affirmative answer but there are several major difficulties.

Firstly, in the absence of specified quantities of food for several categories, variations in the level of maximum expenditure might merely reflect the leniency or otherwise of the promulgator of the law rather than an increase in price of a given bundle of food. Secondly, the normal assumption has been that the figures for the Fannian and

Licinian laws convey sextantal asses. But if the dating of the *lex Licinia* to c. 107 B.C. is correct, then, in the space of a few decades, permissible amounts of expenditure leapt by a factor of between 1100-3900% . In view of Sulla's determined attempt to limit consumption in other spheres - witness his anti-dicing law, checks on funerary expenses and on the standing of surety - inflation of colossal proportions seems to be suggested. However, our most reliable source for information, Aulus Gellius, always specifies the amount in *aeris* and I suggest that this denomination in legal texts might be tarified at the rate of 1 HS.²⁴²

The Meaning of Luxury

Luxury was given a prominent place in the Roman theory of degeneration.²⁴³ Sumptuary laws were presented as instruments to guard against its pernicious moral effects. Given its importance in classical and later historiography, it is worth considering the significance of this concept and endeavouring to construct a sensible working definition.

No precise definition of luxury was offered by the ancient writers. Even the etymology of the words *luxuria*, *luxuries* and *luxus* is uncertain.²⁴⁴ When the concept first appears in our sources, it is already an important component in a far-reaching ideology which had evolved as a response to immense social and economic change at Rome. Logical evaluation of a term so highly charged with pejorative moral overtones was effectively foreclosed.²⁴⁵

The word was used in a variety of ways. On a simple, concrete level, *luxuriosus* might be applied to inordinately expensive objects such as utensils, perfumes or precious stones²⁴⁶ or to unorthodox and extravagant (especially Greek) practices, eg, the wearing of costly foreign attire, attending *gymnasia* and so forth.²⁴⁷ It was commonly employed to describe the behaviour of people which displayed a signal lack of moderation or of moral restraint, above all indulgence in culinary or sexual foibles.²⁴⁸ Fourthly, it denoted the immoral conduct and dissolute way of life of disreputable people.²⁴⁹ Often present was the implication

that one was either spending beyond one's means or one's station.

But it was not merely employed as a descriptive term. As a major causative factor of decline, luxury frequently appeared in an active role in the form of a vice that afflicted a hitherto wholesome body, occasioning the downfall not only of the individual but spreading to corrupt the whole society.²⁵⁰

A fragment of a speech by C. Sempronius Gracchus, probably delivered in the context of his frumentary law, outlines the negative boundary of the word: *non est ea luxuries, quae necessario parentur vitae causa.*²⁵¹ This statement provides a convenient starting-point from which to evaluate later attempts to define luxury.

A prevalent view asserts that luxury denotes any expenditure which is in excess of the simple necessities of life or of those things needed to sustain physical and mental efficiency. Since the minimum requirements for subsistence such as food, warmth and shelter have been satisfied, in the history of European society at least, from an early period, a huge percentage of all commodities and goods ought to be classified as superfluous or luxurious. Not surprisingly, this position was found to be especially congenial to the later apologists of luxury who were quick to point to the unreasonable and impracticable aim of their opponents to curtail spending on such objects.²⁵²

Strong moral premises dominate another approach to the problem. Luxury consumption is censured on ethical grounds, i.e., the criticism is directed not so much at the economic wastefulness or on the qualities of the object *per se* but on the wrongful desires or pleasures which prompt, or are awakened by, such expenditure - in short, its detrimental effect on the character of the individual. This view was commonplace not only amongst Greek and Roman historians and statesmen but amongst almost all the philosophical schools of antiquity.²⁵³ For Plato and the Academic school, craving for luxury goods indicated the triumph of the appetitive over the immortal, rational part of the soul.²⁵⁴ This line was closely followed by the Cynic and Stoic philosophers;

the former, in their search for a simple, self-sufficient life (αὐτάρκεια), the latter, because such things, classed as matters of indifference (ἀδιαφορία) were unbecoming pursuits for the truly wise man.²⁵⁵ Luxury also contravened the spiritual and indeed ascetic ideals valued by the Early Christians who, like the Puritans, held that the temptations offered by material longings distracted from the worship of God and so decreased the chances of redemption.²⁵⁶ Many socialists too, as part of a wider critique on the unjust inequality in the distribution of wealth in society point to the moral outrage of the concurrence of sumptuous extravagance with intense deprivation.²⁵⁷

Other scholars have advanced definitions based primarily on economic factors. For N. Baudeau luxury signified: '*un superflu de dépenses préjudiciable à la reproduction des richesses d'une Nation.*' In his view, luxury arose when resources were diverted from productive (particularly agricultural) activity to unproductive activity.²⁵⁸ However, quantitative luxury in food has often arisen through the surpluses created by taxation in kind levied by central government.²⁵⁹

E. Urwick proposed that the average income per head of all families in the population might serve as a useful yardstick for an objective assessment of luxury. This approach is seriously vitiated by the huge discrepancies in income and wealth which exist in most societies.²⁶⁰

The conventional modern definition of luxury is highly subjective being based upon a psychologically-grounded theory of individual consumer behaviour. Luxuries are defined in terms of the price-elasticity of demand - that is, the decreasing amount of satisfaction which the spender derives from the consumption of non-essential goods will be exhibited in an appreciable responsiveness to small changes in price.²⁶¹ Whilst the demand for necessities like food, drink, medicine is relatively inelastic the demand for luxury goods is relatively elastic to fluctuations in price. But the basic premises of this widely-held view - namely the doctrine of diminishing marginal utility and the belief that wants originate in the personality of the consumer - are

unsound. It has been clear for some time that the expenditure habits of many people are strongly affected by what others are purchasing. Vanity, imitation, snobbery - the external repercussions of consumption - all play a significant role. Far from being spontaneous, consumerism can be induced.²⁶² As demonstrated in the example given earlier in the chapter, conspicuous consumption occurs where the demand for a product is increased because it carries a higher rather than a lower price. Accordingly, the demand for this type of good is highly inelastic, contrary to the general assertion.

The sheer scale and persistence of innovation and production of luxuries and the widespread adoption of these intrinsically useless objects or practices, which caused so much consternation amongst Roman commentators, had their roots in the complex mechanisms of consumer behaviour, imperfectly understood today and less so in antiquity. The Roman authorities interferred clumsily with legal imposition. Ancient observers tended to view everything through a moral lens. That even plebeian women should seek to adopt pearl-rings and silver shoe-buckles argued for the ubiquity of corrupting extravagance rather than for the facts of social imitation.²⁶³ Shell-fish, unwittingly, had caused the devastation of morals.²⁶⁴

It is difficult to establish a clear-cut definition which encompasses the wide social, cultural and economic implications of this word. It is insufficient merely to remark on its temporal and technological relativity.²⁶⁵

One important consideration is the capacity of luxury to express tangibly distinctions in social status. Many liberal sociologists concentrate on this aspect. For them luxury signifies comparative degrees of expenditure between individuals or groups in accordance with their position in the 'pyramid' of social or income 'strata.'²⁶⁶ This is, however, essentially a descriptive approach - luxury being highly relativistic and, ultimately, simply reflecting different styles of living. Indeed H. Schoeck has gone so far as to say that actually luxury does not exist - merely envy at specific types of consumer behaviour.²⁶⁷

However, what is valuable about this type of analysis is that it focuses not so much on individual items but on patterns of expenditure. It makes more sense to isolate levels of luxury spending (primary, secondary, tertiary and so forth), taking as a base-line, not just the simple necessities for a family's existence but those resources required for it to participate in widely-enjoyed recreational and cultural pursuits.

As a cultural phenomenon, luxury often surfaces, in the major commissions of public and private patronage, as the consummate expression of prevailing artistic achievement.

But the existence of luxury preserves a more significant fact. As the economic correlative to deprivation it testifies to the mal-allocation of resources in human society. It is proportionate, as C.S. Montesquieu pointed out, to the inequalities in the distribution of wealth.⁴⁶⁴ Radical perspectives would draw an instructive comparison between the quantities of material and manpower services embodied in the production of the non-essential elements of goods or utilities with the unmet aggregate of social need.⁴⁶⁵

The Provision of Luxury Goods and the Roman Economy.

The introduction of luxury in Ancient Rome has often been commented upon. The effect of the progressive spread of intensive market-orientated agricultural concerns, producing cash-crops with exchange-values on the basically subsistence level farming practices has generated an enormous amount of literature in recent years.⁴⁷⁰

Three points will be argued. Firstly, that from the close of the third century B.C. onwards, a sizeable market for luxury goods was artificially created by members of the Roman ruling body.⁴⁷¹ Secondly, that this predominantly land-owning oligarchy became conscious of the possibilities for profit which the domestic provision of private *luxus mensae* and the mass demand of public luxury could offer at the moment when the means to exploit such possibilities became available. Thirdly, that the systematic attempt to

supply such products provided the catalyst for the gradual transformation in the patterns of landownership and modes of production in many areas of Italy.

The creation of demand. The traditional belief that goods are only produced to meet existing demand, i.e. that increases in the production of commodities merely keeps pace with an increase in wants, has obscured an understanding of more complex economic realities.⁴⁷² The social and cultural environment in which consumption occurs is, more often than not, decisively influenced by the most economically and politically powerful members of the community. In Rome, innovation and elaboration of public festivals in particular and the heightening of the upper levels of personal expenditure induced or intensified demand for a multiplicity of goods.

From the period of the Hannibalic war, a whole series of new festivals was instituted, e.g., the *ludi Plebeii*, the *ludi Apollinares*, the *ludi Megalenses* and the *ludi Ceriales*, some of which were originally set up to lift morale and to relieve privation occasioned by the Carthaginian invasion of Italy and at first they were probably fairly simple affairs. I find it unlikely that landed proprietors would have remained unaware for long of the enhanced opportunities for profit that these events offered.

Can any self-interested economic motives be discerned in the framing of sumptuary laws?

Several details may be relevant. The senatorial decree of 161 B.C. stipulated that the *principes civitatis* were to serve only home-produced and not foreign wines at banquets during the Megalensian games.⁴⁷³ One might also conjecture from the low maximum levels of expenditure enjoined by the Fannian law that the intention was to preclude the purchase of imported dainties. Now the significant change that the *lex Licinia* effected was to encourage the ample use of products of the earth, vine and orchard - the very products in which many wealthy landowners were specialising.⁴⁷⁴ The prohibition, variously dated and interpreted, imposed on the Transalpine tribes may also be relevant - the most powerful explanation being that it served to uphold the exchange-

value of Italian wine in return for much needed imports of minerals and slaves.²⁷⁵ The value of vineyards well situated to take advantage of the export market would necessarily appreciate. But of greater interest still is the Aemilian law of 115 B.C. which forbade the serving of dormice, of shellfish and of birds of a foreign provenance at banquets.²⁷⁶ Now in the first century B.C. one notable development was the growth of *villaticae pastiones* (farmstead pasturing). By Varro's day, huge profits were accruing from the raising of geese, chicken, thrushes, peacocks and cranes in aviaries while other landowners diversified into the pasturing of pigs, goats, hares and other specialised forms of market gardening.²⁷⁷ One is not suggesting that by virtue of a single legal enactment a wholesale change in agricultural practice was effected but while many scholars have rightly highlighted the concern felt for the stability of wealth and the need for regulation, Roman aristocrats might equally have perceived the shared opportunities for enrichment that the growing demand for luxury offered them, enhancing their status and pecuniary strength still further. What the array of sumptuary laws provided was an indispensable, authoritative guide, channelling expenditure or directing investment into areas most beneficial to themselves.

Furthermore, large-scale investment in certain types of agricultural activity contributed in itself to the fuelling of public and private luxury at Rome. As mentioned above, the 'accepted sequence' - namely that supply is only generated to meet spontaneous demand - has now been replaced by a growing realisation that artificially intensified or stimulated desires are bound up with the whole investment and productive processes.²⁷⁸

Growing dependency and the concentration of Wealth. Modern scholarship has considerably deepened our understanding of the degree of dislocation that Roman expansionism in the Mediterranean and the consequent influx of wealth and slaves exerted on the social and economic structures of Roman Italy in the second century B.C.²⁷⁹ Major demographic changes occurred as large numbers of small-peasant farmers and their

families were dispossessed of their land by economic realities,²³⁰ by choice²³¹ or by coercion.²³² These people were either absorbed into the army or migrated to large towns where many found employment in public works, e.g., in the construction of temples, roads, aqueducts, sewers or in private *aedificatio*. Despite numerous statutory imposed limits and agrarian resettlement programmes, the basic aim of the legislators - the replenishment of the rural free labourer - was frustrated. The fact was that landed property proved an irresistibly attractive form of investment for the wealthy or newly enriched.²³³ A fundamental change occurred in many areas of Italy especially in the vicinity of large towns or in fertile regions situated near the major arterial links (road and water) where small natural-economy farms whose products were grown primarily for their use-value were displaced by market-sector estates producing surpluses in the form of cash-crops for sale in the large urban and even more far-flung markets. A regular and lucrative market for leather and woollen goods which were the products of pastoralism was provided by the Roman army.²³⁴ In the process, landed wealth became concentrated in proportionately fewer hands and a section of the population which had previously possessed an economic base of their own became dependent for their employment and sustenance on the policies of the governing order. A structural transformation in patterns of land-ownership and in the social relations of the means of production had occurred on a significant scale.

The retrospective judgement on this period by the Roman historian Florus was unequivocal. The magnificent banquets and sumptuous largesse were bound to produce want. An explicit connection was made between *luxus* and *fames*: *unde enim populus Romanus a tribunis agros et cibaria flagitaret nisi per famem quam luxus fecerat?*²³⁵ In my opinion the Sempronian law - the first to subsidise systematically wheat distributions at Rome - was prompted by a very real need occasioned by developments in economic practice.²³⁶ In a seminal essay on poverty and famine, Amartya Sen has observed how changing ownership relations can adversely affect a person's entitlement to food sufficiency. He stresses that famine usually occurs not when there is not

enough food available but when certain sections of the community cease to be able to command sufficient food through established legal means. Thus, the traditional focus on the difficulties of food supply as an explanation for distress or starvation can be shown to be fundamentally faulty.²⁰⁷

It was the thesis of Werner Sombart that luxury played a vital role in the genesis of capitalism. He observed that the repeal of the major sumptuary codes in seventeenth century Europe coincided with the geographical expansion of large-scale capitalistic enterprises. One immediately thinks of the introduction of colonial plantations (many of which were slave-staffed) for the production of cash-crops like sugar, cocoa, coffee, cotton as well as industrial development in Europe. An increase in productivity and employment, stimulation to trade, technology and the circulation of wealth were held to be the beneficial results of luxury.²⁰⁸ It is tempting to invite contrast with the failure of luxury trade and agriculture to effect sustained development in Ancient Rome. Salient cultural, technological and other differences are striking. The highly competitive political climate entailed that much of the surplus extracted from the estates of the nobility was reserved for ostentatious spending. Self-sufficiency (*minimum impendium*) was a guiding principle of economic rationality and so there was little borrowing for reinvestment in long-term and potentially fruitful ventures. Lacking too was the requisite reserve of a mobile, notionally free labour force. Barriers to the wholesale reception of commercial attitudes, strong even in seventeenth century England, were insurmountable.²⁰⁹

In Western Europe at least, the anti-luxury debate and the passage of sumptuary restraint was to recur for centuries. But this all ended with the emergence of capitalism, with its emphasis on the entire 'rationalisation' of working practices and of attitudes towards consumer behaviour in the pursuit of profit-maximisation. The vitriolic attack of Adam Smith is worth quoting in full,

signalling as it does the close of nearly two millenia of humbug on this subject:

It is the highest impertinence and presumption, therefore, in kings and ministers to pretend to watch over the economy of private people and to restrain their expense by sumptuary laws or by prohibiting the importation of foreign luxuries. They are themselves always and without exception the greatest spendthrifts in society.⁴⁹⁰

Wherein lies the significance of these statutes? Neglect and constant repetition need not simply indicate their futility. On the contrary, they evidence the constant will and determination to update these measures - to sustain the social structure on which the political ascendancy of the oligarchy depended.

It is true that they had limited economic effect - but they were aimed, in the main, to tamper with the external manifestations of status - at the forces of consumption rather than at the productive processes.⁴⁹¹

NOTES

III

- 1 Val. Max. 2.9.5.
- 2 C.S. Montesquieu The Spirit of the Laws trans. T. Nugent (New York, 1949), 97/8 noting the reluctance of Augustus and Tiberius to impose sumptuary legislation concluded that monarchies had no need of these laws. Indeed, for such regimes, unbridled luxury was a necessity.
W. Roscher 'Uber den luxus' in *Ansichten der Volkswirtschaft auf den geschichtlichen Standpunkte* (1878)
- 3 In Republican Rome the necessity of securing public approval for legal restrictions restrained glaring discrimination.
- 4 Unlike despots, aristocrats are concerned to regulate not to debar luxury spending. Contra Plato *Rep.* 555c who suggests that oligarchs resisted sumptuary laws in order to buy up cheaply the property of spendthrifts.
- 5 This was in accordance with their general principle of "cutting-off-the-tops" which was also manifested in the clampdown of aristocratic social and cultural clubs; *Arist. Pol.* 1313b. Thus the sudden disappearance of funerary *corredi* in Archaic Rome (see n.15 ch.1) may well point to the existence of tyrants.
- 6 Notice Athenaeus' comment on the dual standards of Demetrius of Phalerum (*Deipn.* 542c; cp. 593f); and Sallust on Sulla's (Plut. *Comp. Lys. & Sull.* 3.2).
- 7 In extreme cases legislation could be used to promote luxury. See Athen. *Deipn.* 526b on the measures of the people of Colophon concerning the pay and working hours of flute-girls; 518c for the anti-noise laws of the Sybarites. Phylarchus states (*apud Athen. Deipn.* 521c) that the Sybarites ordained one year's warning for sacrifices so that women might have ample time to prepare their dresses and that a cook or caterer who invented a culinary dish should have exclusive rights over it for a year.

- 8 The term was employed by Cicero (*Fam.* 7.26.2) and was employed as a convenient category by the jurists of the early first century A.D. The Elder Cato referred to them as *leges cibariae*. The Elder Pliny consistently called them *censoriae leges*, not once using the expression *sumptuariae leges*.
- 9 For a discussion of inequality, see Appendix 2.
- 10 See, for instance, the 1337 & 1363 Acts of Edward III.
- 11 Curiously, the regularisation of the wearing of gold-rings occurred after C. Sulpicius Galba's overzealous efforts to implement sumptuary laws were frustrated when: ... *volgo institores eius culpa defendi anulis*. Pliny N.H. 33.32. I can only assume that the *equites* were specifically exempted from the orbit of this law. Cp. *id.* 19.52-56.
- 12 The following discussion is intended to survey the various types of social distinctions observable in Ancient Rome during this period. These social categories were not rigidly fixed. They emerged over a period of time and were subject to change, redefinition and elaboration.
- 13 See Ch'u (1961) p.135 for the Hsin-shu code of Imperial China A 27a-29a which regulated so that merely' ...by looking at a man's dress it can be seen whether he is noble or humble, and by looking at a man's flag, his power can be ascertained.'
- 14 Zon. 7.9; Cic. *Phil.* 13.28; Plut. *Mor.* 282; Hor. *Sat.* 1.6.27; Juv. *Sat.* 7.192. On the subject of dress and related matters see Mommsen *Staats.* 3.215-23.
- 15 Livy 33.42.1. Macrobius *Sat.* 1.6.7-14 supplies a short history of the extension of the privilege, granted to the sons of *ingenui* (and later of freedmen), to wear the *toga praetexta* and *bulla*. At first these privileges were confined to the sons of nobles or of those who had served in the cavalry. Schol. in Cic. p.254 Stangl records that the offspring of a freedmen wore a leather *bulla*. For the story of Papirius Praetextatus see Gell. *N.A.* 1.23.1f. This privilege was conferred on certain religious officers on special days, see the *lex civ. Narb.* 15 *FIRA I.* p.201; cp. the *lex Col. Gen.* 66.

- 16 Polyb. 6.53.5. Other insignia of office included the *sella curulis*, *lictors*, *viatores*.
C. Nicolet in 'Augustus, Government and the Propertied Classes' in Millar & Segal eds. (1984), 89-128 has restated his conviction that there was a fixed senatorial census in the Republic but there is no scholarly consensus on this point. Augustus and his successors made important changes to this order. On the granting of the *latus clavus* by the early emperors see Cass. Dio 59.9.5; Tac. Ann. 14.50; M.T. Griffin (1982), 404f.
- 17 Polyb. 6.53.7. actually states that those who represented censors at the funerals of illustrious men were dressed in togas of full purple; *triumphatores* were honoured by gold-embroidered togas.
- 18 See *OCD* s.v *equites*. On the definition of *equites* see n.38 below.
- 19 Cic. *Rep.* 4.2.
- 20 Appian *B.C.* 2.120. Cf. Seneca *Clem.* 1.24. for the reluctance of the authorities to bestow a distinctive uniform on slaves for fear that it would give them too accurate an estimation of their potential strength. The dress of the common people was often described as *pullati*; Augustus directed the aediles to enforce the wearing of the toga as part of his general policy of reinforcing boundaries between the orders. Suet. *Aug.* 40.5. The *toga pulla* was a sign of mourning; see Cic. *Schol.* p.148 St; *EJ* 68.18; 69.22.
- 21 Ygr. Pliny *Ep.* 4.11.
- 22 Plut. *Cat.Min.* 6.3.
- 23 Cass. Dio 49.16.1; 57.13.5; Macrob. *Sat.* 2.4.14.
- 24 Suet. *Nero* 32.3; M. Reinhold 'History of Purple as a Status Symbol in Antiquity.' *Collection Latomus* 116 (1970) 48-73.
- 25 On this whole subject see D. Owen Hughes (1983), and especially p.42 for the different methods employed to distinguish *matronae* from *meretrices*.
Zaleucus of Locri stipulated that freeborn women could not (1) wear gold jewellery or purple-bordered garments unless they were courtesans; (2), leave the city at night except to commit adultery; (3), be accompanied by more

- than one slave save when she was drunk. In addition, only husbands who were either prostitutes or adulterers might wear a gold-studded ring or cloak of Milesian fashion; see Diod. Sic. 12.21.1 (Loeb ed.).
- 26 See *id.* p.25-6 on the regulations imposed in the cities of Siena and Ferrara in her recent article, 'Distinguishing Signs: Ear-rings, Jews and Franciscan Rhetoric in the Italian Renaissance City' *P & P* 112 Aug. 1986, 2-59. In addition, many Italian civic authorities employed sumptuary laws to isolate members of the Jewish faith. One tactic involved compelling Jewish women to wear ear-rings in order to associate them with conventional symbols of immorality - lust, vanity and pride. Some Jewish communities drew up their own self-regulatory codes in order to diminish public odium of their conspicuously successful financial enterprise. See *id.* pp. 34ff for a fascinating discussion of the ambiguous positions occupied by prostitutes and Jews - widely denigrated yet providing indispensable services to these cities.
- 27 47.18.5; cp. ch.4 for restrictions on mourning during the *ludi Saeculares*.
- 28 *EJ* 69.24.
- 29 Cass. Dio 56.43.1.
- 30 Tac. *Ann.* 16.22.
- 31 On the possible motives behind this rejection of normal societal pressures see S. Mackiewicz cited by Neal Ascherson in the course of stimulating animadversions on changing patterns of consumer behaviour in the modern era in 'The New Rich Spend, the Old Rich Sulk' *Observer* 13/7/1986.
- 32 Livy 5.25.9; Diod. Sic. 14.116.9; Cas. Dio. 60.22.2; Ovid *Fasti* 1.617.
- 33 Similar privileges were granted to the Vestal Virgins see Tab. Heracleensis 62; For their theatre privileges see Suet. *Aug.* 44.3 & for other exemptions see Cass. Dio 60.22.2; Tac. *Ann.* 12.42.
- 34 Suet. *Dom.* 3; cp. *Iul.* 43.3 for restriction on the use of *lectica*.
- 35 Hor. *Sat.* 1.2.28; 47; 71; 99. See Tib. *El.* 67.

36 Hor. *Sat.* 1.2.82.

37 Livy 34.54.5; Cic. *Har. resp.* 24; Val. Max. 4.5.1; Cf. Livy 34.44.5 for its attribution to the censors Sextus Aelius Paetus and C. Cornelius Cethegus and to Scipio Aemilianus by Val. Max. 2.4.3. T.P. Wiseman reviews the evidence for the variant traditions on this incident in *Phoenix* (1973), p.194f.

38 K.Hopkins (1983) p.17.

39 Cic. *Mur.* 40 & Vell. Pat. 2.32.2 have *restituit* which strongly suggests the restoration of a *ius* abolished by Sulla. For further references see Livy *Epit.* 99; Pliny *N.H.* 7.117; Cass. Dio 36.42.1. Cf. Plut. *Cic.* 13.2. T.P.Wiseman (1973) argues that Roscius legislated for the first time in an area where custom had previously prevailed.

The perplexing problem of defining exactly whom the equestrian order constituted has exercised the ingenuity of many scholars, e.g., C. Nicolet *L'Ordre équestre à l'époque républicaine* (Paris, 1966); M.I. Henderson 'The Establishment of the *Equester Ordo*' *JRS* 53 1963, 61ff; T.P. Wiseman 'The Definition of *equus Romanus* in the late Republic and Early Empire' *Historia* 19 (1970), 67-83; etc. but has led to no consensus. A garbled passage in the Elder Pliny *N.H.* 33.29-36 provides the only sustained discussion amongst ancient authors. It is clear that the confusion prevailed in antiquity, probably occasioned by the increasing obsolescence from the second century B.C. onwards of census categories designed for a much earlier historical period. Originally the 18 centuries of *equites equo publico* - a designation which itself had altered with time (Pliny *N.H.* 33.35) - must have been sufficient to contain eminent members of the state who possessed the requisite property qualification. With the fruits of imperial expansion, many others achieved the technical rating of this order which, in the late Republic, was fixed at 400,000 H.S. A further complication was injected by C. Gracchus' judiciary innovation which created a new album of *Gracchani iudices* whose specific description is, sadly, lacking from the surviving text of the *lex*

Acilia (13). It is certain that at least some of these jurors possessed the *equus publicus* (id. 28) but others may have simply had the requisite property qualification. The latter would have been entitled only to wear iron rings (Ateius Capito asserts *apud* Macrob. *Sat.* 7.13.12 that any free man had the right to wear a ring which might be of gold or iron; probably the former was confined to holders of the public horse; Val. Max. 9.3.3). From that period, when C. Gracchus was perceived as favouring equestrian over senatorial interests, an overlapping definition arose. In general parlance, all those possessing the technical financial standing of an *eques* were given the title. The *leges teatrales* do not seem to have cleared up the problem although Roscius probably stipulated both a minimum *census* and *ingenuitas* as requirements for the privilege of sitting in the first 14 rows (Ps. Quint. 302; Hor. *Epod.* 4.16; *Epist.* 1.1.62; *Sat.* 1.6.40. Juv. 3.152f complains that sons of pimps and auctioneers can occupy these seats) as well as making special arrangements for bankrupts (*decoctores*) (Cic. *Phil.* 2.18.44) and debarring gladiators from this privilege. Finally Tiberius unified the equestrian order in A.D. 22 by granting all those who were freeborn and whose father's father had been freeborn, and possessed over 400,000 H.S. and had not been disqualified under the *lex Iulia theatralis* from sitting in the 14 rows, the *ius anuli aurei*.

- 40 On a *lex Iulia* of uncertain date see Rotondi (1912) p.462; Pliny *N.H.* 33.32; Suet. *Aug.* 40. For Nero's provisions see Tac. *Ann.* 15.32; Suet. *Nero* 11; cp. *Claud.* 21.3. The *lex Iulia de maritandis ordinibus* seems to have placed certain restrictions on the right of single people of both sexes to behold public spectacles (Ulp. 16.1); disabilities were temporarily lifted by the *s.c. de ludis Saecularibus* 55f *FIRA* I. pp.274/5; cp. Cass. Dio 54.30.5 for another easing of this measure. However this information does not square well with the reports of open demonstrations of dissent by the unmarried in the theatre in A.D. 9 Cass. Dio 56.2.1.
- 41 For special seats for religious officials note *EJ* 94;

333. The *Lex Coloniae Genetivae Iuliae* 127 mentions the reservation of the orchestra for mag., promag., senators and the sons of senators, and the *praef. fabrum* of the Roman people. The variety of legal sources listed in the *lex Irnitana* ch. 81 testify to the sensitivity over this issue, see the commentary on p. 226 J. González (1986). For a full discussion of the categories established in the etc. during the Empire see J. Kolendo 'La repartition des places aux spectacles et la stratification sociale dans l'empire Romain à propos des inscriptions sur les gradins des amphithéâtres et théâtres.' in *Ktema* 6 1981, 301-15.
- 42 Suet. *Aug.* 44-5; *Claud.* 4.3.
- 43 Suet. *Claud.* 21.3; *Nero* 11.1; Tac. *Ann.* 15.32; C. Dio 55. 22.4; 60.7.
- 44 Suet. *Aug.* 44.1; cp. Plut. *Mor.* 475b for a reference to the custom of $\pi\rho\omicron\epsilon\delta\rho\acute{\iota}\alpha$ in Greek city-states.
- 45 See ch.6 for details.
- 46 For a penetrating discussion of snobbery at work in the setting of contemporary social gatherings, see Simon Barnes' witty piece 'Humbug of Jolly Chaps in Badges' in *The Times*, 7th July, 1986.
- 47 In the Republic sons of freedmen gained entry into the senate (S. Treggiari 1969, 51) but in the Principate they were debarred from the equestrian order (Pliny *N.H.* 33.32). Freedmen were not eligible for local office in the municipalities; *lex Mun. Mal.* 54. Cp. also A.M. Duff *Freedmen in the Early Roman Empire* (Oxford, 1928).
- 48 Under the *lex Aelia Sentia* A.D.4 and the *lex Iunia Norbana* A.D.19? three distinct categories of ex-slaves emerge: freedmen who enjoyed citizenship status, Iunian Latins and *peregrini dediticii*. The last-named category could never achieve full freedom. Justin. *Inst.* 1.5.3; Gaius *Inst.* 1.36.9; 3.55; 18.9. In the early Empire *civitas* was also granted to local magistrates together with their parents, wives and children under *patria potestas* and grandchildren in the male line; *lex Mun. Salp.* 21. Service in the Roman army brought the reward of *civitas* on completion of service for the soldier, his children and descendants, and *conubium* with his wife.

- 49 Indeed on just how much of post-war research in social mobility has been concerned to combat Marxist analysis of the exploitative nature of class relationships and to uphold liberal myths about the 'open society' consult J.H.Goldthorpe *Social Mobility and Class Structure in Modern Britain* (Oxford, 1980) p.5f for an excellent critique and survey of the material. Radicals insist on the need for collective rather than individual advancement.
- 50 A point which Michael Crawford has emphasized in *The Roman Republic* (London, 1978), esp. ch.7. Discussion of this aspect and full details of the major categories of sumptuary laws passed in the Republic will be given in ch.4.
- 51 Two examples will suffice here to demonstrate classical perceptions of such social forces. L. Lucullus' indignant rejoinder to those who criticised the luxury of his villa at Tusculum was that his neighbours, one an *eques*, the other a freedman, had already built magnificent houses. Was he to be denied what was permitted to members of an *inferior ordo*? But, as Cicero pointed out, if prominent members of the community had exercised self-restraint in the first instance, others would have refrained from luxury as well: Cic. *Leg.* 3.30-1; *Off.* 1.140. In his dramatic speech set in the golden age of fourth century Rome Dionysius of Halicarnassus expands on the theme of public luxury and private parsimony. In his celebration of rustic poverty, Camillus is made to reject all but the necessities of life and to observe that even if he had accepted Pyrrhus' presents for purely personal use, the Roman people would have condemned him for corrupting the youth by initiating into the state an emulous yearning for luxury and extravagance; 19.15.1ff.
- 52 At some time in the second century B.C. the qualification for the first census class was changed from 100,000 asses to 100,000 HS.
- 53 Regressive taxation could effect the same result.
- 54 For background information on these groups see P.C. Weaver 'Social Mobility in the Early Roman Empire: The Evidence of the Imperial Freedman and Slaves' *P & P* 37

- 1967, 3-20 and his book *Familia Caesaris: a Social Study of the Emperors' Freedmen and Slaves* (Cambridge, 1972).
- 55 So, as C.S. Montesquieu pointed out (1949), preserving the proper proportioning between one's wants and the means of satisfying them.
- 56 Cic. *Att.* 2.19.3 9 July 59 B.C. where Pompey and C. Caesar irritated at the knights' appreciation of Curio, threatened to repeal the Roscian and frumentary law; cp. C. Dio 36.24.4 L. Roscius as one of the few who opposed the *lex Gabinia*; Macrobian *Sat.* 2.7.2-9 & Suet. *Iul.* 39.2 for C. Iulius Caesar's humiliation of the *eques* Laberius. See Tac. *Ann.* 6.3 for the opportunism of Iunius Gallio whose proposal for the privilege of the 14 rows to be bestowed on retired Praetorians led to his exile.
- 57 *Roman Law: Linguistic, Social and Philosophical Aspects.* (Edinburgh, 1969), 117f. J.A. Crook in 'Feminine Inadequacy and the *s.c. Velleianum*' in B. Rawson ed. (1986), 83-92 has advanced the suggestion that both Augustus and Claudius were moved to take steps to protect women from becoming embroiled in the complex arrangements of standing surety for debts.
- 58 Livy 34.4.13.
- 59 Livy 34.4.15; for the whole debate see 34.1-8; J. Briscoe in *A Commentary on Livy Bks 24-37* (Oxford, 1981), 39ff denies the authenticity of Cato's speech. cp. Symacchus' (*Ep.* 10.8) grateful appreciation of the emperor Theodosius' measures.
- 60 *op.cit.* (1983), esp. pp. 84-90.
- 61 Polyb. 31.26.5f.
- 62 On this aspect see chapter 4.
- 63 H. Schoeck *Envy: A Theory of Social Behaviour* (London, 1969), p.20 has some valuable insights but his general thesis that "...envy alone makes any kind of social coexistence possible." (p.2) can, in no way, be endorsed.
- 64 Diod. Sic. 34/5.2.48. This shared recognition on the part of the indigent of the overall injustice of their plight was something which state authorities were most anxious to avoid. Compare Sallust's characterisation of the Roman plebs' approval of

- Catiline's designs (*Cat.* 37.3). *Plut. Lyc.* 10.1; cp. 24.2, for Lycurgus' insistence on ordinary and specified victuals at common messes to ensure that wealth did not arouse envy.
- 65 *Plut. Luc.* 40.1. Notice Plutarch's comment on the judicious restraint of Pompey in the construction of his house; *Pomp.* 40.5.
- 66 *Plut. Sulla* 1.2
- 67 *Strabo* 10.4.16. The Indian sophist Calanus was credited with perceiving the link between ὑβρις on the one hand and luxury and greed on the other. Notice also *Athen. Deipn.* 521; 523. Compare Polybius' (6.7.6) analysis of the reasons for the degeneration of kingship into tyranny. A fondness for luxury in dress and food, and a growing licence in sexual matters was to blame.
- 68 For the activities of the goddess Nemesis, the chastiser of human presumption and foe of the excessively happy, see H. Schoeck (1969), p. 122. For the link between human success and divine indignation notice *Appian Pun.* 9.57 on the warnings of Aemilius Paulus and *Diod. Sic.* 30.23.1 on the *princeps* M. Aemilius Lepidus' explicit admonition to the senate to heed Nemesis and not to treat Perseus too harshly; *id.* 31.9.4.
- 69 Loeb trans. of *Cic. De Orat.* 2.209f. cf. *Hor. Epist.* 1.2.57 on envy as worse than the torture of Sicilian tyrants.
- 70 Horace's friendship with Maecenas seems to have provoked tremendous envy, see *Sat.* 2.1.75; 2.6.48; 1.1.110.
- 71 *Juv. Sat.* 1.26f; 3.131; & 3.58 where spite was directed particularly against Greeks. For racial considerations in Augustan social legislation see *Suet. Aug.* 40.3.
- 72 *Hor. Epod.* 4; cp. *Epis.* 1.6.22; *Dion. Hal.* 4.24.1 warned against the pollution of the body politic by excessive manumission.
- 73 As K. Hopkins observed in 'Elite Mobility in the Roman Empire' in *Past and Present* 32 (1965), p. 18f the social mobility of this group was a function of the political rivalry between the emperors and the senatorial aristocracy.
- 74 A classic parallel in recent history is provided by Winston Churchill's insistence in national broadcasts during the

- Battle of Britain that "There are no class divisions now."
- 75 App. *Sam.* 4.7 (321 B.C.). See *B.C.* 1.116 for the sumptuary restrictions imposed by Spartacus on his own men.
- 76 Cic. *De Orat.* 2.209. One's *dignitas* might be improved through one's *virtus*, *industria* and *ingenium*; *Balbo* 18. Conversely, resentment was inflamed by a feeling that success had been attained through *vitium*. Cp. *Diod. Sic.* 34/5.2.33.
- 77 Festus p.290 Lind. on the *lex Ovinia*. Technically, eligibility to the senate, in the Republic at least, was open to any freeborn *ingenuus* but in practice wealth and connections were prerequisites. Cicero designated as *optimates* those who adapted their policies to the likings of all the best citizens. He termed as *populares* those whom he believed to pander to popular favour (*Sest.* 96-7). Many of these Latin terms can be paralleled in Greek usage, e.g. ἀριστοί, ἀγαθοί, βέλτιστοι.
- 78 Tab. *Heracleensis* 94. Cp. Cic. *Fam.* 6.18.1 for restrictions on practising auctioneers. Notice Cicero's strong disapproval of Verres' equalization of privilege in Sicily. Distinctions in *ordo*, *aetas* and *quaestus*, perhaps enshrined in censorial arrangements, were blurred by his indiscriminating greed for money, *Verr.* II.2.49.122.
- 79 Tab. *Her.* 123f (from the local senate & decurionate). For *lanista* cp. the *s.c. de Larino* 16; for *lenones* cp. *id.* & *C.Dio* 59.10.6; for prostitutes, cp. *Tac. Ann.* 2.85; the *lex Acilia* excluded gladiators from being empanelled as jurors (13 a restored reading), see also the *s.c. de Larino* 16; Tab. *Her.* 108f for restrictions on thieves, frauds and those who had infringed the *lex P/aetoria*.
- 80 See M. Malavolta 'A proposito del nuovo s.c. da Larino' in *Sesta miscellanea greca e romana* (1978), 347f and B. Levick's thorough review of the evidence in 'The *Senatus Consultum* from Larinum' in *JRS* 73 (1983), 97-115. It is rightly connected with senatorial concern about morality in A.D. 19. Cp. *Tac. Ann.* 2.85.1; *Suet. Tib.* 35.2; *Dig.* 48.5.11.2.
- 81 See M. Reinhold 'Usurpation of Status and Status Symbols

- in the Roman Empire' *Historia* 20 (1971), p.286.
- 82 The first debarred senators and their sons because, according to Livy (21.63.4) ... *quaestus omnis patribus indecorus visus*; the second forbade the same group from bidding for lucrative public tax contracts in Asia.
- Notice the frequent reference to *sordidi quaestus* in the *s.c. de sumpt. lud.* Bruns (1909), p. 208, 1.8; 1.13 *quaestus lanistarum*. On the subject of money-making as a whole see T.P. Wiseman (1971), 77-89 on *artes inhonestae*.
- 83 See L.Grieve (1985), p.425.
- 84 Cic. *Phil.* 2.18.44; Seneca *Ben.*4.26.3 and *Ep.* 81.2; *contra SHA Hadrian* 18.9. On this term and for wider aspects of insolvency in Roman law, in particular, the *lex Iulia de cessione bonorum* which allowed certain debtors to avoid *infamia*, see J.A. Crook 'A Study in Decoction' *Latomus* 26 1967, 363-76.
- 85 On this epoch, see the illuminating discussion of N. Elias *The Court Society* (Oxford, 1983), 66-77; ch.4.
- 86 The senatorial census which was, perhaps, fixed for the first time by Augustus was subsequently raised from 400,000 HS. to 800,000HS and then to 1 million HS. For his far reaching purges of the senatorial order see Cass. Dio 52.42.1f; 53.2.2; 54.17.3; 55.13.6; 57.10.3; & the discussion of C. Nicolet in Millar & Segal (1984). Vell. Pat., however, 2.129.3 could claim that Tiberius made up a senator's *census* in such a way as to discourage luxury.
- 87 George Orwell in *Homage to Catalonia* (1938) ch 1 describes the euphoria during those heady days of freedom when people discarded servile forms of speech like *señor, don*, and adopted working-class clothes.
- 88 See Josephus *BJ* 2.119f; for their asceticism see Philo *de Vita Contemplativa* and *The Jewish Encyclopedia* (New York and London, 1907), 5.224f s.v. Essenes.
- 89 Macrobian. *Sat.* 3.17.10.
- 90 Cp. Sall. *Cat.* 6.1; Verg. *Aen.* 7.203. This idea was expressed in myth by the departure of Astraea, goddess of justice: Ovid *Met.* 1.150; Verg. *Ec.* 4.6; *Georg.* 2.473; Aratus *Ph.* 133-6. In these golden-ages a form of

- communism was envisaged. See further A.F. Wallace-Hadrill (1982), esp. p.23 on Verg. *Georg.* 1.122; Ovid *Met.*1.135.
- 91 Tac. *Ann.* 3.26-9; cp. Isocrates *Areopag.* 40.
- 92 Quoted and discussed in ch.6.
- 93 These views were articulated through the person of Sextus Caecilius *N.A.* 20.1.22f.
- 94 I am grateful to Frank Goodyear for drawing my attention to this passage which is cited and discussed in his article (1970), p.103.
- For Seneca's stance see *Ben.* 1.10.3; *ceterum idem semper de nobis pronuntiare debebimus, malos esse nos, malos fuisse, invitus adiciam, et futuros esse.*
- 95 Quoted on p. 10 above.
- 96 An attempt by the praetor Sempronius Asellio in 89 B.C. to uphold an obsolete restriction on the exacting of interest in defiance of long-established usage met with disastrous personal consequences. The money-lenders had him cut down during a religious ceremony; Appian *B.C.* 1.54. Note how judiciously the emperor Trajan resolved a query of Pliny's on another conflict; *Ep.* 10.115.
- 97 Quoted by D. Owen Hughes (1983).
- 98 Cass. Dio 57.13.3; Tac. *Ann.* 3.54; cp. Cass. Dio 56.25.7; see ch.6.
- One of the problems of the late Republic and early Empire was the over-readiness of the authorities to legislate.
- 99 For examples see ch.2 below. For a discussion of the relationship between law and social change in contemporary societies and for a valuable review of attempts to find a working definition of social change see R. Cotterrell (1984), 48-51. For a survey of the major perspectives of social change see appendix 3.
- 100 *Rep.* 427.
- 101 'Social Mobility and the Theodosian Code' *JRS* 54 1964, 49-53.
- 102 *The Theory of the Leisure Class. An Economic Study of Institutions.* (London, 1923). See appendix 4 for a fuller discussion of his ideas.
- 103 See H.Gerth and C.W.Mills *From Max Weber: Essays in Sociology.* (Oxford, 1946), 186-7.

- 104 See R.H. Tawney's incisive analysis in 'Inequality and Social Structure' in Tumin (1970).
- 105 Ateius Capito explained the growing elaboration and expense of rings from their simple origins as a seal to the inseting of increasingly precious stones as consumer rivalry which led men to boast of paying higher prices for engraved stones, *Macrob. Sat.* 7.13.12.
- 106 For all these terms see H. Leibenstein 'Bandwagon, Snob and Veblen Effects in the Theory of Consumer Demand' in *Quart. Jour. of Econ.* 64 1950, 183-203. The behaviour of Hippodamus of Miletus, commented on by Aristotle *Pol.* 1267b, provides a nice illustration of the desire to be exclusive in antiquity.
- 107 See appendix 4 for a summmary illustration of the major types of status spending by the Roman aristocracy.
- 108 On this fish, see A.C. Andrews 'The Roman craze for Surmulletts' *C.W.* 42 (1948a) 186-8. Commercial dealers were signally unsuccessful in artificially raising larger specimens.
- 109 *Juv. Sat.* 4.16; *Pliny N.H.* 9.67; cp. 9.139..
- 110 *Plut. Mor.* 60d/e; cp. *Juv. Sat.* 4.70; A. Passerini 'La τρυσή nella storiographia ellenistica' *SIFC* 11 1934, 35-56 reviews the political significance of luxury and pleasure in the theories of the decline of constitutions advanced by Plato, Polybius etc.
- 111 Veblen (1923), p.30f; cp. *Persius* 6.13. On emulative consumption, "keeping up with the Jones'," notice the comments in *Juv. Sat.* 6.149; 14.138.
- 112 *Seneca Ep.* 123.6-7.
- 113 *Persius* 6.13.
- 114 *Gell. N.A.* 2.24.2.
- 115 *Pliny N.H.* 13.24; 14.95.
- 116 *Cass. Dio* 57.15.1; *Suet. Tib.* 34; cp. *Tac. Ann.* 2.33.
- 117 See *OCD* s.v. *patria potestas*.
- 118 In an illuminating article R.A. Nisbet in 'Kinship and Political Power in the First Century Rome' in *Sociology and History: Theory and Research* (1964), Cahnman W.J. & Boskoff A. (eds.), 257-71 examines the penetration of state authority into family concerns and the growth of legal individualism. However his explanation for the

- changes is not compelling.
- 119 As R.A. Nisbet (1964), 259/60 observed, the exclusion of the mother's blood relations was necessary to avoid the confusion resulting from a person falling under the sphere of two *patresfamiliae*. The strict procedures for marriage and adoption reflected this fact too.
- 120 See *OCD* s.v. Inheritance, law of (4) for the difference in treatment between civil and praetorian law on intestacy.
- 121 *Ibid.* for the remedy available in the Principate to close relatives who had been passed over without just cause.
- 122 Both legacies and donations in anticipation of death were covered; Gaius 2.224f. suggests that the measure was prompted by the dispersal of estates through legacies and by manumission, neither of which the Twelve Tables appear to have restrained; Gaius 4.23 for the possibility of a *manus iniectio* on legatees who had received over a 1000 asses; Ulpian 1.2 records that a quadruple penalty was exacted.
- 123 The possibility was raised by A.F. Wallace-Hadrill 'Family and Inheritance in the Augustan Marriage Laws' *PCPS* 207 1981, 58-80, on p. 70 but it would have been a very insecure method of payment.
- 124 The unfairness of this statute was acknowledged in antiquity, see Cic. *Rep.* 3.10.17. On the qualification of the first census class, Gell. *N.A.* 6.13.1 has 125,000 *aeris*; Cass. Dio 56.10.2 states that women might not inherit property valued at more than 100,000 HS; cp. Gaius 2.274 & Cic. *Verr.* II.1.41.106f. It is generally held that this law did not interfere with the intestate rights of women but cf Berger s.v. *lex Voconia* who suggests that this law confined the capacity to intestate succession of female agnates to sisters; cp. Paulus *Sent.* 4.8.22.
- 125 Gell. *N.A.* 17.6.1; cf. the Elder Cato frs. 218/9 *Malc.* for an indication of where real power lay in the Roman family.
- 126 As A.E. Astin *Cato the Censor* (Oxford, 1978), p.114f pointed out in his discussion of this law there is no way of assessing how common this form of marriage was at this period. He suggested that a major factor was *mens'*

- perception that their own dignity was impaired by the independence of women.
- 127 R.P. Saller in 'Roman Dowry and the Devolution of Property in the Principate' *CQ* (1) 34 1984, 195-205 explores the implications of changes in marital practice and the high divorce rate for dotal arrangements. He concludes that the relatively modest size of Roman dowries indicates that they were intended not as alternatives to female inheritance of part of an estate but as provision for the upkeep of the married daughter and her *sui*. No record of Roman sumptuary restrictions on this subject survive but see Strabo 4.1.5 for dotal limits in Massilia. For references to the *lex Maenia* see Rotondi (1912).
- 128 In 'Women in Roman Succession' in B. Rawson (ed.) *The Family in Ancient Rome: New Perspectives* (London & Sydney, 1986).
- 129 Appian *B.C.* 5.67 discussed by A. Watson in *The Law of Succession in the Later Roman Republic* (Oxford, 1971), p.171f. For sources of this law see Gaius 226-7; Ulpian 24.32; Dig. 35.2.14.
- 130 See Rotondi (1912), 454-5 and D. Daube (1969), p.120-1 for 'non-tipping' aspects.
- 131 In the Digest 48.5.6.2; 48.5.34.1 a distinction is drawn between *adulterium* - an illicit sexual relationship involving a married woman (*matrona*) - and *stuprum* (debauchery) - a crime committed against a widow, boy or virgin. However, earlier writers, eg. Livy 8.22.3; 10.31.9 & Val. Max. 6.1.2. use the latter term for various forms of male and female unchastity. Other scholars have preferred to date this measure to 149 B.C. on the basis of Livy *Per.* 50 but the text is very corrupt.
- 132 Polyb. 6.37.9. For homosexual offences or charges see Plut. *Marc.* 2.3f; Val. Max. 6.1.7; 8.1.8; Cic. *Fam.* 8.12.3; Suet. *Dom.* 8.3; Quint. *Inst.* 4.2.69; Cic. *Mil.* 9; Dion. Hal. 16.4.1.
- 133 Plut. *C. Gracch.* 4.4; Cic. *Pis.* 89. See also R. MacMullen 'Roman Attitudes to Greek Love' in *Hist.* 31 1982, 484-98 for a full discussion of the evidence for this activity in Rome. I find difficult to accept his view that this

- was a Greek phenomenon confined to the wealthiest sections of the Roman society.
- 134 Cp. Cic. *Off.* 3.15.61; *Nat. Deo.* 3.30.74 for the *iudicium publicum rei privatae lege Plaetoria*; condemnation on this charge entailed disqualification from high municipal offices such as the decurionate see Tab. Her. 111.
- 135 On the basis of Plaut. *Pseud.* 303 which mentions a *lex quinavicenaria* but does not directly refer to the *lex Plaetoria*. A minor who was sued for payment could be granted an *exceptio legis Plaetoriae*; see Claudius' speech to the senate' Smallwood 367. Notice that Suet. *Vesp.* 11 in a chapter on the repression of *libido* and *luxuria* mentions Vespasian's insistence that usurers who lent money to minors should not be able to enforce repayment even on the death of their *paterfamilias*. Cp. the advice of Ps. Sallust *Orat. Caes.* 5.7;
- 136 See especially Plaut. *Truc.* 760; 842; *Rud.* 652; *Asin.* 131; *Aul.* 793; *Merc.* 410; Paulus s.v. *muneralis, lex*. For the banning of procurers from the municipal senates, see n.79 above.
- 137 Cp. Elder Cato frs. 218-9 *Malc.*; Hor. *Sat.* 1.2.31f for the Elder Cato's greeting of an acquaintance emerging from a brothel.
- 138 Following M. Voigt (1890), pp. 244ff who gives valuable references on this and related matters. For trials see Livy 10.31.9 (295 B.C.); 25.2.9 (213 B.C.); sometime before 328/7 B.C. M. Flavius was prosecuted by the aediles on a charge of *stuprum* with a *materfamilias*, Livy 8.22.3; cp. Val. Max. 2.5.3; 6.1.6; 6.1.10; 6.1.11; 6.1.12. In 331 B.C. 170 *matronae* were convicted on a charge of poisoning; Livy 8.18.1.
- 139 Gell. *N.A.* 4.20.3; Cic. *Leg.* 3.7 proposed that the censors: *caelibes esse prohibento*.
- 140 Suet. *Aug.* 89.2.
For the stock arguments in favour of child-rearing see the dramatic speech of Augustus in Cass. Dio 56.2.1f in reply to demonstrations against his marital reforms.
- 141 A papyrus fragment from Egypt cites a clause from the *lex Iulia de maritandis ordinibus* explicitly enjoining the procreation of children as a condition of matrimony, see

- H.A. Sanders 'A Latin Marriage Contract' *TAPA* 1938, 104-16.
- On the case of Spurius Carvilius Ruga who pointed to his oath before the censors as a reason for wanting to divorce his wife, see Val.Max. 2.4.1; Gell. *N.A.*17.21.44.
- 142 Eg. *CIL* 1².1211.
- 143 Val. Max. 7.1.1; Pliny *N.H.* 7.140.
- 144 Varro Γερωνιοδιδάσκαλος fr.189 where the simple, healthy lives of Roman women of old are contrasted with the pampered, luxurious lives of women of a later age. Livy 7.25.8f on the manpower shortage; Horace *C.* 3.24. G. Williams in 'Poetry in the Moral Climate of Augustan Rome' *JRS* 52 1962, p.31f rightly associates the abrupt intrusion of these ideas in several poems with Horace's support for Augustus' legislative programme. Contrast the tone of *C.* 4.5.
- 145 See H.H. Scullard (1981), p.62 for the *Carmentalia* on the 15th Jan.; p.77 for the *Lupercalia* on the 15th Feb. For the inauguration of temples see J.H.W.G.Liebeschuetz (1979), p.51 on *Pudicitia*, *Pietas* etc. In 114 B.C. Sulpicia, wife of Q. Fulvius Flaccus, was deemed the chastest woman in Rome and dedicated a statue to Venus Verticordia.
- 146 Bibliography: D. Nörr 'The Matrimonial Legislation of Augustus: An Early Instance of Social Engineering' in *Irish Jurist* 16 (1981), 350-64; H. Last in *CAH* vol. 10; L.F. Raditsa 'Augustan Legislation concerning Marriage, Procreation, Love Affairs and Adultery' in *ANRW* H. Temporini (ed.) *Principat Recht* II (Berlin, 1980) 278-339; B. Rawson 'The Roman Family' in B. Rawson (ed.) (1986) 1-57. A. Wallace-Hadrill 'Family and Inheritance in the Augustan Marriage Laws' in *PCPS* 207 (1981), 58-80; P. Csillag *The Augustan Laws on Family Relations* (Budapest, 1976); P.A. Brunt (1971), 558-66; R.I. Frank 'Augustus' legislation on Marriage and Children' in *Calif. Stud. Cl. Ant.* 8 1975, 41-52.
- 147 E.g. H.H. Scullard *From the Gracchi to Nero* (London, 1976) p.239 and N. Lewis & M. Reinhold *Roman Civilization* (Columbia, 1966) [p.47. For concern about adultery at an early stage in Roman history see Plautus *Mil. Gl.* 807; 1437;

- Bacch.* 914; For Sulla's *lex de adulteriis* see M. Voigt (1890). Note Cass. Dio 37.46.2; 39.6.2; Val. Max. 8.5.5 for the public trial of P. Clodius, accused of adultery in 61 B.C. and acquitted. See too Val. Max. 8.1.abs.12 for the acquittal (of uncertain date) of Calidius Bononiensis on a public charge of *adulterium*; id. 8.2.3 for a private charge of *inpudicitia*.
- 148 See Elder Cato *apud* Gell. *N.A.* 10.23.3-4 although the exercise of this power must have been very rare. Paul Sent. 2.26.1 states that in the second chapter of this *lex Iulia* both adoptive and natural fathers were given the right to kill adulterers caught in the act in his or in his daughter-in-law's house whatever his station. A husband's right to kill was restricted to *infamosi lenones*, *histriones*, gladiators, freedmen, criminals and slaves. He could not legally slay his spouse although judicial leniency was extended to him if he did.
- 149 Dig. 48.5.2.2; Paul Sent. 2.26.8. Pliny *Ep.* 6.31.6 for the case of a military tribune unwilling to proceed against his wife. On the subject of conjugal forbearance of their spouse's misdemeanours see D. Daube 'The *lex Iulia* concerning adultery' *IJ* 7 1972, 373-80.
- 150 Dig. 48.5.4.1; 48.5.2.8; Tac. *Ann.* 2.85.
- 151 Paul Sent. 2.26.6.
- 152 Seneca *Ben.* 6.32. Augustus was strict, (Tac. *Ann.* 3.24) but cf. id. 2.50 for Tiberius's clemency in certain cases. On the numerous trials for adultery see Tac. *Ann.* 3.22; 3.38; 4.42; 4.52; 6.29; 6.40; 6.47; 11.2; 12.8; 14.2.
- 153 Paul Sent. 2.26.14.
- 154 The nature of the evidence is such that it is often difficult to tell whether certain clauses belong to the *lex Iulia* or to the *lex Papia Poppaea*.
- 155 Suet. *Aug.* 34; Cass. Dio 54.16.1f; 56.7.2 On inheritance restrictions see Gaius 2.286 and for scholarly discussion P. Csillag (1976), 85/6. The restrictions on inheritance may have only affected the first census class, see J. Crook (1986), p.67. R.I. Frank (1975), 45 cites an official document from Egypt which suggests that the law was only implemented in the case of men with estates worth over 100,000 H.S. (women over 60,000 H.S.).

- 156 Dig. 23.44.1; Ulp. *Rules* 13 & 14.
- 157 Tac *Ann.* 12.53; 14.60 on the degradation of Octavia.
 In addition this *lex Julia* may have hindered the unmarried from viewing the games although this restriction was temporarily lifted in 17 B.C. by the *s.c. de ludis saecularibus*. *Ingenui* were permitted to marry freedwomen (Cass. Dio 56.7.2) perhaps for the first time; cp. Livy 39.19 on the special *ius* granted to Hispalla Fecenia.
- 158 Prop. 2.7; Livy 1 *Praef.* 9; Suet. *Aug.* 34; C.Dio 56.1.2.
- 159 Hor. *Carm. Saec.* 17-20.
- 160 A passage in C.Dio 54.16.1 suggests that this privilege may have been granted by an earlier law, eg. 18/7 B.C. or even 27 B.C. (C.Dio 53.13.2-3; Tac. *Ann.* 2.51.
 See Tac. *Ann.* 15.19 on the senatorial clamp-down on fictitious adoptions by candidates on the eve of elections or allocation of provinces or to receive inheritances, followed by swift emancipation. Cp. id. 2.51. For details of how these inducements operated in the municipalities see the *lex Mun. Mal.* 56 *FIRA I* pp.211-2.
- 161 Ulpian 29.3 *libertae* with 4 children were freed from guardianship and given the right of making a will provided their patron shared in their estate. Gaius 1.145; 3.50. Gell. *N.A.* 10.2.2 records the erection of a monument on Augustus' instructions to one of his *ancillae* who had died soon after producing quintuplets. The inscription recorded the number of her children even though they all died.
- 162 Ulpian 13 & 14.
- 163 Tac. *Ann.* 3.25; 3.28; Pliny *Pan.* 42; for its inefficacy see Juv. 2.37; Tertull. *Apol.* 4.
- 164 Suet. *Aug.* 69; 71. Cass. Dio 54.16.3.
- 165 See ch.7.
- 166 I am in basic agreement with the views expressed by A.F. Wallace-Hadrill (1981), p.59f who examines the laws from their role as inheritance laws. As he pointed out, these laws only make sense in the context of a common practice of leaving property to *extranei* and those most affected by his measures were the wealthy propertied, candidates for office and freedmen. In the case of the latter

category the stipulation that they had to have three surviving heirs in order to be free from patronal rights to their estate entailed that in practice the chances of their offspring entering the highest property classes were slight.

- 167 Appian *B.C.* 1.9 In addition to the allowance of 500 *iugera* his law permitted a further holding of 250 *iugera* for each child. Plut. *Ti. Gracch.* 8.7 cites from a pamphlet issued by his brother Gaius which records Tiberius' dismay at the prevalence of imported labour in the fields of Tuscany.
- 168 Suet. *J.C.* 42 records Julius Caesar's measures to maintain the population of Rome including the prohibition on citizens aged 20-40 from leaving Italy for more than three successive years; nor might senators' sons go abroad except as a *contubernalis* or *comes*; at least a third of all herdsmen were to be freeborn. Notice the strong correlation between Julius Caesar's actions and the advice tendered by Cicero in *Marc.* 23; *constituenda iudicia, revocanda fides, comprimendae libidines, propaganda suboles, omnia, quae dilapsa iam diffluxerunt, severis legibus vincienda sunt.*
- 169 Suet. *Aug.* 46. Augustus had recorded in the *acta* the fact that C. Crispinus Hilarus, a freedman, had 8 children, 27 grandchildren and 18 gt. grandchildren.
- 170 For a sceptical appraisal of its demographic effects see P.A. Brunt (1971), 558-66. Notice the comments of Propertius 2.7.14.
- 171 Notice the tack which Q. Caecilius Metellus Macedonicus adopted in his speech (fr.8 *Malc.*), explicitly admitting the attractions of remaining single.
- 172 Cicero, for example, was expending 80,000 HS p.a. for his son's education in Athens. On competitive spending, see K. Hopkins (1983), 107-16.
- 173 See W.J. Goode 'Family and Mobility' in M.M. Tumin (ed.) (1970), 322-31 on the conflicting objectives of preserving the family patrimony intact and providing for all the offspring. In Ancient Rome, childless couples might have recourse to adoption although in the last

- century B.C. this does not seem to have been frequent perhaps because of legal complications; Cic. *Dom.* 34.
- 174 K. Hopkins (1983), p. 117 (for some reservations see the review of this book by A.F. Wallace-Hadrill in *JACT Bulletin* review 64 1984) & on p.78f he has a stimulating discussion on the possible causes of a decline in fertility amongst the Roman aristocracy in the first century B.C. onwards.
- 175 Polyb. 36.17.4.
- 176 What is mystifying is the concurrence of a *sustained* policy on the part of the authorities to encourage a high rate of reproduction on the one hand and a powerful social custom to keep the family *patrimonium* intact on the other. Meagre epigraphic evidence (*Laudatio Turiae* I.13 & *Laudatio funebris Murdiae* Bruns 1909, 326-7) superficially supports the notion that there was no tradition of impartibility. But scholars often ignore the strong corporate identity of the Roman family in their treatment of inheritance. The *paterfamilias*, together with senior relatives and friends, was expected to preserve the religious, economic and social interests of his *familia* whose members were neither financially nor legally independent individuals. On the death of the *paterfamilias* I consider it unlikely that the *patrimonium* would have been split up *equally* amongst all his surviving offspring or *heredes* since such a course would have affected the *ordo* in which they were registered at the census. Notice the pains taken by Turia and her husband not to diminish her parent's *patrimonium* I.48.
- 177 Tac. *Ann.* 2.37-8; cf. Suet. *Tib.* 47; *Aug.* 41.1.
- 178 Aristotle *Pol.*1270b was keenly aware of the contradictions in Spartan policy towards maintaining an adequate supply of male property owners. Their lawgivers not only permitted the title of land to be transferred by gift or bequest without hindrance but induced their citizens to rear as many children as possible by rewarding fathers with three or more sons. Impoverishment of many families and a marked imbalance in property ownership were the consequences. At *Pol.* 1265b he recommends a policy of birth control.

- 179 R.A. Nisbet (1964), p.266f.
- 180 Acutely observed by S.M. Lipset in *IESS* s.v. stratification, social, where he comments on the crucial role of the family unit in underpinning inequality.
- 181 Plato *Rep.* 457c/d as part of his plan to abolish the family life of the Guardians.
- 182 Livy 21.63; repeated in Julius Caesar's *de repetundis* law. For discussion see Shatzman p.100. Cp. Aristotle *Pol.* 1316b.
- 183 N. Elias (1983), p.69.
- 184 The virtues of pursuing this course are repeatedly advanced in the treatises of Cato *Agri.1 praef.2*; Varro *R.R.* 3.1.4; Columella *R.R.* I *praef.* 7; 3.3.1.
- 185 *Loci classici* Dion. Hal. 2.28.2; Cic. *Off.* 2.152; Livy 21.63.
- 186 Plut. *Cat.Mai.* 21.5. Notice Polybius' (6.56.2) comment on the Romans' intense disapproval of money-making in improper ways, especially in the matter of giving or accepting bribes,
- 187 Cic. *Att.* 5.21.
- 188 Rotondi (1912), 268-9.
- 189 Plut. *Cat. Mai.* 19.2.
- 190 H.H. Scullard (1976) p.189.
- 191 L. Calpurnius Piso Frugi *apud* Pliny *N.H.* 18.41f.
- 192 Pliny *N.H.* 29.17.
- 193 Plut. *Cic.* 10.4.
- 194 Pliny *N.H.* 34.164. for black lead; 33.78 for mines at Vercellae. M.H. Crawford has suggested to me that the fear of a slave revolt was probably uppermost in the minds of the authorities.
- 195 E.g., worry about the effects of a sudden influx of precious metals on the market; see Polyb. 34.10.10-14 where the exploitation of the gold-mines at Aquilaea led to a fall in the price of gold in Italy by a third. Cp. Diod. Sic. 31.8.7.
- 196 For the building regulations preserved from Herculaneum see *FIRA* I p.288-90. Collusion between the buyer and the vendor was foreseen; *lex Mun. Malac.* ch. 62; *SHA Hadrian* 18. See also the *lex Mun. Tar.* 32; *lex Col. Gen.* ch. 75.

197 Strabo 5.3.7;

198 Chs. 74 & 76.

199 Macrobi. *Sat.* 3.17.11.

200 It is possible that Macrobius had the actual text of the *lex Cornelia* in front of him and perhaps reflects a contemporary revival of interest in these laws.

See M.H.Crawford and J.Reynolds in *JRS* 65 (1975) for the possibility of the appearance of the 'just price' in one particular rescript of the edict and D. Sperber '*Laesio Enormis* and the Talmudic Law of Ona'ah.' in the *Israel Law Review* (1973), p.254ff for Talmudic influence.

See also H.Michell 'The Edict of Diocletian: A Study of Price Fixing in the Roman Empire.' in the *Canadian Journal of Economic and Political Science* 13 (1947), 1-12 for the connection between the edict and the coinage reform.

201 Pliny *N.H.* 14.95.

202 *FIRA* 3 p.121 for price-fixing amongst the salt-merchants of Tebtunis in Egypt A.D. 47; and notice the price-fixing of grain by L. Antistius Rusticus in Antioch A.D.93.

203 Suet. *Tib.* 34.1; Tac. *Ann.* 3.52. It had been military practice during the second century B.C. for the Roman state to supply its soldiers with a monthly ration of grain at a set price, see P.Garnsey and D.Rathbone 'The Background to the Grain Law of C.Gracchus' *JRS* 75 (1985) p.23. Furthermore, Pliny records an old Roman dislike for *peregrinae merces* and *externa pretia* (*N.H.* 29.24). Amongst other details of provincial expenditure the senate fixed the price of corn for governors; Cic. *Verr.* II.3.81.188; II.3.84.195; cp. Plut. *Ti. Gracc.* 13.1 for the practice of setting daily allowances for commissioners.

The *Digest* 1.12.11 records that the task of supervising the sale, at a fair price, of every type of meat was assigned to the prefect of the city, as was the oversight of the hog market.

204 Pliny *N.H.* 19.56.

For later Imperial concern about profits, notice the emperor Theodosius' edict on silk raiments treated with Tyrian dyes;Cod. Theod. 10.21.3.

- 205 Pliny *N.H.* 8.135.
- 206 Suet. *Tib.* 30; 71.
- 207 Notice the disapproval of Strabo 17.1.13-15 on the technique of creating scarcities in order to raise prices; 16.2.41; Cass.Dio 60.17.8.
- 208 Lucilius Fr. 222W.
- 209 Hemina Fr. 13 Peter; Livy 38.35.5 records how in 189 B.C. the *frumentarii* were condemned for withholding the corn supplies; cp. Plautus *Ep.* 407; Suet. *Vesp.* 16 for the practice of *coemptio*; Juv. 14.293; cp. Lysias *Against the corn dealers* 5; Philostratus *Apol.* 1.15;
- 210 18 B.C. on the basis of Cass. Dio 54.17. The acute food shortages of A.D.6-8 seem to me to provide a better setting; Cass. Dio 55.26.1.
- 211 Dig. 48.12.11.1; Just. *Inst* 4.18.11; Rotondi (1912), 448.
- 212 Ch.75; J. González *The Lex Irnitana JRS* 76 1986, 147-243.
- 213 Pliny *N.H.* 33.164.
- 214 Suet. *Vesp.* 16.1.
- 215 Cic *Dom.* 11; cp. 14.
- 216 *Deipn.* 6.274.
- 217 Macrob. *Sat.* 3.17.13 on *cibariae leges*; notice the use of the word in Pliny *N.H.* 15.82 (Cato *Agri.* 66).
- 218 In an interesting review of the UK Ministry of Food's rationing policy during the World War, W.K.Hancock and M.M.Gowing in *British War Economy* (London, 1949) regard price control and rationing as two complementary principles '...for just as scarcity without price control must allocate supplies to the richer...so price control, if unsupported by rationing, allocates them to the luckier or more cunning and pushful ones.' In Britain strenuous efforts were made to ensure a fair and efficient distribution of food which was vital to maintain citizen morale. Thrift was encouraged in all departments of life. The Board of Trade deliberately promoted austere fashions in clothing with standardized plain designs which required a minimum of material and labour resources.

A.C. Pigou in *The Economics of Welfare*⁴ (London, 1932) pp 694-98 has a good discussion of rationing and price-fixing.

- 219 Gellius *N.A.* 2.24.12 explicitly states that the *lex Aemilia* imposed a ceiling on the type and quantity of food.
- 220 Varro *R.R.* 3.2.16 for an aviary on the *Via Salaria* where 5000 *turdi* might be sold for 3 *den.* each.
Note the sentiments put into the mouth of Euclio by Plautus *Aul.* 381-2: *festo die si quid prodegeris, / profesto egere liceat nisi peperceris.*
- 221 Cass. Dio 55.26.1; Suet. *Aug.* 42.3.
- 222 K.R.Greenfield (1918), p.28; Edward II, March 1315 proclamation.
- 223 See the article by B.W. Lewis in *JESS* s.v. Prices: Price Control and Rationing, and n.206 above and n.237 below for discussion of these mechanisms during wartime.
- 224 See note 191 above. Cicero *Verr.* 2.3.93.216-7 states that this was a long-established and acceptable practice. C. Sentius, for instance, a man of old world integrity, made a fortune during his tenure of office in Macedonia.
- 225 Cic. *Vat.* 12; *Flac.* 67-8.
- 226 *Ann.* 3.54.
- 227 See E.H.Warmington *The Commerce between the Roman Empire and India* (Cambridge, 1928), p.86.
- 228 Pliny *N.H.* 12.84; 6.101; cp.6.162.
- 229 P. Veyne 'Rome devant la prétendue fuite de l'or: Mercantilisme ou politique disciplinaire?' *Annales: Economies Sociétés Civilisations* (1961), 211-44.
- 230 C. Nicolet 'Les Variations des prix et la "théorie quantitative de la monnaie" à Rome, de Cicéron à Plin l'Ancien' in *Annales* (1971) p.1225 believes that the Roman authorities had established a clear relationship between a dearth in precious metals and money specie with the high rate of interest and the simultaneous decline in real estate prices. See the qualifications of M.H. Crawford in the same volume 'Le problème des liquidités dans l'antiquité classique' p.1228f.
Note the use of the word *egestas* by Cicero in the context of the Catilinarian conspiracy; *Cat.* 2.24. As N. Purcell pointed out in 'Studying the Poor in Antiquity', a paper delivered at the Cambridge-London-Oxford Ancient History Meeting (Feb.28, 1987), this word denotes a state of

indigence into which someone has fallen by accident or through calamity and refers to the type of social transition which was held to threaten the stability of the Roman political system.

- 231 For Cicero's strenuous opposition to any kind of redistributive scheme - be it agrarian resettlement or the cancellation of debts - see J.M. Carter's interesting appraisal of the economic imperatives behind Cicero's political stance; 'Cicero, Politics and Philosophy' in *Cicero and Virgil: Studies in honour of Harold Hunt* ed. J.R.C. Martyn (Amsterdam, 1972), esp. p.32.

Cass.Dio 41.38.1 for a 15,000 $\delta\rho$ limit to hoarding; cp. Tac. Ann. 6.17; Suet. Tib. 49. On the economic situation of this period, M.W.Frederiksen's article 'Caesar, Cicero and the Problem of Debt' *JRS* 56 1966 129-141 is most informative.

- 232 Cic. Rep. 3.16: *nos vero iustissimi homines, qui Transalpinas gentis oleam et vitem serere non sinimus, quo pluris sint nostra oliveta nostraeque vineae; quod cum faciamus, prudenter facere dicimur, iuste non dicimur, ut intellegatis discrepare ab aequitate sapientiam.* On this, see J.Paterson 'Transalpine Gentes: Cicero *De Re Publica* 3.16.' in *C.Q.* (1978) 452-8 and note 275 below.

- 233 B. Levick 'Domitian and the Provinces' *Latomus* 41 (1982) p.50f. Notice the curious parallel with Spain at the time of the Cortes who legislated to stop the cultivation of vine, the more profitable crop, from encroaching on grain production; see W.Sombart *Luxury and Capitalism* (Michigan, 1967) p.139.

- 234 See S.J. De Laet's criticism of Carcopino's protectionist interpretation (*Portorium*. Bruges, 1949, pp.60-1).

235 On the s.c. of 161 B.C. see p. 124 above.

236 Ann. 13.50.

- 237 Consult W.K.Hancock and M.M.Gowing *op. cit.* (1949) on the financial strategy of the British government during the World War. 'The best way of gathering up the nation's savings was "to compel them to come in" by consciously drying-up and levelling down the opportunities for private spending on consumption goods and capital goods.'

- 238 See B.W. Lewis in *IESS* s.v. Prices on the policy of modern governments during wartime and interesting remarks on their resort to deficit financing. War-profiteering presents another threat to public morale, especially when privation is acute and widespread. For the *fraus* of the *publicani* during the Hannibalic War and the decisive steps taken by the authorities to clamp down on their illicit gain see Livy 25.3.8ff.
- 239 R.F.Newbold 'Social Tension at Rome in the Early Years of Tiberius' reign' *Ath* 52 1974, 110-43.
- 240 J.Bodin *Discours ... sur le rehaussiment et diminution des monnayes, tant d'or que d'argent,...* (Paris, 1578) kiif.
- 241 Eg.M.H.Crawford *Coinage and Money under the Roman Republic: Italy and the Mediterranean Economy* (London, 1985) p.149.
For a standard definition of inflation, consult A. Griffiths¹ and S.Wall's *Applied Economics: An Introductory Course* (New York, 1984) p.284: 'Inflation is a persistent tendency for the general level of prices to rise. In effect the rate of inflation measures the change in the purchasing power of money;'
- 242 If so, the figure given by Athenaeus (274c) of 2½ δρ laid down by the Fannian law would tally with the limit of 10 *aeris* on working days supplied by Gellius (2.24.2) A ceiling of 10 sextantal asses to cover (all) expenditure seems impossibly low. Cf Plut. *Cat.Mai.*4.3 for Cato's boast that he only spent 30 asses ἀσραρίων τριάκοντα on fish and meat at the public marketplace.
- 243 The historical chain of events was depicted by most authors as follows: ancient austerity and simplicity gave way to wealth; in its wake, wealth brought luxury while luxury, in turn, spawned the moral evils of avarice and ambition. Indeed Cicero *Orat.* 2.171, as an example of deductive reasoning, offers: '*avaritiam si tollere vultis, mater eius est tollenda, luxuries.*'
- 244 Attempts to pin down a Greek derivation of *luxuria* have proved unsuccessful. Some have suggested λευκός through *lux*, -*cis* (cp Macrobian *Sat.* 1.17.39 for *lux* from λύκη). Others have advanced λεξός which has affinities with the

first conjugation verb *luxo, -are* (to sprain, dislocate *Cato Agr.* 157.4). It seems likely to me that *luxuria* was a metaphor drawn from a rural context as it is often used to express ideas of overabundance, rankness in vegetation or crops cp *Virgil Georg.* 1.191; *Colum. R.R.* 4.27.6; *C.Nepos Cato* 2.3 has: *at Cato censor...multas res novas in edictum addidit qua re luxuria reprimeretur, quae iam tum incipiebat pullulare.*

- 245 So J.Sekora p.48f in *Luxury: The Concept in Western Thought, Eden to Smollett.* (Baltimore, 1977) who aptly observes that for so many historical and philosophical discussions, luxury was both a starting-point and a conclusion. His book is by far the most stimulating treatment of the topic. He discerns behind all the anti-luxury tirades an attempt by the governing bodies to enforce the twin principles of necessity and hierarchy. What his treatment lacks is an investigation into the economic implications of luxury.
- 246 On the *luxuria, luxuriosus, luxus* and other derivatives Lewis & Short and OLD have been consulted. *Juv. Sat.* 11.71; This meaning is much rarer in Latin than in current English usage.
- 247 *Varro V.P.R.* 1 fr.49; .
- 248 *Cic. Pis.* 66; *Phil.* 2.66; *Val. Max.* 9.1.4.
- 249 *Cicero Caelio* 29: *facile est accusare luxuriam. dies iam me deficiat, si, quae dici in eam sententiam possunt, coner expromere; de corruptelis, de adulteriis, de protervitate, de sumptibus immensa oratio est.* Cp. 44.
- 250 *Livy* 1 *praef.*11-12. Luxury was often personified, cp. *Pliny N.H.* 13.1; 9.124; *Sallust B.C.* 12.2; *Hist. fr.* 16 *Maur.*
- 251 *Frs.* 48 & 49 *Malc.* Note the apologetic flavour of *Philonides'* defence of perfumes. "And since human life is constantly adding to the merely useful some of those things which conduce to enjoyment and luxury, it is impelled to the use of perfumes." *Loeb trans. Athen. Deipn.* 692b.
- 252 For example, *G.M. Butel-Dumont Théorie du luxe* (Paris, 1771), p.121 and *B.Mandeville The Fable of the Bees; or, Private Vices and Publick Benefits.* (London, 1732) p.108

where luxury is defined as everything "that is not immediately necessary to make man subsist." Adam Smith in *The Wealth of Nations* (London, 1826) p.823 defines necessities as those '...commodities which are indispensably necessary for the support of life' and '...whatever the custom of the country renders it indecent for *creditable* people even of the lowest order, to be without.' (My italics). Note the judicious discussion of the Commons Select Committee on this aspect *BPP* (1918) 4 p.26.

- 253 Contra the extraordinary remark of Herakleides, a Peripatetic, who declared that luxury was a primary way of inspiring nobility in man as exemplified by the Athenian's defeat of the Persians at Marathon Athen. *Deipn.* 512a-c.
Followers of the hedonistic schools, eg, Eudoxus, Aristippus and the Cyrenaics were very much the intellectual 'deviants' in antiquity.
- 254 Note Socrates' reluctance to admit luxury consumption into the ideal state *Rep.* 372e and its fatal influence on oligarchic governments 555c; cp. Polyb. 6.7.7; 6.8.5. J. Sekora interprets the Greek deprecation of luxury as the "secular and rational complement to the Hebrew view." e.g. Adam's yielding to temptation in the garden of Eden manifested disobedience to God (1977), 29.
- 255 Plutarch *Cat. Mai.* 2.3 relates that the Elder Cato was particularly impressed by the views of the Pythagorean Nearchus on the close connection between pleasure and evil and on how the bodily delights tended to cloy the soul. Athen. *Deipn.* 274e suggests that it was the doctrines of the Porch, not sincere respect for legal statute which prompted Rutilius Rufus, Aelius Tubero and Mucius Scaevola to moderate their expenditure in keeping with a sumptuary law, see also 4.163f.
- 256 See *Encycl. Brit.* 29th ed. s.v. Luxury.
- 257 R.H. Tawney *The Acquisitive Society* (1964) pp. 11-2.
- 258 *Principes de la science morale et politique sur le luxe et les lois somptuaires.* (1767) p.14
K. Marx in *Capital* (London, 1979) 3.200 defines luxury production as '...all production that is not required by the reproduction of labour-power.' For luxury consumpt-

ion, he adopts J. Stuart-Mill's definition 1.718.

259 As pointed out by C. Brinkman in *ESS* s.v. luxury.

260 E.J.Urwick *Luxury and the Waste of Life* (London, 1908)
p.11f

261 Elasticity of demand = $\frac{\% \text{ change in quantity demanded of } x}{\% \text{ change in price of } x}$

Luxuries are said to be those goods whose elasticity of demand is greater than 1 and less than infinity. For further discussion see E.K.Hunt and H.J.Sherman *Economics An Introduction to Traditional and Radical Views*. (New York, 1981) p. 229f.

262 Notice Plutarch's disparagement of those who indulged in rare and expensive victuals, courtesans etc. merely for the empty repute attaching to such pleasure (*Mor.* 124d). 4

The theory of marginal utility, upon which so much of modern liberal economics rests, holds that the value any household attaches to successive units of a particular commodity will diminish steadily as its total consumption of that commodity increases, the consumption of all other commodities remaining the same. Expressed graphically, a downward sloping demand curve is produced. For an acute critique of many of the assumptions behind modern theories of consumer behaviour see J.K.Galbraith *The Affluent Society* (Singapore, 1984) p.138 and especially B.McFarlane *Radical Economics* (London, 1982) p.39 and indeed the whole chapter entitled 'The Philosophical Bias in Modern Economics.' N.Bukharin *Economic Theory of the Leisure Class* (London, 1929), p.59 contrasts the subjectivist character (ie, as resting on the individual psychology of man) bestowed on value by orthodox economists with the sociological approach of scholars such as Marx who explored the complex connection between the two social phenomena - the productivity of labour and price.

263 Pliny *N.H.* 33.152; 9.114. As those involved with luxury production know well, imitation provides the key to many types of consumer behaviour. There is a vested commercial interest in promoting seasonal fashions. Even today some poorer West European governments are compelled to intervene to regulate expensive fads in the interests of consumers. In Oct. 1985 at the beginning of the school

- year the Greek minister of Commerce bridled profit margins on *haute couture* uniforms, satchels and exercise books when a craze for fancy, imported, designer-labelled items amongst fashion-conscious school children led to popular demand from parents for governmental action.
- 264 Pliny *N.H.* 9.104.
- 265 As Asinius Gallus long ago reflected in his dissuasion of calls for yet more sumptuary restraint, wealth meant one thing amongst the Fabricii, quite another with the Scipios and everything was relative to the state; Tac. *Ann.* 2.33.
- 266 See the valuable discussion on this subject by C. Brinkman in *ESS* s.v. *Luxury*.
- 267 H. Schoeck (1969), p.216.
- 268 C.S. Montesquieu in *The Spirit of the Laws* trans. T. Nugent (New York, 1949), p.94. He believed that legal enactment, by ensuring that every man only had what was necessary for nature, could promote the equal distribution of riches in society and thus eradicate luxury.
- 269 As Peter Townsend has emphasized a definition of poverty should not be confined simply to absolute conditions - i.e. with respect to the minimum demands for subsistence - but should include social perceptions of deprivation - i.e., the consciousness of want caused by exclusion from the customary activities, amenities and standards of comfort of society; *Poverty in the United Kingdom* (California, 1979), esp. 31-55.
- By reducing luxury, the prime mechanism by which social distance is created, relative insufficiencies and expectations throughout society would correspondingly be diminished.
- 270 Only a selected collection can be given here; K.Hopkins *Conquerors and Slaves* (Cambridge, 1978); the two articles by D.W.Rathbone in *JRS* 71 & 73; N.Purcell 'Wine and Wealth in Ancient History' *JRS* 75 (1985); A. Carandini 'Columella's Vineyards and the Rationality of the Roman Economy' in *Opus* II (1983) 177-204.
- 271 It has been observed that products which were originally luxuries come to be regarded in the course of material prosperity, as comforts or decencies.

- 272 In reaction to the oft-repeated fictional claims about consumer sovereignty or autonomy (ie manufactures produce only to satisfy existing wants) see P. Donaldson *Economics of the Real World* (1984), p.153f who analyses the way large companies help to promote demand for their products by advertising, salesmanship etc in order to ensure the receptivity of consumers to their products. N. McKendrick in *The Birth of a Consumer Society; the Commercialization of Eighteenth Century England* (1982) p.140f highlights the masterly marketing techniques used by Josiah Wedgwood to exploit the commercial and consumer possibilities in late eighteenth century England.
- 273 Gell. *N.A.* 2.24.2.
- 274 Gell. *N.A.* 2.24.7. Meat and fish were the main targets of the legislators.
- 275 Cicero *Rep.* 3.16,
Recent archaeological inquiry has underlined the importance of wine as an exchange commodity to secure slaves and metal from Gaul and Illyria. See especially A. Tchernia 'Italian Wine in Gaul at the end of the Republic' in *Trade in the Ancient Economy*, P. Garnsey, K. Hopkins and C.R. Whittaker (eds.) p.100f & M.H. Crawford 'Republican Denarii in Romania: the Suppression of Piracy and the Slave Trade' in *JRS* 67 (1977), p.117f. T. Frank's view that the measure was designed to help Massilia is now rejected; 'Mercantilism and Rome's Foreign Policy' *AHR* 18 (1912/3), p.223f.
- 276 Pliny *N.H.* 8.223.
- 277 Varro *R.R.* 3.2.14; the raising of dormice and fish was highly profitable, too. Since the phrase *ex alio orbe* in Pliny's text qualifies *aves*, this activity suggests that the *lex Aemilia* had become a dead-letter law.
- 278 For the 'revised' sequence, see J.K. Galbraith *op.cit.* p.131 who notes that '...as a society becomes increasingly affluent, wants are increasingly created by the process by which they are satisfied.' - The Dependence Effect.
- 279 Notably, W.V. Harris *War and Imperialism in Republican Rome 327-70 B.C.* (1971) who cites economic gain as a crucial factor in Roman Imperialism; K. Hopkins *op.cit.* (1978); P.A. Brunt *Italian Manpower 225 B.C. - A.D. 14*

- (Oxford, 1971), and id. 'Review of D.C. Earl's *Tiberius Gracchus*' *Gnomon* 37 1965, 189-92 where he observes that the growing shortage of *assidui* is only explicable in terms of the increasing concentration of land-holdings.
- 280 T.Mommsen *History of Rome* 3.79 believed that the influx of cheap grain from Sicily undermined the market for producers in Latium.
- 281 Livy 41.8.6 (177 B.C.) for the complaints of the Latin allies about the migration of many of their citizens to Rome.
- 282 The accounts of Appian *B.C. and Plutarch Lives of Tl. & C. Gracchus* stress the forceable nature of their departure.
- 283 K.Hopkins (1978) cites lack of other secure forms of investment, high status conferred by land-ownership and profitability as reasons for this investment in land. The preference for slave labour is explained (p.13) as a desire to avoid the direct exploitation of free citizens and to ensure uninterrupted production. The existence of a pool of free labour must not be forgotten, even in those areas of Italy most affected by the changes in agricultural practice, see Cato *Agri*.136; Colum. *R.R.*1.7.1; Suet. *Vesp.* 1.4. D.W.Rathbone *JRS* 71 (1981) has calculated that mixed (ie a combination of servile and hired) labour on these intensive plantation farms would have been economically more efficient for the rich landowners.
- Notice the observations of R. MacMullen *Roman Social Relations 50 B.C. - A.D. 284* (New Haven), p.5f on the degree of absentee land-ownership and the pressures for the consolidation of land-holdings in the late Republic.
- 284 M.H. Crawford (1978), 108.
- 285 Florus 1.47.8f.
- It is worth comparing the cycle of dependency, impoverishment and famine in previously self-sufficient tropical African countries brought about by the replacement of staple food crops with cash-crops for the luxury European markets; see R.Dumont & M.F.Mottin *Stranglehold on Africa* (1983) p.182f.
- 286 Note especially C.Gracchus frs. 47-9 Malc.
- 287 *Poverty and Famines: An Essay on Entitlement and Depriv-*

ation (Oxford, 1981). He showed that the elimination of starvation from large parts of China resulted not so much from an increase in the food supply but a shift in the entitlement system. In short, ownership rights, commercial monopolies, title-deeds to land etc enshrined in the legal process exert a decisive influence over the availability and distribution of food. He powerfully concludes 'The law stands between food availability and food entitlement. Starvation deaths can reflect legality with a vengeance.' p.165-6. Nowhere is this process more starkly illustrated than in the phenomenon of food leaving areas affected by famine, e.g., during the Irish Potato famine and for an example from classical antiquity see Philostr. *Vit. Apol.* 1.15. For qualifications and some amplifications of the basic ideas expressed in (1981), see his recent article 'Food, Economics and Entitlements' in *Lloyds Bank Review* 160 April 1986, 1-20 and esp. pp. 5-7 for the differences between 'boom famines' and 'slump famines.'

288 Exponents of this belief seldom treat of the immiserisation of large sections of the population.

289 Cp. N. McKendrick *op.cit.* Effective demand came only from the wealthy few. See F.W.Walbank in D.Kagan ed. *Decline and Fall of the Roman Empire* (Boston, 1962): p.15 'Economically, this division of society ensured that the vast masses of the empire never tasted the fruits of their labour; and this meant a permanently restricted internal market. Because wealth was concentrated at the top, the body of society suffered from chronic underconsumption.'

290 *The Wealth of Nations* (London, 1826), p.327.

291 As D.H.Shively noted *op.cit.* p.134 they were directed at '...the symptoms rather than the causes of fundamental change in society.'

IV

ARISTOCRATIC POWER-SHARING

Concern for the effects of unrestricted public and private expenditure on the stability of domestic political life was one of the prime motivatory factors behind sumptuary legislation. The smooth working of the mechanisms of collective rule by the Roman aristocracy involved three major concerns: firstly, economic supervision to ensure that the level of competitive consumption should not be so ruinously high as to encompass the eclipse of leading families; secondly, complex regulation of marital, testamentary and child-rearing practices to ensure the correct level of replenishment of personnel for a whole range of official (military and political) positions; thirdly, the maintenance, at least outwardly, of decorous moral standards to sustain belief in their political ascendancy.

Elections and magistracies had to be carefully managed to facilitate rotation in office-holding, allowing representatives from a whole range of families and *gentes* to have a share in the social and political honours. '

Laws like the *lex Villia annalis* (180 B.C.) and the *lex Cornelia annalis* (81 B.C.) were concerned to structure the political career by specifying minimum ages and a sequential order to magisterial positions.⁴ Iteration of particular offices was forbidden. Thus, seniority and experience might be rewarded while the ambitions of unscrupulous politicians and the emergence of charismatic leaders checked. Except during periods of national crisis, these constitutional arrangements worked tolerably well from the aristocratic viewpoint as the practical and legal realities of competition prevented even the illustrious houses, eg.,

the Aemilii, Caecilii Metelli, Fabii from maintaining a stranglehold over office for long.³

A major problem that presented itself to the Roman authorities was the rigorous definition of electoral malpractice. Measures to forestall open bribery - the direct exchange of material rewards for political favours - cut across long-established relationships. The informal nature of the *patronus-clientis* link, an enduring feature of Roman social life, made the distinction between legitimate presents and corruption exceedingly difficult to establish.⁴

During the second century B.C. the proliferation of *leges de ambitu* and *leges tabellariae* evidences the progressive replacement of conventional by formal restraints. The growing inefficacy of self-regulation is significant.

leges de sumptibus ludorum et de luxu mensae

Opportunities for ostentatious self-display were numerous. As noted in appendix 4 *infra*, the great public festivals such as the *ludi Romani*, *ludi Ceriales* and *ludi Megalenses* offered ample scope for aspiring politicians to further their ambitions by impressive largesse. Although these *sacra* were by origin primarily religious events, they developed into important occasions for public relaxation and enjoyment. Indeed their secular function began to outweigh their religious significance. Wealth as well as ancestral achievement must have been necessary conditions for winning popular favour for all but a few. For aediles, intent on high office, it became indispensable to supplement the state-allocated sum with revenue from other sources - personal or borrowed - in order to maintain or to exceed the expected magnificence in the presentation of various spectacles. Lavish *epulae* were eagerly awaited by the populace on occasions like triumphs, funerals and votive games.⁵

As in Athens where compulsory liturgies obliged the wealthy to provide dramatic exhibitions and to equip the navy, noble rivalry engendered the ever-present temptation

to surpass the minimum laid down by statute so in Rome the intensely competitive political environment sparked similar tendencies.⁶ Generosity, as Q. Cicero observed, had a wide berth: *est in conviviis, quae fac ut abs te et ab amicis tuis concelebrentur et passim et tributim.*⁷ Guidelines proved to be indispensable and were progressively elaborated during the course of the last century and a half of the Republic.

Several ad hoc measures were taken by the senatorial aristocracy in the early second century B.C.. In 187 B.C. the senate permitted M. Fulvius Nobilior to spend on his *ludi magni* to Jupiter Optimus Maximus, vowed on the occasion of the capture of Ambracia, a maximum of 80,000 asses.⁸ On a similar occasion eight years later, the senate decreed that Q. Fulvius' votive games should not exceed the same amount. It is clear from Livy's narrative that the senate had been sufficiently perturbed by the growing lavishness in expenditure in this area to prevent Roman magistrates from inviting, obliging or accepting gifts from any source which contravened the regulations contained in a *s.c. de ludis* passed in the consulship of L. Aemilius Paullus and Cn. Baebius Tamphilus (182 B.C.), details of which are sadly lacking. Livy adds that the restriction was provoked by the aedile Ti. Sempronius Gracchus whose costly games had proved onerous for the Latins, Italian allies and provincial communities alike.⁹

It is tempting to associate this decree with the one mentioned by Pliny (*N.H.* 8.64) forbidding the importation of wild beasts (*africanæ*) into Italy. It was either repealed or modified by a measure sponsored by Cn. Aufidius, tribune of the plebs in c. 170 B.C., who permitted them to be imported for the Circensian games.¹⁰

The earliest known statute on *luxus mensae*, a subject which engrossed generations of Roman moralists and statesmen, was the *lex Orchia* of 181 B.C. although tradition has it that the early Romans were ordered to dine with their doors open so that their eating habits might be observable to their fellow citizens.¹¹ It was promulgated by a plebeian tribune, C. Orchius with the support of the senate and came soon after the censorship of the Elder Cato and L.

Valerius Flaccus whose stand against other aspects of luxury was celebrated in antiquity. It laid down a maximum to the number of guests (*convivae*) who might be invited to dine.¹³ Several fragments in the ancient sources suggest that Cato opposed the passage of this law although scholars have been tempted to emend the manuscript readings.¹⁴ Why he should have objected to this anti-luxury statute is unclear but perhaps it was not strict enough since Macrobius, who seems to have good knowledge of Cato's speeches on the subject, believed that in practice the law encouraged people to lavish more money on fewer guests. Even the provision on the number of guests, Cato complained, was ignored.

Twenty years later the *lex Fannia*, moved by the consul of 161 B.C., detailed far-reaching restrictions on prandial practice with popular and senatorial support.

It was preceded by a *senatus consultum* which ordained that:

*...principes civitatis, qui ludis Megalensibus antiquo ritu "mutitarent", id est mutua inter sese dominia agitent, iurare apud consules verbis conceptis, non amplius in singulas cenas sumptus <se> esse facturos quam centenos vicenosque aeris praeter olus et far et vinum neque vino alienigena, sed patriae usuros, neque argenti in convivio plus pondo quam libras centum inlaturos.*¹⁴

The subsequent enactment graded maximum expenditure according to the importance of the festivities: on the occasion of the *ludi Romani*, *ludi plebei* and *Saturnalia* and on certain other days 100 *aeris* might be spent *in singulos dies*; on 10 other specified days of the month, 30 *aeris*, and on the remaining days only 10 *aeris*.¹⁵

In addition it laid down specifications on the type of food that it was permitted to serve: *...ne quid volucrum poneretur praeter unam gallinam quae non esset altilis, quod deinde caput translatum per omnes leges ambulavit.*¹⁶ According to Athenaeus it prescribed the maximum number of guests from outside the family one might invite to dine - 3 on ordinary days and 5 on *nundinae*¹⁷ - and placed a yearly maximum of 15 talents on the amount that could be spent on κρέας καπνιστόν (smoked meat) and λάχανα (green vegetables)

which the earth produces and ὄσπρια ἐγμηατά (boiled pulse).¹⁰

The wide scope of this enactment is striking. Convivial entertainment at private functions as well as at religious festivals was covered since both occasions could be used to enhance one's standing in the eyes of friends, clients or fellow citizens.

In 143 B.C. a *lex Didia* extended the penalties enjoined by the Fannian law to guests and its validity throughout Italy. While recent scholars have interpreted this enactment as applying only to Roman citizens in Italy¹¹ the evidence supplied by Macrobius strongly points to the extension of legal writ over all her Italian allies: *...prima et potissima ut universa Italia, non sola urbs, lege sumptuaria teneretur, Italicis existimantibus Fanniam legem non in se sed in solos urbanos cives esse conscriptam.*¹² This act therefore has considerable significance for a correct assessment of the relationship between Rome and her allies in the second century B.C. I suggest that, at the discretion of the senate, important Roman criminal and civil enactments were imposed on all inhabitants of Italy.¹³

The bill of the consul for 115 B.C., M. Aemilius Scaurus, added to the growing complexity of sumptuary restraint on *luxus mensae.*¹⁴ He concentrated on elaborating restrictions on the type and quality of food. *Glires* (dormice), *conchyliis* (oysters) and *aves* (birds) *ex alio orbe* were banned from the dinner table.¹⁵ A fragment of a speech by a well-known spendthrift M. Aemilius Lepidus Porcina survives, delivered in an attempt to abrogate the law.¹⁶

In the same year the censors L. Caecilius Metellus Delmaticus and Cn. Domitius Ahenobarbus acted: *...artem ludicram ex urbe removerunt praeter Latinum tibicinem cum cantore et ludum talarium.*¹⁷

Several years later, probably in 107/6 B.C., another major legislative act was carried by P. Licinius Crassus (Dives) which reiterated many of the provisions of the Fannian law and made some important modifications.¹⁸ The haste with which the bill was promulgated and implemented before the customary *trinundinum* suggests that it was

occasioned by an imminent electoral contest or magisterial show.²⁷

It stipulated a limit of 100 *aeris* on days of major festivals (i.e. *ludi Romani*, *ludi Plebei* & *Saturnalia*), 30 *aeris* on specified days (probably the 10 days of minor festivals mentioned in the Fannian law and corresponding to the *Kalendae*, *nones* and *nundinae* of Macrobian *Sat.* 3.17.9) and laid down a specified weight of 3 lbs of *carnae aridae* (dried meat) and 1 lb of *salsamenti* (salted fish) on ordinary days²⁸ but allowed the unrestricted consumption of fruits of the earth, vine and orchard.²⁹ It was also the first recorded measure to place a ceiling on expenditure at weddings - not more than 200 *aeris*.³⁰

A decade later c.97 B.C. the plebeian tribune M. Duronius brought about the repeal of this law with an oration, noteworthy for its crisp repudiation of the basic tenets of the anti-luxury programme. His dissent was swiftly rewarded by a *nota* and ejection from the senate by the censors M. Antonius and L. Valerius Flaccus. Duronius' rejoinder was to prosecute M. Antonius for corruption as censor.³¹

Luxus mensae was curbed again by P. Licinius Crassus, this time as censor with L. Iulius Caesar in 89 B.C. when an edict was issued: *...ne quis vinum Graecum Aminniumque pluris octonis aeris singula quadrantalia venderet.*³²

L. Cornelius Sulla as dictator in 81 B.C., revived statutory restraint on a whole range of expenditure imposing a limit of 300 HS on *kalendae*, *nones*, *ides*, on days of *ludi* and certain *ferii sollemnes* while on all remaining days no more than 30 HS was permitted.³³ In addition he placed a ceiling on a substantial number of delicacies, in effect lowering the prices of many commodities and incurring the wrath of moralists like Macrobius who misinterpreted the action as an incitement to luxury.³⁴

...in qua non conviviorum magnificentia prohibita est nec gulae modus factus, verum minora pretia rebus imposita, et quibus rebus, di boni, quamque exquisitis et paene incognitis generibus deliciarum! quos illic pisces quasque offulas nominat, et tamen pretia illic minora constituit!

In a rare assertion of progress in morals Macrobius pronounces his age as superior, at least in this respect, to the past.

Despite Sulla's initial adherence to the adage of Democritus that an *ambitiosa mensa* was provided by *fortuna*, a *parca mensa* by *virtus*³⁹, he, typically, transgressed his own ordinances in an attempt to drown his sorrows by *symposia* and banquets on the death of his beloved Metella.⁴⁰

The plebeian tribune of 71 B.C. L. Antius Restio attempted to thwart electoral malpractice as well as curtailing outlay by prohibiting magistrates or magistrates elect from dining out except with designated people.⁴¹ According to Macrobius, such was the obstinancy of luxury and the established compact on vices that Restio never ventured to dine out again for fearing to witness the contempt of his own bill.⁴² A similar restriction occurs in the *lex Coloniae Genetivae Iuliae S. Ursonensis*, the charter of a Roman colony in southern Spain founded or planned by Julius Caesar. The latter measure forbade those seeking office, in the year of their candidature, from giving banquets or from inviting anyone to dinner or from bestowing gifts and presents in order to further his electoral prospects nor might anyone do the same on his behalf.⁴³

Cicero indignantly quoted from his own consular *lex de ambitu* of 63 B.C. forbidding: *...biennio quo quis petat petiturusve sit, gladiatores dare nisi ex testamento praestituta die* when it had been flagrantly disregarded by an opponent during his candidature.⁴⁴

A further attempt to supplement the already complex body of sumptuary restraint by the consuls of 55 B.C. Cn. Pompeius Magnus and M. Licinius Crassus was eloquently foiled through the masterly intervention of Q. Hortensius Hortalus, orator and epicure par excellence.⁴⁵

Sumptuary laws had become an integral part of the Roman politician-general's ideological armoury. The basis for the legitimation of their preeminence in domestic politics sprang from the very fears which the senatorial aristocrats had so vociferously expressed for decades - departure from the moral standards of their ancestors. Since injurious

social change had been repeatedly advanced as the major cause of the deterioration of the Republic, the systematic correction of contemporary vices, involving a projected restoration of all those moral, social and religious virtues which were held to have given rise to the greatness of Rome, found resonance amongst large sections of the Roman people eager for a cure for their country's ills. The senate's patent inability to meet its professed standards left them in a dangerously exposed position.

In an ominous development Julius Caesar undertook the novel, remedial post of *praefectus moribus*.⁴⁴ *Mores maiorum* had, paradoxically, engendered innovation.

Despite the curious silence of our two major sources, Aulus Gellius and Macrobius, the dictator made substantial contributions both in the area of legislation and in the realm of enforcement. According to Suetonius:

*legem praecipue sumptuariam exercuit dispositis circa macellum custodibus, qui obsonia contra vetitum <proposita> retinerent deportarentque ad se, submissis nonnumquam lictoribus atque militibus, qui, si qua custodes fefellissent, iam adposita e triclinio auferrent.*⁴⁵

Strict observance of the *lex sumptuaria* had unfortunate consequences for Cicero. In an attempt to compensate for the absence of customary delicacies such as *ostrea* and *muraena*, Lentulus' culinary artists had gone over the top in seasoning *terra nata* - mushrooms, pot-herbs and greens - occasioning the orator no small gastric discomfiture.⁴⁴

It is clear from another letter to L. Papirius Paetus that Julius Caesar had imposed a daily expenditure limit on the purchase of food although the details of this imposition are unrecorded. Cicero claims that were he residing in Naples he could make the legal allowance for one day stretch for ten.⁴⁵

It is to Julius Caesar's dictatorship that a bronze inscription recording detailed instructions on municipal government has been attributed although recent scholarly opinion favours the view that it comprised extracts from Roman legal statutes adapted ad hoc on local initiative.⁴⁶ Laws such as the *Tabula Heracleensis*, commonly referred to

as the *lex Iulia Municipalis*, laid down strict regulations governing the selection of magistrates for the local senate and sundry details on the conduct of public administration. The *lex Coloniae Genetivae* detailed instructions on the regulation of *sumptus ludorum*. The chief magistrates, the *duoviri*, during their term of office were to provide *munera, ludi scaenici* in honour of Jove, Iuno and Minerva for four days, each contributing not less than 2000 HS from their own pocket and withdrawing 2000 HS from the public purse. Aediles were to provide the same entertainment but for the duration of three days, spending 2000 HS from personal funds and 1000 HS from the treasury.⁴⁷ So munificence was not wholly voluntary. Inscriptions from the late Republic onwards evidence enforced largesse.⁴⁸

According to Macrobius (3.17.14), even M. Antonius (probably as triumvir) had the impudence to promulgate a sumptuary edict.

It was left to Augustus to put into practice the comprehensive programme of moral and social reform that had been threatened for so long. Sumptuary restrictions, predictably, played an important role. Gellius relates that a *lex Iulia* limited expenditure on *profesti dies* to 200 HS; on *kalendae, nones* and *nundinae* and on certain festivals to 300 HS while on nuptial feasts, a maximum of 1000 HS might be expended. These figures represent a considerable increase on the last known ceilings specified by L. Cornelius Sulla but a further rise was permitted by an edict issued either by Augustus or Tiberius, setting an upper limit on *sollemnes dies* of 2000 HS.⁴⁹

A sumptuary measure of considerable significance was taken during this period. The state magistrates were progressively relieved of their duty of staging public festivals at their own expense. In essence, this move corresponds to the 'anti-ostentation' measures enforced under dictatorial or tyrannical regimes by which prominent members of noble families were denied scope for independent *largitio*.⁵⁰

leges funerariae

Funerals have provided a perennial context for displays of aristocratic wealth and influence. Julius Caesar's astute use of this medium on the death of his aunt Julia and of his wife Cornelia to celebrate the supposed divine ancestry of both branches of his family is but one of numerous examples exhibiting the political importance of these occasions.⁵¹

An astonishing variety of ways was found to project the importance of the individual, the family and even the *gens* he represented. Perhaps legal restraint on obvious targets of ostentation contributed to its manifestation in other areas. Expensive funeral appurtenances, the size of the cortège, the location of the burial, the degree of wailing, the cost of the sepulchral monument, the duration of mourning, spending on gladiatorial spectacles and *epulones*, even the testamentary wishes of the deceased fell under the roving eye of the law.

It must be borne in mind, however, that legislation of similar content might have been prompted by widely differing motives. While curbs on funerary expenditure in Republican Rome may have stemmed principally from the regulatory policy of the senate, such restraints often had a pronounced anti-aristocratic flavour under despotic régimes.⁵²

The remarkable dearth of funerary *corredi* in cremation and inhumation tombs from the beginning of the sixth to that of the fourth century B.C. suggests the existence of some sort of sumptuary restraint in Archaic Rome.⁵³ Numa too was credited with a restriction on the display of grief and on the sprinkling of wine on the funeral pyre.⁵⁴ Certainly the Twelve Tables contain a number of expenditure limitations: (1), on the elaboration of the funerary pyre ... *hoc plus ne facito: rogum ascea ne polito* (Table 10.2); (2), on expensive funerary raiments and on processional attendants *extenuato igitur sumptu tribus reciniis et tunica purpurea et decem tibicinibus tollit etiam lamentationem* (Table 10.3) ; (3), exhibitions of grief were curtailed *mulieres genas ne radunto neve lessum funeris ergo habento* (Table 10.4);⁵⁵ (4), the period of mourning was restricted *homini*

mortuo ne ossa legito, quo post funus faciat (Table 10.5)⁵⁰⁰; (5), other forms of ostentation were prohibited *servilis unctura tollitur, omnisque circumpotatio*. (Tab.10.6a) *ne sumptuosa respersio, ne longae coronae, nec acerrae praetereantur* (Table 10.6b); although it was permitted to bury a person whose teeth had been fastened with gold; (Tab. 10.8), the location of the grave (outside the city Table 10.1)⁵⁰⁷ and its proximity to other pyres (Table 10.9). Sacral considerations⁵⁰⁸ concern for health⁵⁰⁹ and fire precautions⁵¹⁰ were other factors which influenced the drafting of these regulations.

Changes in funeral ideology and practice occurred when existing legislation was ignored or when novel features were introduced. The elaboration of gladiatorial combats, dating from the fourth century B.C., and of *epulae* turned the funerals of notable men into occasions of public enjoyment. The fact that the senatorial aristocracy did not intervene to check these developments suggests that they were alert to new opportunities of promoting their position. Nevertheless a line had to be drawn somewhere. In the mid second century B.C. M. Aemilius Lepidus left instructions to his sons to give him a thrifty funeral costing no more than one million *aeris*, stating that *imagines* and not *sumptus* befitted the dignity of great men.⁵¹¹

Prolonged expressions of grief during periods of national adversity or rejoicing might prove dysfunctional or, quite simply, embarrassing. After the disastrous battle of Cannae in 216 B.C. the senate was forced to restore order to the streets by keeping *matronae* at home, preventing families from lamentation and putting a limit of 30 days on mourning.⁵¹² These steps were taken in order to improve morale and, in the case of women, to ensure that the rites of Ceres, and other public and private ceremonies were not left unattended. In 17 B.C. an edict of the *XVviri sacris faciundis* was concerned to suppress manifestations of female grief on the occasion of the *ludi saeculares* as not being consonant with a period of public rejoicing.⁵¹³ In Renaissance Venice after the great plague of A.D.1347/8. the senate issued a sumptuary law forbidding dark blue or green raiment to encourage general happiness and senators likewise

were barred from mourning garb as unbecomting the dignity of their station.⁶⁴

It must not be forgotten that funerals could provide the pretext for overt demonstrations of political sympathy. Following the cruel massacre of C. Gracchus and several thousand of his supporters in 121 B.C., their bodies were hurled into the Tiber and the wives of the leading figures were debarred from mourning.⁶⁵

Sulla passed a law limiting the expense of funerals which was disregarded both by himself on Metella's death and by his partisans on the occasion of his own death.⁶⁶ Although the details are lacking it might have tightened the regulations on the size of *monimenta*.⁶⁷ As a special tribute to the eminent senator and jurist Servius Sulpicius Rufus Cicero proposed that the curule aediles' *edictum de funeribus* should be suspended to permit the erection on the rostra of an imposing statue on a pedestal and a splendid funeral ceremony.⁶⁸

Some people flagrantly ignored the provisions of the law⁶⁹ while others were prepared to incur a financial penalty in order to ensure that their loved ones were fittingly commemorated. Cicero, however, became obsessed with the idea of erecting a *fanum* (temple or shrine) to his deceased daughter, Tullia but had to take considerable care to find an appropriate site for her memorial in order that it should not be confused with an ordinary *sepulchrum*.⁷⁰

leges aleariae

Measures to restrict *alea*, a game of hazard usually involving dice (*tali* or *tesserae*) akin to modern day backgammon and one of the favourite pastimes of the Romans, date from an early period.⁷¹ Plautus attests to a prohibition on dicing as early as the late third century B.C.: *atque adeo ut ne legi fraudem faciant aleariae, / adcuratote ut sine talis domi agitent convivium.*⁷²

There are two measures of unknown date, a *lex Titia* and a *lex Publicia* and several senatorial decrees on the

subject.¹² Interestingly the prohibitions did not take the form of a blanket ban on gambling for profit. (The usual English rendering of *leges aleariae* as 'anti-gambling laws' is, in this respect, misleading). While games whose outcome rested on chance were frowned upon both a *lex Cornelia* and the senatorial decrees expressly exempted those activities which involved a contest of physical prowess: ...*ubi pro virtute certamen, virtutis causa...*, e.g., throwing the javelin, running, jumping, wrestling and boxing.¹³

A link between these anti-dicing laws and the military requirements of the Roman state might, *prima facie*, seem tenuous. Yet, there is a striking resemblance between these measures and the royal proclamations of Mediaeval England and the charters of Continental Europe which forbade many popular sports and pastimes such as quoits, dicing, cards and bowls and enjoined practice with the bow since the authorities feared lest the growth in popularity of these leisure activities might sap the war-like spirit of the youth.¹⁴

To be sure there were other social evils like inebriation, prostitution and gourmandising associated with this habit but the most serious consequence was the effect of large-scale indebtedness, especially amongst sections of the nobility.¹⁵ As Lawrence Stone observed in his study of the seventeenth century English aristocracy, gaming with cards, cock-fighting, horse racing etc. were considered to be part of the cultural accomplishment of a gentleman so long as they did not develop into an all-consuming passion. The tendency to raise stakes to impress others and the compulsion through pride to meet challenges had disastrous financial results for people like Lord Compton.¹⁶ As the Catilinarian conspiracy proved, disaffection amongst bankrupted noble youths could lead to serious political unrest.¹⁷

If gambling could not be totally suppressed, it might at least be contained by restrictions on loans and pledges. Now a *lex Cornelia de sponsu* (most probably of Sulla in 81 B.C.) stipulated that no one might stand surety for another person for more than 20,000 HS in the same year.¹⁸

In the late Republic at least, there can be no doubt that these measures were enforced. Licinius Denticulus and Q. Curius were both condemned *de alea*.⁶⁰

Fond indulgence in this pastime was a hallmark of the Roman emperors, above all of Augustus whose correspondence to his family was full of his latest gambling exploits - a passion shared by Caligula and Nero.⁶¹ Claudius' *penchant* for the game - he even wrote a book on the subject - suggested to Seneca a fitting punishment for the figure he so roundly despised. In his *Apocolocyntosis*, Claudius was consigned to the underworld for perdition to rattle dice in a riddled box.⁶² As will be argued below, it was often the legislators themselves who did the most to bring the law into disrepute.

leges de habitu et cultu

One of the earliest attested laws on this subject, the *lex Metilia* of c.217 B.C., was proposed by a tribune of the plebs, one Metilius,⁶³ in accordance with the wishes of the censors C. Flaminius and L. Aemilius.⁶⁴ Since Pliny's account suggests that the law was technically still in place, it is doubtful whether the activities of the *fullones* (fullers or launderers) were checked entirely. Moreover, several decades after the measure was passed the Elder Cato invested heavily in and drew considerable profit from areas where fullers' workshops were established.⁶⁵ The restriction was probably aimed at the most advanced processes of restoring the lustre to dyed garments and of adding, or renewing, the sheen to white garments.⁶⁶ It is tempting to connect the former process to the *lex Oppia* restriction and the latter to those regulations governing self-advertisement during canvassing.⁶⁷

The fullers were singled out for criticism in antiquity - perhaps because their much sought after services in this luxury industry reaped for them huge profits. A series of senatorial decrees and imperial edicts attempted in vain to prevent the operation of monopolies in hedgehog skins which were probably used by the *fullones* in treating garments.⁶⁸

Epigraphic evidence from Pompeii reveals the range of sophisticated techniques that could be applied to the treatment of cloth in antiquity. In addition to the fullers themselves, there were *coactiliariae* (makers of felt), *officinae lanifricariae* (wool-workers), *tinctoriae* (dyers), *textrinae* (weavers).²³

The passage of the *lex Oppia* in 215 B.C., and its repeal twenty years later on the motion of the tribunes M. Valerius and L. Fundanius provided the setting for numerous moral reflections on the growth of feminine luxury and on the desirability of legal containment.

The law stipulated:

*...ne qua mulier plus semunciam auri haberet neu vestimento versicolori uteretur neu iuncto vehiculo in urbe oppidove aut propius inde mille passus nisi sacrorum publicorum causa veheretur.*²⁴

The clauses of this law afford an interesting glimpse of female extravagance at the end of the third century B.C., a period which predates the fateful turning-points favoured by many classical historians.²⁵ The details of the statute are significant in themselves. The first restriction prohibiting the possession of more than a half an ounce of gold was, as argued above, tantamount to requisitioning and contrasts with the tradition surrounding previous crises when women were praised for their voluntary contributions. The second clause may indicate an attempt to enforce a uniformity of dress on Roman women, e.g., the white stola as a mark of a *matrona* etc. The third clause, as well as its anti-luxury aspect, reinforced the privileged status of participants in female rites like the Vestal Virgins.²⁶

In 195 B.C. with the immediate threat to national security long lifted, concerted moves were made to restore the opportunities for invidious distinction that luxury could afford. Authors like Valerius Maximus and Livy, for whom the spectre of *matronae* taking to the streets and besetting senators offered irresistible dramatic attractions, focused on female agitation. Indeed a tradition preserved in Plutarch and Ovid suggests that Roman women

threatened to stop bearing children to secure restoration of their *ius*.³²

Sadly, Livy's account which is full of fascinating social comment cannot be relied upon as a faithful record of sentiments expressed on the passage of the *lex Valeria Fundania*.³³ Some scholars consider the pair of antithetical speeches to be influenced rather by contemporary controversies surrounding the promulgation of a *lex Iulia sumptuaria* (18 B.C.) than by a recasting of ideas advanced at the beginning of the second century B.C.³⁴ Of great significance would have been the tension generated by (1), the Roman aristocracy's obvious desire to contain spending on luxury items and (2), the need to project their status in order to distance themselves from the rest of the *populus Romanus* especially during a period of increasing material prosperity when ancient distinctions were becoming increasingly ineffectual.³⁵ The priority conferred on differentiation served only to sharpen the contradiction between attempts at regulation in some areas and growing display in others. The senate never formulated a coherent policy on this subject.

In 189 B.C. a censorial edict ordained: *...ne quis venderet unguenta exotica*³⁶ Whether this was a straightforward act to curtail extravagance or was connected in some way to the famous perfume market, the *Seplasia*, in Capua is unknown.

The Elder Cato, piqued at his failure to forestall the repeal of the *lex Oppia*, stretched his censorial potestas to its limits in order to penalise high spenders.

*ornamenta et vestem muliebrem et vehicula, quae plurius quam quindecim milium aeris essent, deciens tanto plurius quam quanti essent in censum referre iuratores iussi: item mancipia minora annis viginti, quae post proximum lustrum decem milibus aeris aut plurius eo venissent, uti ea quoque deciens tanto plurius quam quanti essent aestimarentur, et his rebus omnibus terni in milia aeris attribuerentur.*³⁷

Cato's actions occasioned considerable resentment and may have contributed to the abolition of *tributum* in 169 B.C.

The next statute in this category, of which we have knowledge, was the *lex Iulia sumptuaria* of Julius Caesar in 46 B.C.

*peregrinarum mercium portoria instituit. lecticarum usum, item conchyliatae vestis et margaritarum nisi certis personis et aetatibus perque certos dies ademit.*¹⁰⁰

Exactly which categories of women were affected by this measure is unclear. There may well have been a desire to preserve the privileges of celebrants of female rites in the case of personal transport. As regards dress, a distinction between prostitutes and honourable women may be indicated.

In 36 B.C., Caesar Octavian banned anyone from wearing purple clothing except for senators in magisterial office. As Augustus, he expressed concern at the fashion of circulating *pullati* and ordered the aediles to put a stop to the practice¹⁰¹ while Tiberius tried to check the growing male taste for silk.¹⁰⁰

Finally Nero prevented the general use of Tyrian and amethystine dyes in order to reserve purple as a distinctively imperial hue.¹⁰¹

leges viariae

Ample scope for luxury innovation and refinement was offered in the realm of personal transport. The *lex Oppia* and the *lex Iulia* of 46 B.C. mentioned above are two statutes which are known to have dealt with aspects of this subject. In 50 B.C. a *rogatio* of the plebeian tribune C. Scribonius Curio proposed to levy a luxury tax on travellers. Cicero recounts an encounter with a notable profligate on the highway:

*hic Vedius mihi obviam venit cum duobus essedis et raeda equis iuncta et lectica et familia magna, pro qua, si Curio legem pertulit, HS centenos pendat necesse est.*¹⁰²

Although this particular bill was a failure it is clear that by the early Empire the levying of transit-tolls on all but the most vital personal necessities was an established practice.¹⁰³

The *lectica* was a favourite means of travel for the wealthy. The very rich like Verres might imitate the custom of the Bithynian kings by employing as many as eight bearers.¹⁰⁴

The emperor Claudius may have been concerned to check ostentation in this area, too, stipulating that people were not to travel through Rome or Italian cities seated in a vehicle.¹⁰⁵

aedificatio

The lack of regulation on house building is surprising. The Elder Pliny evinces dismay that no legislation forbade the importation of costly marble.¹⁰⁶ It is possible that lavishness in *aedificatio* was checked indirectly by the censorial control of the public water supply. The Elder Cato was credited with cutting off all private access to *aqua publica*.¹⁰⁷ At a later date pillar taxes were levied on aqueducts and perhaps on private houses.¹⁰⁸ In exceptional circumstances imposts were calculated on the number of roof-tiles a house possessed.¹⁰⁹

High rents were certainly a target for censorial disapproval. Velleius Paterculus (2.10.1) and Valerius Maximus (8.1.7) record variant traditions on the reasons why M. Aemilius Lepidus Porcina incurred a *nota*; the former stating that he had rented a house for more than 6000 HS, the latter that he had constructed too high and extravagant a villa in the territory of Alsium.¹¹⁰ Pliny records how the censors castigated L. Lucullus for constructing a villa disproportionately large for the size of his farm.¹¹¹

Rutilius Rufus' speech *de modo aedificiorum* delivered in 105 B.C. and quoted verbatim by Augustus before the senate has often been interpreted as a sumptuary restriction although there is no evidence to support this view. It is

possible that the consul merely laid down safety regulations for the construction of large or high properties.¹¹²

Other forms of self-advertisement fell intermittently under the legal gaze. Unauthorised public statues were pulled down on the orders of the censors P. Cornelius Scipio and M. Popilius in 158 B.C. while the Elder Cato during his censorship exclaimed against the practice of erecting statues to women in the provinces.¹¹³

Forbidden Pleasures

Aristocratic concern for the security of their own position and for the standing of other groups relative to themselves occasioned a fascinating interplay between morality and politics. Each new diversion, each intensified pleasure, each change in fashion was suspiciously scrutinised and countered, if need be, both by ideological strictures and by legislative barriers.

A powerful moral stigma was attached to those who fondly over-indulged in those activities such as gaming, gluttony and debauchery that threatened to destabilise the delicate basis of oligarchic wealth and prestige. Dissipation of one's family property (*res familiaris, bona patria, patrimonium*) was one of the gravest misdemeanours a Roman gentleman could commit.¹¹⁴

Aulus Gellius' comments, prefixed to the promulgation of the *lex Cornelia* of 81 B.C. establishes the link clearly:

*postea L. Sulla dictator, cum, legibus istis situ atque senio oblitteratis, plerique in patrimoniis amplis elluarentur et familiam pecuniamque suam prandiorum conviviorumque gurgitibus proluissent, legem ad populum tulit...*¹¹⁵

So, when shame and calumny proved insufficient deterrent, recourse was made to legal enactment, and the delicate transformation of a sin into a crime was effected.

A complex attitude towards hedonistic pursuits evolved. The Elder Cato paid particular attention to the psychology of pleasure - the proper proportioning of one's wants to one's needs forms a theme in his oratory:

*neque mihi aedificatio neque vasum neque vestimentum ullum est manupretiosum, neque pretiosus servus neque ancilla. si quid est quod utar, utor; si non est, egeo. suum cuique per me uti atque frui licet... vitio vertunt, quia multa egeo; at ego illis, quia nequeunt egere.*¹¹⁶

A boundary had to be set to *cupido*. Unlimited desire was the mark of an *aeger animus* as Cicero observed in his analysis of his country's misfortunes, quoting a famous dictum of Ennius.¹¹⁷ Lucretius's comparison of the insatiable nature of the ambitious with the riddled urn of the Danaids would have gained the approval of many a senatorial aristocrat.¹¹⁸

The familiar antithesis between *voluptas* and *labor* was given a delightful twist by Cato in his speech delivered before the assembled knights at Numantia:

*cogitate cum animis vestris, si quid vos per laborem recte feceritis, labor ille a vobis cito recedet, bene factum a vobis, dum vivitis, non abscedet; sed si qua per voluptatem nequiter feceritis, voluptas cito abibit, nequiter factum illud apud vos semper manebit.*¹¹⁹

Tradition also records that, during his stay in Tarentum, the Pythagorean Nearchus' adherence to the Platonic dualism between the soul and the body - the rational and the appetitive - left an indelible imprint on the young Cato's mind.¹²⁰

Indeed the Roman attitude corresponded closely to the reluctance of most philosophical schools in antiquity to equate pleasure with 'the good.'¹²¹ Concepts embodying a cluster of ideas concerned with self-control, moderation, temperance, e.g., *continentia*, *moderatio*, *abstinentia*, *simplicitas*, were given a positive moral rating. Unrestrained self-seeking, whether for power (*ambitio*) or in the

pursuit of money (*avaritia*), was insistently condemned. Accordingly, the formal denial of pleasure, the curtailment of a citizen's desire to dispose of his economic and social acquisitions as he chose, was sanctioned by reference to a powerfully articulated value-system which at the same time elevated a set of desirable virtues and traduced, as *luxuria*, any conduct that infringed their code. Polyarchus, clear-sightedly, noted the arbitrary nature of state intervention and the fabrication of a moral hierarchy.¹⁴⁴

Aristocratic Enrichment

The stability of the aristocracy required the supervision not only of consumption patterns but also of income. Indeed the *leges Porciae* and the *leges de repetundis* were as much concerned to restrict opportunities for excessive gain on the part of provincial magistrates as with the plight of the provincials themselves.

A *lex Porcia*, often attributed to the consulship of C. Porcius Cato in 195 B.C., laid down strict rules governing requisitioning by magistrates and *legati* in the provinces.¹⁴⁵

Careful regulations were drawn up to ensure the public provision of an official's expenses and the salary of his staff in order to minimise the scope for display, largesse or malpractice.¹⁴⁶ Livy, in his account of the arrogance of the consul of 173 B.C. L. Postumius Albinus towards the Praenestines, states that the magistrates were equipped with military apparatus, mules and tents so that they need not make onerous exactions on the allies.¹⁴⁷ At a later date *liberae legationes* (free, diplomatic missions) and official *villulae* (resting-houses) staffed by public officials and caterers (*parochi* or *copiarii*) were features of provincial administration.¹⁴⁸

There was also a limit to the purchase of slaves for personal use by governors. A law forbade an official to buy a slave except to replace one who had died in, or on the journey to, his province.¹⁴⁹ Several authors recount, as an example of signal *continentia*, the restraint shown by Scipio

Aemilianus who was accompanied by only five personal slaves on a *legatio* and, on the death of one, sent for another from Rome.¹³⁰ The Verrine orations of Cicero provide a further glimpse of senatorial arrangements for the conduct of officials abroad. Even silver-plate and cloth was furnished at public expense by law to senior officials.¹³¹ The senate also fixed the maximum amount, and price, of corn that a governor might need.¹³²

One must imagine a considerable overlap between these *leges de sumptu provinciali* and the *leges de repetundis*, the first of which, the *lex Calpurnia* of 149 B.C., established a *quaestio*. A *lex Iulia de pecuniis repetundis* (59 B.C.) of Julius Caesar may have been designed to clarify a confused legal situation. Certainly it made provision for the restitution of irregular exaction while regulations on provincial *sumptus* were tightened up during this period too.¹³³ Cicero boasts that as governor of Cilicia he did not even avail himself of the allowances permitted by the *lex Iulia*.¹³⁴ Avoidance of billeting won him the goodwill of the hard-pressed provincials.¹³⁵

On the whole these checks were ineffectual. There were simply too many loopholes for an unscrupulous governor to exploit. The concentration of military, political and judicial functions offered too great a temptation for the weak-willed or for those whose political career had proved financially burdensome.¹³⁶ Those who resisted personal interests often succumbed to powerful pressures from other interest groups such as the tax-farmers and their agents. Nor did Imperial supervision terminate iniquities.¹³⁷

leges de donis

As with other sumptuary restrictions, so with the *leges de donis* it is necessary to adopt a multi-dimensional approach to questions concerning their scope, degree of electoral support, motivation and consequences.

The significance of bestowing a gift, present or service obviously extends beyond gestures of benignity or friendship

although the element of genuine good-will should never be discounted.

Classical authors fondly cite, as an example of the native uprightness of the Romans, an incident that occurred in 278 B.C. when Cineas' offer of gold and women's apparel to make acceptable Pyrrhus' proposals was spurned by influential Romans of the day.¹³⁷ On a political plane, the direct exchange of material goods for electoral favours constituted bribery and the authorities showed an understandable concern both to foreclose unconstitutional methods of attaining one's goal and to limit canvassing expenses. The Roman authorities did not attempt to prohibit all forms of electoral expenditure. Certain aspects such as the use of *nomenclatores* or *paid sectatores* (attendants) and the activities of the *divisiores* came under intermittent review.¹³⁸

One of the first recorded measures on the subject was the *lex Publicia* of 209? B.C., proposed by a *tribunus plebis*, (probably C. Publicius Bibulus), whose bill was explicitly designed to protect poorer people from the obligation to furnish gifts to the better-off on the occasion of the *Saturnalia* stipulating: *...non nisi cerei ditioribus missitarentur*. Our sole source for this law, Macrobius, suggests that it was designed to protect poorer clients from the avarice of their patrons.¹³⁹ Alleviation of financial hardship incurred by those who were expected to give but were hard-pressed to do so was also a powerful motivatory factor in regulations which freed provincial communities from the obligation of making lavish presents to Roman magistrates. Indeed, the acceptance of such presents by these officials became the basis of a criminal charge.¹⁴⁰

The *lex Cincia* was a more complicated statute.¹⁴¹ It attempted not only to outlaw payment of any kind for the professional services of an advocate but to restrict the bestowal or acceptance of gifts beyond a certain *modus* for all but a carefully defined group of people.¹⁴² With so little known about the context, conjecture alone can surmise the principal objective of this law. Perhaps it was intended to underline the moral basis of *fides* that was supposed to subsist in the *patronus-cliens* relationship. Custom required

a patron to assist a client who was experiencing difficulties as a duty without expectation of financial gain. If so, the measure has strongly conservative implications since it aimed to sustain the traditional ties of obedience to aristocratic authority which would inevitably have been undermined by the professionalisation of such services. As was the case with the *lex Claudia de navibus senatoribus* the search for profit (*quaestus*) was regarded as degrading.¹⁴¹

But other factors cannot be ruled out. Changes to, or an increase in, the practice of litigation could have sparked an element of envy on the part of those who were not gifted in oratory.¹⁴²

On a personal level the law might have supervened to regulate customs which were proving burdensome for a whole range of social groups. As in many societies, so in Rome the nodal points of family development, weddings, funerals, coming-of-age ceremonies and birthdays, were wont to be celebrated with considerable degrees of splendour.¹⁴³ Their elaboration, together with the growing number of festive occasions introduced during and after the Hannibalic War, may have prompted the need for legal guidelines on the subject.

The complex social implications of gift-exchange have been the subject of considerable research and controversy. A seminal study on prestation in Polynesian societies by M. Mauss *The Gift* concentrated on the obligatory nature of this phenomenon. Customary rules of generosity imposed three constraints; to give, to receive and to repay.¹⁴⁴ Others have demonstrated how the disparities evidenced in reciprocal arrangements can serve to underscore differences in standing and prestige.¹⁴⁵

The most thorough examination of gift-exchange in the classical world has been undertaken by P. Veyne in *Le pain et le cirque*. Employing the concept of *évergétisme*, he rejects excessive reliance on theories such as depoliticisation and conspicuous consumption.¹⁴⁶

The text of these laws are of considerable interest for an assessment of the size of the family unit within which

the Roman authorities felt it desirable to contain wealth. Vatican fragments 298 & 299 are of crucial importance - the latter stating: *quinque igitur gradus pleni excepti sunt et ex sexto una persona, sobrini et sobrina*. The substance of this text is that cognates within a fifth degree of affinity and second cousins to the sixth degree could mutually give and receive donations of unrestricted size.¹⁴⁸

A similar list of *exceptae personae* recurs in several of the statutes concerned with inheritance and succession, eg, the clauses in the *lex Furia* or in the *lex Papia Poppaea on bona caduca*.

These exemptions embraced both lineal (i.e. ascendants up to and including the gt.gt.gt.gt grand-parents *tritavus* and *tritava*, and descendants up to and including the gt.gt.gt.gt. grand-children *trinepos* and *trineptis*) and collateral (i.e. uncles and aunts, brothers and sisters etc including the offspring of cousin-germans or cousins on one's mothers' side) relationships.¹⁴⁹ Owing to the crucial importance of inheritance whether by will or by intestacy, the law presupposes knowledge of a highly intricate network of family relations. Indeed in the Twelve Tables' regulations on intestacy it was laid down that failing a *suus heres* or an *adgnatus proximus* the kinsmen (*gentiles*) might gain possession of the household.

*si intestato moritur, cui suus heres nec escit, adgnatus proximus familiam habeto. si adgnatus nec escit, gentiles familiam [habent].*¹⁵⁰

As A. Watson has observed, a prominent feature of the Roman law of succession was that the heir was often required to perform the *sacra privata*.¹⁵¹ This evidence points to a determined attempt to preserve the integrity if not of an entire *gens* then at least of a *stirps* (branch of a *gens*) for a considerable period of Roman history.

Augustus' marital laws were not designed to upset these traditional arrangements. In fact they were intended to be complementary by ensuring that there was a sufficient supply of natural heirs to perpetuate ancient Roman stock.¹⁵²

One wonders quite how a Roman citizen might accurately establish relationships of this breadth although the Elder Pliny records that copies of the family tree were kept in

the atria of the *maiores* along with the *imagines: stemmata vero lineis discurrebant ad imagines pictas. tabulina codicibus implebantur et monimentis rerum in magistratu gestarum.* ¹⁵³

The Maintenance of Standards

Powerful political imperatives underpinned this programme of moral and social control. There was an urgent need for the aristocracy to maintain, at least in the eyes of the public, high standards of domestic and provincial administration in order to sustain a belief in their own moral superiority - their right to govern in the interests of the *populus Romanus* as a whole. Honourable and decorous service to the Republic was the principal *raison d'être* of the Roman aristocrat. Further, the preeminent position of the senatorial order rested as much on its accumulated prestige - its *auctoritas* and *gravitas* - as on constitutional formalities.

In the second century B.C. Scipio Aemilianus found the activities at the *ludi histrionum* shocking but what disturbed him profoundly was the presence of a *puer bullatus*, the son of an office-seeker:

docentur praestigias inhonestas, cum cinaedulis et sambuca psalterioque eunt in ludum histrionum, discunt cantare, quae maiores nostri ingenuis probro ducier voluerunt: eunt, inquam, in ludum saltatorium inter cinaedos virgines puerique ingenui. haec cum mihi quisquam narrabat, non poteram animum inducere, ea liberos suos homines nobiles docere, sed cum ductus sum in ludum saltatorium, plus medius fidius in eo ludo vidi pueris virginibusque quingentis, in his unum - quod me rei publicae maxime miseritum est - puerum bullatum, petitoris filium non minorem annis duodecim, cum crotalis saltare, quam saltationem impudicus servulus honeste saltare non posset. ¹⁵⁴

Those members of the ruling class who gave full rein to their sensual appetites for paederasty, dicing, gluttony etc

lowered, by their unseemly behaviour, the esteem of the aristocracy in the eyes of their fellow citizens and undermined a powerful prop of their ascendancy. Could they be trusted to govern the Republic and its imperial possessions responsibly when their private lives were so disreputable? A decline in the moral standards of the oligarchy might affect general perceptions of their political efficacy. While figures like C. Titius, the Elder Cato and Scipio Aemilianus chastised all forms of degrading licence, a politician with a different political motive, C. Sempronius Gracchus, might advance the visible corruption of officials as a sound reason for widening the basis of political power.

ita versatus sum in provincia, uti nemo posset vere dicere assem aut eo plus in muneribus me accepisse aut mea opera quemquam sumptum fecisse. biennium fui in provincia; si ulla meretrix domum meam introivit aut cuiusquam servulus propter me sollicitatus est, omnium nationum postremissimum nequissimumque existimatote. cum a servis eorum tam caste me habuerim, inde poteritis considerare, quomodo me putetis cum liberis vestris vixisse... itaque, Quirites, cum Romam profectus sum, zonas, quas plenas argenti extuli, eas ex provincia inanes retuli; alii vini amphoras quas plenas tulerunt, eas argento repletas domum reportaverunt.¹⁵⁵

Hostile critics of the nobility like Sallust expatiated on their moral failings. Unbridled ambition and avarice, he asseverated, had reached such serious proportions that catastrophic consequences were unavoidable.

Hedonistic pursuits distracted from a rigorous application to the administrative and political tasks of government. But the life of luxury had other deleterious consequences, too, such as the reluctance to engage in the inhibiting obligations of family life which entailed conjugal fidelity, the tiresome and expensive process of rearing children and the loss of the flattering attentions of suitors and fortune-hunters. There survives a censorial

speech from the second century B.C. which neatly captures the anxieties of the authorities:

*si sine uxore <vivere> possemus, Quirites, omnes ea molestia careremus; set quoniam ita natura tradidit, ut nec cum illis satis commode, nec sine illis ullo modo vivi possit, saluti perpetuae potius quam brevi voluptati consulendum est.... di immortales plurimum possunt; sed non plus velle nobis debent quam parentes. at parentes, si pergunt liberi errare, bonis exheredant. quid ergo nos <ab> immortalibus dissimilius expectemus, nisi malis rationibus finem facimus? is demum deos propitios esse aecum est, qui sibi adversarii non sunt. dii immortales virtutem adprobare, non adhibere debent.*¹⁵⁶

Q. Caecilius Metellus Macedonicus' speech is remarkable not so much for its exhortation to enter into wedlock but for its tacit recognition of the appeal of the *bon viveurs'* life-style.

Polybius' remarks, composed a little earlier and in the immediate context of a perceived decline in fertility amongst Greek families, probably echoed attitudes prevalent amongst concerned members of the Roman aristocracy.¹⁵⁷

According to Polybius, ambition, avarice and indolence were to blame for the lack of interest in marriage or, where nuptial bonds were established, childless or at best small families. An additional factor which contributed to the small size of families was the desire of the well-off to maintain high living standards of their offspring.¹⁵⁸ In the absence of a wholesale change in attitudes, the legal remedy should be relied upon, he proposed, making it compulsory to raise children.

In sum, the enactment of these moral and social laws served to underwrite the overriding political needs of the aristocracy, satisfying its desire for regulation as well as exhibiting concern for incorrect types of behaviour that were injurious to public welfare. It did not succeed in preventing the demise of the illustrious Republican nobility. The long catalogue of families, which were either

extinguished or became dependent on imperial subsidies, was a hallmark of the early Principate.¹⁵⁹

NOTES

IV

- 1 For a succinct, penetrating account of the Roman aristocracy's concern to preserve cohesion amongst their own ranks see M.H. Crawford *The Roman Republic* (London, 1978), esp. ch. 7. See also B. Levick 'Morals, Politics and the fall of the Roman Republic' *G&R* 29 1982, 53-62 who accepts D. Daube's non-tipping interpretation.
- 2 By a statistical analysis of office-holding patterns A.E. Astin, in an important monograph on this subject 'The *Lex Annalis* before Sulla' *Coll. Lat.* 32 1958, has established that the *lex Villia* imposed a compulsory two year interval between office as well as specifying minimum age qualifications. By the late Republic, minimum ages for curule offices were: 36 for the aedileship; 39 for the praetorship; 42 for the consulship.
- 3 As M. Beard & M. Crawford (1985), p.53 have pointed out, this system entailed that at almost every stage of his political career a Roman statesman would be in direct contention with peers of a similar age.
- 4 So E.S. Gruen in *The Last Generation of the Roman Republic* (Berkeley, 1974), p. 160 and see p. 212f for a thorough discussion of the anti-bribery laws in the late Republic.
- 5 See appendix 4.
- 6 See S.C. Humphreys in *The Family, Women and Death* (London 1983), p. 9 for these 'pot-latching' aspects in Athenian public life.
Note the Greek use of the term πολυτελείς to denote those who spent too much at festivals and εὐτελείς for those who spent too little, Athen. *Deipn.* 40e. For an interesting survey of injunctions, both legal and philosophical, promoting moderation in dining and drinking amongst the Greeks see Athen. *Deipn.* 186; for Solonic measures, id. 137e.
- 7 Q. Cicero *Comment. Pet.* 44.
- 8 Livy 39.5.10 merely states *octoginta milium* but it is

safe to assume *asses* and not HS.

It would be most interesting to be able to chart the rising cost of games during the last two centuries of the Republic. Scattered details are all that we have. For an early period notice the statements of, e.g., Macrobian *Sat.* 1.17.29 that when the Apolline Games were instituted, the senate decreed a sum of 12,000 *aeris* should be spent; Dion. Hal. 7.71.2 for the senate's designation of 500 *minae* of silver for the *ludi magni*; Cic. Schol. p.217St for *ducenta milia nummum* at the *ludi Romani*; Plut. *Fab.* 4.5 a music and dramatic festival in honour of the gods was to cost 333 HS & 333 $\frac{1}{3}$ den. = 83,583 $\delta\rho$ & 2 obols; Polyb. 31.28.5 says that the average cost of a funeral gladiatorial contest (mid 2nd century B.C.) was 30 talents; Livy *Per.* 48 a cheap funeral costs 1 million *aeris*; Plut. *Cras.* 12.2 for Crassus' dedication of a tenth of his fortune (71,000 tal.) to Hercules when he banqueted the people at 10,000 tables and gave them an allowance of grain for three months; id. *Iul. Caes.* 55.3 for Julius Caesar's feast for the populace at 20,000 tables; Suet. *Tib.* 20 where Tiberius banqueted the people at 1000 tables & a *congiarium* of 300 HS apiece in A.D. 12; Petr. *Sat.* 45 (400,000 HS show).

9 Livy 40.44.10-12.

10 The dating of this measure is highly problematic. Rotondi (1912) places it in 103 B.C. on the basis of Cic. *Tusc.* 5.112 but 170 B.C. seems preferable because of the activities of a plebeian tribune in that year (Livy 43.8.2) & in 169 B.C. Livy (44.18.8) records the magnificence at the *ludi circenses* when the curule aediles P. Cornelius Scipio Nasica and P. Lentulus exhibited 63 *Africanæ*, 40 bears and elephants. Curiously though, Varro (*R.R.* 3.13.3) refers to the staging of *venationes sine Africanis bestiis* by the aediles in the Circus Maximus. Caelius' strenuous efforts to import panthers with the help of Cicero make the reimposition of this measure doubtful.

11 Macrobian *Sat.* 3.17.1.

12 Macrobian *Sat.* 3.17.2 states: ...*cuius verba quia sunt*

prolixa praetereo, summa autem eius praescribentur numerum convivarum. This suggests that the law was a fairly complex affair.

13 Festus s.v. *obsonitavere* p.220 L: *Cato in suasione <ne> de lege Orchia derogaretur. "qui antea obsonitavere, postea centenis obsonitavere";* s.v. *percunctatum* p.280-2 L: *percunctatum patris familiae nomen ne quis servum mitteret, lege sanctum fuisse ait Cato in ea, qua legem Orchiam [dis]suadet.* Pauli excerpta p.221L: *obsonitavere saepe obsonavere significat autem convivari.* Cp. Schol. Bob. p. 141 St.: *non aliter et M. Cato in legem Orchiam, conferens ea quae virtus..., ut summae gloriae sint a virtute proficiscentia, dedecoris vero praecipui existementur, quae voluptas suadeat non sine labe vitiorum.*

14 Gell. *N.A.* 2.24.2.

15 Gell. *N.A.* 2.24.3-6; 20.1.23; cf. Macrob. *Sat.* 3.17.5 merely states that it established a general limit of 100 asses perhaps on the basis of the well-known quotation from Lucilius: *Fanni centussis misellus.* See chapter 2 for C. Titius' castigation of gourmands and Macrob. *Sat.* 3.13.13 for his reference to the 'Trojan pig.'

One may presume that, similar to the clauses in the municipal charters, a state-allocated sum was specified for major festivals with guidelines for personal contributions.

16 Pliny *N.H.* 10.139 records that it was the Delians who invented the practice of fattening hens; cp. Tert. *Apol.* 6.2. Little regard was paid to this injunction; Colum. *R.R.* 8.7.1; Petr. *Sat.* 36.

17 Athen. *Deipn.* 274c/d perhaps reiterating the *lex Orchia*.

18 The added detail that this law did not allow the purchase of victuals worth more than 2½δρ may correspond to the 10 aes limit on working days mentioned by Gell. *N.A.* 2.24.3. It is probable that the Elder Cato's declamation on his contemporaries' predilection for boy-favourites and Pontic caviar (Diod. Sic. 31.24.1; Polyb. 31.25.5) was delivered in the context of the passage of this bill.

19 See Rotondi (1912), p.295 and W.V. Harris 'Was Roman Law

- Imposed on the Italian Allies?' in *Historia* 21 (1972), 639-45 who suggests that *universa Italia* designated all Roman citizens in Italy, but surely *Italicis existimantibus* points conclusively to another interpretation.
- 20 Macrobius *Sat.* 3.17.6: *deinde ut non soli qui prandia cenasse maiore sumptu fecissent, sed etiam qui ad eas vocitati essent atque ominino interfuissent, poenis legis tenerentur.*
- 21 Note Livy 39.8.3f for the Bacchanalian 'Conspiracy'; Polyb. 6.13.4.
- 22 Although both Gell. *N.A.* 2.24.12 and Macrobius 3.17.13 place the *lex Aemilia* in 78 B.C., I feel sure that this is due to a casual reading of the primary source Ateius Capito by Gellius (or even a mistake on the part of Capito) which was taken over by Macrobius. It is not necessary to posit two *leges Aemiliae* on the subject. The consul of 78 B.C. Lepidus stood on a prominently anti-Sullan platform. Since Sulla was noted for his anti-luxury measures it is highly unlikely that Lepidus, in this turbulent period, would have had the wish or time to enact sumptuary restraint.
- 23 Pliny *N.H.* 8.223; cp. 36.4 exstant censoriae leges glandia [preferable to the alternative MS reading *Claudianae*] *in cenis glires[que] et alia dictu minora adponi vetantes.* On *glandia* (sweetbread) see id 8.209; Victor *vir. ill.* 72 for a brief notice on Scaurus' 'poverty' & Plut. *de for. Rom.* 4 & Val. Max. 4.4.11 who records that he inherited only 10 slaves and 35,000 nummum; cf. T.P. Wiseman (1971), 84; 106.
- 24 M. Aemilius Lepidus Porcina fr. 5 Malc.; Vell. Pat. 2.10.1; Val. Max. 8.1.damn.7.
- 25 Cassiod. *Chron.* a. 639.
- 26 Considerable controversy surrounds the authorship and dating of the *Lex Licinia*. Recent scholarship has favoured P. Licinius Crassus Dives Mucianus (RE 72) the famous jurist either as praetor c. 142/1 B.C. or as consul in 131 B.C. (eg. G. Aste 'Autore e tempo della Lex Licinia de sumptu minuendo' in *Aevum* 15 (1941), M.H. Crawford (1978) p.80; G. Clemente (1981); I. Sauerwein (1970) p.94f & Kübler in RE s.v. *sumptus*)

but there are sound reasons for preferring a later date. Firstly, the proximity in time of the *lex Didia* in 143 B.C. and even the Fannian law passed only twenty years previously would render Macrobius' comment on the pressing need to renew the attack on *luxus mensae* by the authority of a new law redundant. Secondly M. Voigt's point (1890), 259 that the *lex Licinia* expresses the *modus* in *aeris* while later laws such as the *lex Acilia* of 122 B.C. and an *s.c.* of 115 B.C. employ *HS* is not conclusive. Indeed small denominations continue to be specified in *aeris*, eg, the frumentary laws of the late second and early first centuries B.C., and the censorial edict of 89 B.C. Thirdly, The controversy surrounding its repeal in c.97 B.C. by M. Duronius suits a later date soon after the promulgation of the act rather than a measure passed forty years previously which would simply have been left to fall into desuetude. A more important consideration is the notice in Athen. *Deipn.* 274 on the lack of observance of the *lex Fannia*. Mucius Scaevola, Aelius Tubero and Rutilius Rufus were three Romans known to have respected the letter of the law. From the dates of their respective political careers, one would have expected the *lex Licinia* rather than the Fannian law to have been mentioned if the Licinian law had been enacted in 143 or 131 B.C. However Rotondi's (1912) conjecture of 103 B.C. is not compelling either for this is the date when the poet Lucilius died who remarked on this law in his *Satires: legem vitemus Licini.* fr. 1200 M. In addition the law was mentioned by Laevius, a contemporary of Varro in his *Erotopaegnia*, dated to the early 1st century B.C. (OCD s.v. Laevius).

Preferable is a date around 107/6 B.C. during the plebeian tribunate of P. Licinius Crassus (RE 61), the future consul of 97 B.C. and who was responsible as censor in 89 B.C. for an edict on costly wines.

- 27 The haste with which the bill was promulgated and put into force before the customary *trinundinum* suggests that it was occasioned by an electoral contest of some moment - probably in connection with the re-election of Marius or one of his supporters: ...*cuius ferundae probandaeque*

tantum studium ab optimatibus impensum est, ut consulto senatus iuberetur ut ea tantum modo promulgata priusquam trinundino confirmaretur, ita, ab omnibus observaretur quasi iam populi sententia comprobata. Macrob. *Sat.*

- 3.17.7. Cf. the senate's zeal to rush through a bill limiting the number of gladiators that might be kept in Rome in order to forestall Julius Caesar's plans for a spectacular *gladiatorum munus* in 65 B.C.; Suet. *Iul.* 10.2.
- 28 Perhaps corresponding to the 10 *aeris* specified by the *lex Fannia*.
- 29 *cum et carnis aridae et salsamenti certa pondera in singulos dies constituisset, quicquid esset natum e terra, vite, arbore, promisce atque indefinite largita est.* Gell. *N.A.* 2.24.7; Macrob. *Sat.* 3.17.9; note the speech of Favonius on the subject, quoted in chapter 2; cp. Festus p.47 L [Pauli excerpta ex lib. Pomp. Fest.] s.v. *centenariae: centenariae cenae dicebantur, in quas lege Licinia non plus centussibus praeter terra enata inpendebatur, id est centum assibus, qui erant breves nummi ex aere.*
- 30 See table 1.
- 31 Val. Max. 2.9.5; Cic. *De Orat.* 2.274-5; for Duronius' speech see chapter 6.
- 32 Pliny *N.H.* 14.95. T. Frank *A.J.Phil.* 1931, p.278 emends *singula quadrantalia* to *singulos quartarios* to tally with the figure in Diod. Sic. 37.3.5 but this was a top price. It is preferable to read *octoginta* in place of *octonis* and understand the currency denomination as libral *aes* and not quadrantal *as*.

No general measure limiting alcoholic beverages is recorded for this period although the restrictions on the sale of food and drink in taverns and cookshops must have affected the consumption of liquor. Either custom or statute hindered the enjoyment of wine by Roman women; see, e.g., Pliny *N.H.* 14.89f; Athen. *Deipn.* 429; 440e; Aelian *V.H.* 2.38. For the whole subject see A.P. McKinlay 'Wine and the Law in Ancient Times' in *Studies presented to D.M. Robinson on his seventieth birthday* ed. G.E. Mylonas (Saint Louis, Missouri, 1953), 858-67.

- 33 Gell. *N.A.* 2.24.11.
- 34 3.17.11. For an explanation of Sulla's action, see ch.3.
- 35 *Amm. Marc.* 16.5.1 in connection with Julianus Caesar's sumptuary law which restricted the serving of *phasiana* (pheasant), sow's *vulva* and *sumen* (udder).
- 36 *Plut. Sulla* 35.2; *Comp.Lys. & Sulla* 3.2; *Cic. Fam.*7.26.2 may contain an allusion to Sulla's law.
- 37 Gell. *N.A.* 2.24.13.
- 38 *Macrob. Sat.* 3.17.13; *Q. Cicero Comment. Pet.* 44 shows no regard for Antius' measure.
- 39 *Lex Col. Gen. Iul.* ch. 132; a restored reading at Tab. 4 c.3.20f by Riccobono *FIRA I* pp. 97-8 permits the candidate to invite up to 9 people per day for a meal provided that they were unconnected with his canvassing; cp. *Cass. Dio* 54.18.3 where Augustus, in 17 B.C., is said to have forbidden anyone drawn for jury service to enter other people's houses during their year of office.
- 40 *Cic. Vat.* 37; cp. *Sest.*135; for further details consult Rotondi (1912), p.379.
- 41 *Cass. Dio* 39.37.3.
- 42 Bestowed on Julius Caesar for three years in 46 B.C. and for life in 44 B.C. *Cass. Dio* 43.14.4 & 44.5.3; cp. *Suet. Iul.* 76.1; *Cic. Fam.*9.15.5; *Marc.* 23 for important advice to Caesar.
- 43 *Iul.* 43.2; *Cass. Dio* 43.25.2 records that Caesar not only legislated but made strenuous efforts to enforce his curtailment of prodigious expenditure; *Cic. Att.* 13.7.1 for Caesar's reluctance to absent himself from Rome for fear that his other laws might be ignored in the same way as his sumptuary measure was; *Fam.* 9.15.5; 9.26.4; *Att.* 12.13.2.
- 44 *Cic. Fam.* 7.26.1 on the occasion of an inaugural banquet at Lentulus' house, dated by D.R. Shackleton Bailey to between Oct. 46 - Feb. 45 B.C.; *Fam.* 9.10.2;
- 45 *Fam.* 9.15.5f; the dating of this letter to the intercalary month Nov-Dec 46 B.C. by D.R.Shackleton Bailey and the reference to Julius Caesar's election to the post of *praefectus moribus* serves to pinpoint the passage of this law to late 46 B.C. since it is most likely that Julius Caesar would have reviewed the sumptuary legislation

when he undertook his new post.

Cp. *Fam.* 9.16.7 for Cicero's humorous chiding of Papirius Paetus for his stinginess, even before the latter lost some of his property. The banter is continued in *Fam.* 9.19.1; 9.20.1; 9.23.1; 9.24.2. It is people such as Papirius who would have found legal imposition especially congenial.

- 46 Note Cic. *Fam.* 6.18.1 which corresponds closely to Tab. Her. 94. For the old view see E. g. Hardy *Roman Laws and Charters* (1912) now superseded by the article of M.W. Frederiksen 'The Republican Municipal Laws: Errors and Drafts' in *JRS* 55 (1965), 183-98.
- 47 Lex Col. Gen. 70 & 71. However, in the *lex Irnitana* 77 the setting of a limit on expenses of *sacra* is left to the discretion of the *decuriones*; J. Gonzalez (1986), 224.
- 48 *C. Uulius C.f., P. Aninius C.f. II(viri) i(ure) d(icundo) laconicum et descriptarium faciund(um) et porticus et palaestr(am) reficiunda locarunt ex d(ecreto) d(ecurionum), ex ea pecunia, quod eos e lege in ludos aut in monumento consumere oportuit, faciun(da) coerarunt eidemque probaru(nt)*. Cited in the *Guide archeologichi Laterza* vol.11 *Pompei Ercolano Stabia* ed. A & M de Vos (1982). I am grateful to Andrew Wallace-Hadrill for this reference.
- 49 Gell. *N.A.* 2.24.14-5; Suet. *Aug.* 34.1; Florus 2.34.
- 50 See my brief typology of sumptuary laws in ch.3. For a discussion of sumptuary restraint in the early Empire see chap. 7 *infra*.
- 51 Plut. *Iul. Caes.* 5.1-2; Suet. *Iul.* 6.1.
- 52 For Demetrius of Phalerum, chapter 3. For Greek parallels see S.C. Humphreys *The Family, Women and Death* (London, 1983) pp. 14f & 85 especially for the Solonic limitation of attendance at funerals to near relations, restrictions on grave goods and the presence of women under 60 at the prothesis.
- 53 See ch.1, n.15.
- 54 Cass. *Hemina* fr. 13 Peter; Plut. *Cor.* 39.5 Numa permitted a maximum of 10 months for the period of mourning.

- 55 For the later limit on processional attendants see Ovid *Fasti* 6.663: *adde quod aediles, pompam qui funeris irent, artifices solos iusserat esse decem.* Cp. Plut. *Solon* 21.
- Cic. *Leg.* 2.59; *Tusc.* 2.55 for *lessum* as wailing rather than a mourning garment, cp. Plut. *Solon* 21. On the use of hired mourners (*praeficae*) see Lucilius fr. 995W; Varro *L.L.* 7.70; Gell. *N.A.* 18.7.3 for the Elder Cato's comparison between the dirges of hired mourners and philosophy.
- 56 Cicero (*Leg.* 2.24.60) specifically says that one bier and one funeral only were allowed per person.
- 57 Cp. *Lex Col. Gen.* ch. 73.
- 58 Cic. *Leg.* 2.58 the college of Pontiffs declared it illegal to make a *sepulchrum* in a public place.
- 59 Noted by Isid. *Orig.* 15.11.1.
- 60 Cic. *Leg.* 2.24.61.
- 61 Livy *Per.* 48; Polyb. 6.53f for a fine account of the awe-inspiring occasion of an aristocratic funeral.
- 62 Livy 22.55.6; 22.56.4; Plut. *Fab.* 18.1 Fabius put a limit to mourning, ordering people to lament at home within a period of 30 days.
- 63 *FIRA* I.57 (p.317): *cum bono more et proinde celebrato frequentibus exemplis, quodcumque illusta laetitiae publicae causa fuit, / minui luctus matronarum placuerit, ...*
- 64 See M.M. Newett (1907), pp.249 & 267 where restrictions on apparel were lifted to impress the visiting French ambassador.
- 65 Plut. *C. Gracch.* 17.4-5. It was improper to mourn certain categories of people who were held to have betrayed or disgraced the state; see Frontin. *Strat.* 4.1.38; Dig. 3.2.11.1 *quem more maiorum lugeri non oportet*; with the discussion of D. Daube (1956), 17.
- 66 Perhaps as part of an extensive sumptuary law - see M. Voigt 'Uber die *lex Cornelia sumptuaria*' in *Ber. der Kon. Sachs. gesell. der Wiss.* 42 (1890), 244f. Plut. *Sulla* 35.4; 38.1; Appian *B.C.* 1.106 for the imposing sumptuosity of Sulla's funeral; Rotondi (1912), p.355; Dig. 11.7 for regulations and permitted expenditures at funerals; 47.12 on sepulchres; *CIL* VI.9404.

67 An obvious target. Demetrius of Phalerum placed a limit on newly erected monuments (Cic. *Leg.* 2.66) and there is archaeological evidence to suggest that it was enforced. He also stipulated that corpses were to be buried before daybreak.

68 Cic. *Phil.* 9.15f.

The precise function of the *arbitri funeris* is unclear but from scattered remarks in Cicero they appear to have been charged with evaluating the correct level of expenses which the state should contribute towards the funeral obsequies of eminent men in accordance with the rank of the departed; Cic. *Post. Red. in Sen.* 18; *Dom.* 98; *Pis.* 21; Cic. *Schol.* p.109 St.; Dig. 11.7.12.6.

69 Eg. C. Figulus Cic. *Leg.* 2.62; cp. Petr. *Sat.* 71 for Trimalchio's extravagant whims.

Cicero wanted it placed in a conspicuous public place, like a *hortum*. *Att.* 12.12;18;19;20;21;22;23;25;27;30;31;32;33;34;37;37a;38a;40;41;42;43;44;49;50;52; 13.1.

From *Att.* 12.36 it is clear that Cicero did not wish it to be regarded as a tomb (*sepulchrum*) not simply to avoid paying extra dues but because he wanted it to approach as near to a deification as possible and perhaps also to minimise the chance of it being desecrated; See Shackleton Bailey (1965-8), on *Att.* 12.35 and his appendix 3. Cp. the *Lex Col. Gen.* 73 where the erection of a *monimentum* within the city boundaries was forbidden. Any such building was to be demolished and the person responsible fined 5000 HS.

70 For an interesting discussion of the background to these statutes see R.G. Austin 'Roman Board Games' in *Greece and Rome* 4 (1934), 76f.

71 *Mil. Gl.* 164f; cp. Ovid *Tristia* 2.471.

72 Dig. 11.5.3.

73 Dig. *op. cit.*; Hor. *C.* 3.24.58; M. Viogt (1890).

74 Henry IV 1477; Edward III 1363; see F.E. Baldwin (1926), p.118 & K.R. Greenfield (1918), ch.5 for restrictions at Nürnberg.

75 Cic. *Cat.* 2.10; *Phil.* 2.67; 13.24; see C. Titius' complaints in his speech quoted in chap.2. He seems to be as good a candidate as any for the otherwise

- unattributed *lex Titia alearia*; *Isid. Orig.* 18.60.
- 76 *The Crisis of the Aristocracy 1558-1641* (Oxford, 1965), 571.
- An added problem must have been addiction. The compulsive gambler cuts a sorry figure in any epoch. Note the comments of D.B. Cornish in *Gambling: A Review of the Literature*. (Home Office Research Study No. 42) (London, 1977).
- 77 Sallust *B.C.* 14.2; Suet. *Aug.* 71 Augustus enjoyed this pastime and not just during the *Saturnalia* when it was legally permitted; cp. *Macrob. Sat.* 1.5.11; *Mart.* 4.16.2.
- 78 M. Voigt (1890), p.260f; *Gaius* 3.124; *Festus* p. 375M; D. Daube *Roman Law: Linguistic, Social and Philosophical Aspects* (Edin. 1969), p.121 on the non-tipping aspects - the desire to protect those who did not wish to become entangled in other people's financial difficulties; see *Rotondi* (1912), p.362; *Dig.* 46.1 for exceptions *cautio dotis* etc.
- Other laws were directly concerned with preventing indebtedness, eg., the *lex Sulpicia de aere alieno senatorum* (88 B.C.) & the *lex Claudia de aere alieno filiorum familiarum* (A.D. 47).
- 79 *Cic. Phil.* 2.56; *Asc.* p.93C; *Ps. Asc. In divin.* 24; *Schol. on Cic.* p.194 *St. Martial* 5.84.5; 14.1.3; 4.14.8; 11.6.2.
- 80 *Suet. Aug.* 71.1-3; *Calig.* 41.2; Nero played for 400,000 H.S. per point, *Nero* 30.3; *Dom.* 21.
- 81 *Suet. Claud.* 33.2; *Seneca Apoc.* 15.
- 82 Metilius was a kinsman of Minucius and an outspoken opponent of Fabius Maximus. (see *Plut. Fab.* 7.3; 8.4 for his astonishing claim that a powerful group within the senate had engineered the Hannibalic War with the deliberate intention of suppressing the people. Metilius was *trib. pleb.* in 217 B.C. Münzer followed by Broughton *MRR* (New York, 1951-60) suggests the measure was passed in an earlier tribunate in 220 B.C.
- 83 Pliny's statement (*N.H.* 35.197) that the censors brought the bill before the people is inaccurate.
- 84 In the early part of the second century B.C. *Plut. Cat. Mai.* 21.5.

- 85 The former method used Umbrian earth, the latter used *saxum* 'the rock' and *sarda* from Sardinia. See D.H. Shively (1964) for a prohibition in Tokugawa Japan which restrained the use of dyes to heighten sheens.
- 86 Livy 4.25.13; 7.15.12-13. Cic. *Planc.* 85 for the double-entendre on the word *Creta*. Laterensis had recently been in the province of Crete and was a candidate for office but Schol.on Cic.167St has a more prosaic interpretation. Cic. *Quint. frat.* 2.12.3 may also contain an illusion to legal prohibitions on the refurbishment of togas. Note Plut. *Mor.* 276c for the practice of candidates to wear a toga without a tunic.
- 87 See R. MacMullen (1974) p.139 for references.
- 88 Pliny *N.H.* 8.135. W. Moeller *The Wool Trade of Ancient Pompeii* (Leiden, 1976), esp. ch.3. I am grateful to A.F. Wallace-Hadrill for this reference.
- 89 Livy 34.1.3; cp. Val. Max. 9.1.3; Victor *vir. ill.* 47.6; Tac. *Ann.* 3.33; 3.34; Zon. 9.17.1; Oros. 4.20.14; Dion. Hal. 2.19.5.
- 90 See ch.2 above. Macrobi. *Sat.* 3.17.10 for the adage good laws spring from bad morals.
- 91 Tab. Her. 62.
- 92 Ovid *Fasti* 1.619f relates that women even threatened to abort their children in pursuit of their demands; Plut. *Mor.* 278b.
- 93 Recently, J. Briscoe (1981), p. 39 has contested the authenticity of these speeches.
- 94 See also J.P.V.D. Balsdon *Roman Women. Their History and their Habits* (London, 1963), 33 & 293, n.35 for references - Fraccaro *Opus* 1.78-81; E. Pais 'L'Orazione di Catone a favore della legge Oppia' in *Atti della R. Acc. di Napoli* (1910); H.H. Scullard (1973), 25. In favour of their authenticity is D. Kienast *Cato der Zensor* (Heidelberg, 1954), 21f.
- 95 Livy 34.4.10-12.
- 96 Pliny *N.H.* 13.24 who attributes it to P. Licinius Crassus and L. Iulius Caesar but his reference to the bequest of King Antiochus makes the dating fairly certain.
- 97 Livy 39.44.2-3; Pliny *N.H.* 8.210; cp. Plut. *Cat. Mai.* 18.2 'He had all apparel, equipages, jewellery, furniture and

- plate, the value of which in any case exceeded fifteen hundred drachmas, assessed at ten times its worth, wishing by means of larger assessments to make the owners' taxes also larger. Then he laid a tax of three on every thousand asses thus assessed, in order that such property holders...might desist from their extravagance.' Loeb trans.; Plut. *Cat. Mai.* 4.4 for his inheritance of an embroidered Babylonian robe which he promptly sold.
- 98 Suet. *Iul.* 43.
- 99 Cass. Dio 49.16.1; Suet. *Aug.* 40.5.
- 100 Its see-through, body-clinging qualities marked it out as an effeminate practice; Tac. *Ann.* 2.33; Cass. Dio 57.15.1; cf. Caligula's preferences Cass. Dio 59.26.10; Suet. *Tib.* 34.2 for Tiberius' edict forbidding kissing on certain days.
- 101 Suet. *Nero* 32.3.
- 102 Cic. *Att.* 6.1.25; D.R. Shackleton Bailey identifies P. Vedius with P. Vedius Pollio, the cruel, spendthrift acquaintance of Augustus and suggests the tax was levied at 100 HS per day(?) per slave in excess of a legally specified number. Compare Vedius' train with the large retinue and means of transport of Milo on his fateful journey; (Cic. *Mil.* 28 & 55). In *Fam.* 8.6.5 Cicero relates Curio's bill to the *lex agraria* of Rullus and mentions another proposal of Curio's, a *lex alimentaria*. See Cass. Dio 40.61.1 for the failure of Curio's rogations. W.K. Lacey in 'The Tribunate of Curio' in *Historia* 10 (1961), 318-29 holds that a major aim of the bill was to create a magisterial post for Julius Caesar so as to give him an opportunity to leave Gaul without becoming a *privatus*.
- 103 Pseud. Quint. *Declam.* 359.
- 104 See Cic. *Verr.* II.5.11.27 for the luxury of Verres borne by eight bearers in a *lectica*, reclining on Maltese embroidered cushions. Cp. Catullus 10 for the poet's humiliating retraction of his boast that he had brought back 8 *recti homines* from Bithynia.
- 105 C.Dio epit. 60.29.7; Suet. *Claud.* 25.2: *viatores ne per Italiae oppida nisi aut pedibus aut sella aut lectica transirent, monuit edicto*. It is conceivable that traffic

- congestion might have supplied another motivation for this measure; cp. Tab. Her. 56.
- 106 Pliny *N.H.* 36.5; on marble quarrying see Strabo 12.8.14; 5.2.5; cp. Cic. *Off.* 1.140 on his call for formal sumptuary restraint on this point.
- 107 Livy 39.44.4;
- 108 Cicero *Att.* 13.6 for the pillar tax on aqueducts June 45 B.C.; for a *columnarium* tax levied by the governor of Syria in 49 B.C. see Caes. *B.Civ.* 3.32;
- 109 Cass. Dio 46.31.3; in 43 B.C. each senator had to contribute 4 obols (= 10 asses) per roof tile of the house in the city that he owned or rented; See Lex Col. Gen. 76 for the prohibition on factories producing more than 300 tiles a day and Lex Municipii Tarentini 28 FIRA 1 p.168 for the requirement of every *decurio* to possess a house with at least 1500 tiles.
- 110 For examples of high rents in the late Republic see Plut *Sulla* 1.4. Sulla's house rent was 3000 HS while the freedman above him paid 2000 HS; Cic. *Cael.* 17 Caelio's rent amounted to 10,000 HS; see the figures collected by Z. Yavetz in 'The Living Conditions of the Urban Plebs in Republican Rome' *Latomus* 17 1958, 513/4.
- 111 *N.H.* 18.32.
- 112 Suet. *Aug* 89.2 For sundry building regulations see Vitruvius *Arch.* 2.8.17 *leges publicae non patiuntur maiores crassitudines quam sesquipedales constitui loco communi.*
- 113 Pliny *N.H.* 34.30; 31; cp. 34.24; 93. See Cic. *Phil.* 9.13 for the special *ius* conferred on Ser. Sulpicius Rufus. On the setting up of honorific statues see R.R.R. Smith 'Roman Portraits: Honours, Empresses, and Late Emperors' in *JRS* 75 (1985), p.210.
- 114 Eg. Cic. *Phil.* 13.3; Sall. *B.C.* 5.4:
...alieni appetens, sui profusus, ardens in cupiditatibus... (of Catiline); 12.2; 14.2; Verr. 2.1.12.33; Cato *Agri.* 5.1: *alieno manum abstineat, sua servet diligenter*; Notice the proud claim of the author of the *Laudatio Turiae* I.48.
- 115 Gell. *N.A.* 2.24.11.
- 116 Gell. *N.A.* 13.24.1-2.
- 117 Cic. *Tusc.* 3.4-5.

- 118 Lucr. 3.1003f; 5.1431f. Polybius (13.2.1-2) likened the insatiable greed for gain of Scopas with the physical condition of a person suffering from dropsy whose thirst no amount of liquid might quench.
- 119 Gell. *N.A.* 16.1.3-4. Cp. the Elder Cato fr.143 *Malc.*
- 120 Plut. *Cat.Mai.* 2.3 also records the Pythagorean Nearchus' belief that pleasure was the strongest incentive to evil.
- 121 For the classical philosophical position on this subject see Plato's *Philebus* where Socrates steers a middle course between the hedonists like Eudoxus of Cnidus on the one hand and the extreme ascetics on the other; cp. *Rep.* 580d-588b.
- 122 Polyarchus *apud* Athen. *Deipn.* 546b.
- 123 Lex Ant. de Term. c.2.16 FIRA 1. p.137; Livy 32.27.3: *Siciliam M. Marcellus, Sardiniam M. Porcius Cato obtinebat, sanctus et innocens, asperior tamen in faenore coercendo habitus; fugatique ex insula faeneratores et sumptus, quos in cultum praetorum socii facere soliti erant circumcisi aut sublati.*
- 124 Cic. *Att.* 7.1 for a provincial governor's budget in the mid first century B.C.; Lex Col.Gen. ch.62 stipulated in minute detail the procedure for the hire and payment of attendants to local magistrates - *duoviri & aediles*; Zon. 8.6 275 B.C. for C. Fabricius' supervision of the payment of expenses to officials.
- 125 Livy 42.1.8-9.
- 126 Hor. *Sat.* 1.5.45; C. Iulius Caesar's law *de legationibus liberis* Rotondi (1912), 419-20.
- 127 Cic. *Verr.* II. 4.5.9.
- 128 The story which was recorded by Polybius (Athen. *Deipn.* 273) probably emanated from Panaetius or Poseidonius; cf. Plut. *Mor.* 201; Val. Max. 4.3.13 praises Scipio for taking only 7 slaves on his embassy.
- 129 *Verr.* II.4.5.9.
- 130 *Verr.* II. 3.81.188; 3.84.195 for Verres' commutation of the farmer's' contribution of corn into money.
- 131 *Pro Rabirio Post.* 8; 10; *Fam.* 8.8.3. On the *lex Iulia de pecuniis repetundis* see Rotondi (1912), 389-91.
- 132 Cic. *Att.* 5.10. Summer 51 B.C.; 5.14. Cicero's annual budget for Cilicia amounted to 1 million H.S. *Att.*

- 7.1.
- 133 Att. 5.16; 6.2.
- 134 Acknowledged by Cicero in *Verr.* II.4.5.10.
- 135 See P.A. Brunt 'Charges of Provincial Maladministration under the Early Principate' *Historia* 10 1961, 189-223.
- 136 Plut. *Pyrr.* 18.3; 20 for C. Fabricius' rejection of the offer of gold & 21 likewise of the offer to assassinate Pyrrhus; Livy 34.4.6; Appian *Samn.* 11.1; Diod. Sic. 22.6.3; Zon. 8.4.
- 137 Cic. *Mur.* 67 for other illicit favours, e.g., indiscriminate giving of *prandia* and reserved seating at gladiatorial shows; 70-1.
- 138 Macrob. *Sat.* 1.7.33; but cf. Diod. Sic. 40.5.1 referring to the *Saturnalia* of 63 B.C. suggests that it was a common practice for clients of well-known personages to send gifts. For the social pressures on these occasions see Martial 5.84.7; 14.1.3. Notice, too, Tiberius' prohibition on the exchange of New Year's presents beyond the kalends of January; Suet. *Tib.* 34.2.
- 139 Cp. the Ygr. Pliny *Ep.* 4.9.
In the Treaty of alliance with Asypalaea (105 B.C.) the quaestor was ordered by the cos. P. Rutilius to give gifts according to the formula; cp. the s.c. *de Narthacio et Melitaea* c. mid second century B.C. for a similar specification with regard to gifts. Notice C. Gracchus' boast that he did not receive the tiniest gift while in his province; Gell. *N.A.* 15.12.3.
- 140 For the considerable literature on the subject see Rotondi (1912), 261-3 and F. Casavola '*Lex Cincia: contributo alla storia delle origini della donazione Romana*' (Naples, 1960). Notice the persuasive witticism of M. Cincius during the debate on his bill; Cic. *De Orat.* 2.286.141. On its enforcement and circumvention see ch.5. Cp. the Lex Col. Gen. ch. 93; Cic. *Verr.* II.4.16.35 for the practice of undervaluing gifts to actors.
- 142 Tac. *Ann.* 11.6 Silius, cos. designate, pronounced that:
ne fidem quidem integram manere, ubi magnitudo quaestuum spectetur.
- 143 An argument in favour of the enforcement of the law at a later date suggested that it would lead to a decrease in

litigation. For examples of collusion amongst advocates see the Ygr. Pliny *Ep.* 4.9; 5.4; 5.9.

In the early Empire both Claudius and Nero bowed to social realities and allowed advocates to charge reasonable fees; Tac. *Ann.* 11.5; Suet. *Nero* 17.

- 144 For the celebration of the *toga virilis* see Ygr. Pliny *Ep.* 1.9; 10.116.
- 145 M. Mauss *The Gift: forms and functions of exchange in archaic societies* trans. I. Cunnison (London, 1970).
- 146 For a succinct overview of this subject see the article 'reciprocity' in MSES which draws attention to anthropological studies that have shown how outright antagonisms between neighbouring tribes have been moderated by the rivalries engendered in potlatch activity.
- 147 P. Veyne *Le pain et le cirque. sociologie historique d'un pluralisme politique* (Paris, 1976). For the range of possible motives behind this activity see pp. 15-6; ch.3 for L'oligarchie républicaine à Rome; ch.4 for L'empereur et sa capitale.
- 148 See the recent article by P. Stein '*Lex Cincia*' in *Ath* 63 1985, 145-53. The *lex Furia*, however, specifies the sixth degree of affinity. Special arrangements were made for certain categories of people *in potestate* and those affected by dotal, marital or tutelage relationships. On *exceptae personae* see A.F. Wallace-Hadrill in (1981), 73-6.
- 149 For a clear discussion of the distinct conceptions of *cognatio civilis* and *cognatio naturalis* in Roman law and a useful stemma of complex family relationships see Smith *Dictionary of Greek and Roman Antiquity* s.v. *cognati*.
- 150 Twelve Tables 5.4; 5.5; the *heres* was a person in the *potestas* or *manus* of the deceased. The major difference with later statutes was the specification of *adgnati* (people who are related through the male line only) as opposed to *cognati* (people related on both the maternal and paternal sides of the family).

The observation of Catullus (68.119-23) demonstrates that inheritance by a *gentilis* was a reality in the late

- Republic. Notice the social obligations of kinship upheld by Turia in the *Laudatio Turiae* I.44. The opportunism of those who were contesting Turia's right to inherit was based on (false) claims to be *gentiles*; id. 21 & E. Wistrand (1976), comm. 1.13-26.
- 151 A. Watson in *The Law of Succession in the Later Roman Republic* (Oxford, 1971), p.4 and p.5 for references to Plautus and Festus on the blessings of *sine sacris hereditas*. As he notes on p. 180 the *ius gentilicum* existed in the first century B.C. cp. Cic. *De Orat.* 1.176.
- 152 See A.F. Wallace-Hadrill (1981), 58-80.
- 153 Pliny *N.H.* 35.6-7.
- 154 Fr. 9 Malc.I. p.241.
- 155 C. Gracchus frs. 26-7 Malc.
- 156 Q. Caecilius Metellus Macedonicus frs. 8 & 9 Malc.
- 157 Compare the sentiment expressed in 36.17.4 with Metellus' speech. As H. Last pointed out in his 'Letter to N.H. Baynes' *JRS* 37 (1947), p.152f those families with fewer children held a distinct social advantage over families of more prolific stock because their wealth was more highly concentrated. Recently, K. Hopkins (1983), ch. 2 has examined the problems faced by aristocratic families in ensuring the right number of surviving offspring.
- 158 In a discussion of this passage F.W. Walbank in *Historical Commentary on Polybius* 3.678 suggests other likely causes, eg., poor soil, deprivation through war and piracy, limited opportunities for large-scale emigration.
- 159 See Suet. *Tib.* 47; *Nero* 10; *Vesp.* 17; Tac. *Ann.* 1.75; 2.37; 2.48; 13.34; Cass. Dio 53.2.3; 54.17.3; for incentives to Vestal Virgins, Tac. *Ann.* 2.86; 4.16.

THE MECHANISMS OF ENFORCEMENT

The Roman sumptuary lawgiver was faced with a series of problems common to all social legislators - namely, the detection of infractions to his code and the need to provide effective retributive measures. If the disapprobation of fellow citizens, upon which Zaleucus of Locri relied,¹ could have proved sufficiently dissuasive, the Roman authorities would have been spared enormous pains. As it was, laws, on which the formidably difficult task of altering established social practices was placed, required complex provisions for their enforcement. Indeed the difficulty of ensuring observance is epitomised by the imposition of the *poena quadrupli* for the violation of certain categories of social regulation.²

The scarcity of evidence for the implementation of *leges sumptuariae, aleariae, funerariae* etc has led to several unwarranted assumptions: that these laws simply offered rough guidelines to members of the privileged orders and were never meant to be formally upheld, i.e., they were *leges imperfectae* or that the Roman authorities despaired of ensuring maximum compliance with these injunctions and simply turned a blind eye to all but the most nefarious of practices.

Before a detailed discussion of punitive measures is attempted, two points need to be made: firstly, the considerable deterrent value of a single, exemplary punishment which may easily have dropped out of the historical record, could have affected the conduct of a whole generation of citizens - the operation of law being effective as much by threat as by continuous application; secondly, the very process of legal articulation, i.e., the

exact specification of a form of social or moral conduct that constituted a crime opened up possibilities for evasion. It was simply too easy for determined miscreants to find loopholes whereby they might exhibit obedience to the letter of the law and so openly and legitimately pursue courses of action against which obloquy alone might have proved more effective. The danger of widespread circumvention, which might have grave consequences for the general repute of law and authority, was recognised by perceptive politicians and commentators. Dejected at the inefficacy of legal imposition to forestall the inrush of luxury and the defeats repeatedly inflicted on *mores*, the Elder Pliny asseverated: '...when it was seen that there was no effective way of banning what had been expressly forbidden, it seemed preferable to have no laws at all rather than laws that were of no avail.'

Of course it is indisputable that those statutes, which were unrealistically drawn up or rendered obsolete by material and commercial prosperity, became dead-letter laws. But many would have taken care to pay lip-service to the requirements of the law since, during the late Republic and early Empire, minor technical infractions might be seized upon by political adversaries concerned to frustrate their opponent's, and advance their own, career.

So the crux lay as much in the framing of the law as in the capacity to ensure compliance. Indeed it is a firm contention of this chapter that neither the senatorial nor the imperial administration left as vague and undefined the procedure or the sanctions for punishing neglect of these regulations, even during an early period of Roman history.

Excessive attention to legislative detail can obscure the operation of powerful extra-legal constraints. In fact a high degree of conformity to established norms can often best be secured or reinforced through the pervasive social agencies of shame and opprobrium. Fear of disgrace is a particularly telling sanction amongst relatively closely-knit communities such as the highly privileged senatorial and equestrian orders of Ancient Rome where contact was 'primary and frequent.'⁴ Shared participation in politics

and in a range of cultural activities entailed intimate acquaintance with personal and family details.⁵ Flagrant disregard for rules or conventions was highly visible. Little of importance would have escaped the notice of the observant - a politician like the Elder Cato, a poet such as Naevius.

Accordingly, those who overstepped the mark incurred the reproach of their peers or, in extreme cases, were socially outcast. Preservation of one's esteem and 'good name' (*existimatio* or *fama*) was a preoccupation of Roman aristocrats. Criticism might take the form of invective or ridicule. Satirists - Lucilius, Varro, Horace, Juvenal - formed a lively part of Roman social life, mercilessly exposing the foibles of generations of tearaways and voluptuaries. The pretensions of an upstart - Granius with his lavish banquets, the absurd ostentation of Crispinus - or the disturbing profligacy of a Crassus or an Apicius were equally deserving of derision.

The Emperor Tiberius, aware of the dismal record of past sumptuary checks and acutely conscious of the potential odium that heavy-handed imperial interference might incur, promoted the benefits of private over public correction of morals in his refusal to entertain senatorial calls for severe punitive measures on lewd-living: 'For at the moment, he observed, it was possible that some people would moderate their conduct out of shame in an attempt to escape attention, but once the law was overpowered by human nature no one would hold it in esteem.'

A striking feature of Roman legal practice was the formal application of a mark of shame on those guilty of serious moral misdemeanour. This evidences not only the importance attached to personal *dignitas* (standing) in Roman social life but also the increasing propensity of the state authorities to bring under their control important forms of social expression. Thus the censorial *notatio* was at hand to affix the official brand of disgrace (*ignominia*) on delinquents.⁶ Even more telling was the application of the term *infamia* or the designation *infames*, *infamosi*, to chastise those convicted of criminal and specified civil

charges.' It might entail both a serious loss of civic rights and impair significantly one's capacity in private law. In legal texts the concept was closely linked to those engaged in what were held to be unworthy occupations; auctioneers, beadles, panderers or actors.¹³

To a certain extent this institutionalisation of moral sanctions reflects the authorities' inability to gain widespread acceptance for their legally imposed behavioural codes. The discretionary power of citizens' disapproval could no longer be relied upon to be sufficiently effective.

Aspects of the development of Roman criminal law

Roman law during the Republican period is not easily susceptible to neat classification into public or private, criminal or civil categories. Modern emphases on either accusatorial differences between 'crimes' punishable directly by officers of the state and 'torts' actionable by the injured party, or between offences committed against the public as opposed to individual interests are unhelpful in a Roman context.¹⁴ As early as the mid fifth century B.C., when the authorities drew up formally prescribed guidelines to regulate private vengeance and to outlaw serious misdemeanours, several types of act which, according to modern legal canons, transgressed private rights, e.g., slander, arson, theft, were undifferentiated from those subjected to public adjudication.¹⁵

Such differences that did emerge were fundamentally procedural, that is, they rested upon the type of action instituted against the offender and the constitution of the judicial body before which the case was heard.¹⁶ On the whole, the civil trial became distinguishable by its two clearly defined stages, of which the first, termed *in iure*, took place before a magistrate, often the praetor, who decided whether to grant an action and defined the nature of the issue, while the second, *apud iudicem*, took place before a private person empowered by the magistrate to arbitrate.¹⁷

Unfortunately, the highly fragmentary and sometimes contradictory nature of the evidence for many Republican indictments has left many of the salient features of Roman judicial procedures obscure.¹⁵ However, what is significant for this thesis is that these perplexities are not of a substantive nature, that is, the act of state intervention to define and to curb certain modes of behaviour as inimical to the public good is not in question.¹⁶

The origin and development of Roman criminal law.

Mommsen's *Strafrecht* published in 1899 embodied many of this scholar's brilliant ideas on Roman constitutional and legal questions and has exercised a dominant influence over Roman legal science to the present day. His basic premise held that the germ of Roman criminal law was to be found in the *coercitio* of the higher magistrates¹⁷ which enabled them to compel unquestioning obedience to their commands and, consequently, to enforce law and order not only outside Rome, in the fashion of the consular *imperium militiae*, but within the city too.¹⁸ Since the magistrate's *imperium* was originally unlimited, Roman criminal law was created and elaborated by the successive restraints placed on this arbitrary power. In short, the *leges provocationis*,¹⁹ e.g., the *lex Valeria* of 509 B.C., the *lex Aternia-Tarpeia* of 454 B.C., the important clause in the Twelve Tables 9.2 ...*de capite civis nisi per maximum comitatum ...ne ferunt*, the *lex Valeria* of 300 B.C.,²⁰ effected the transition from *coercitio* to *iudicatio*.²¹ Accordingly, the received conception of criminal law in this early period was that of a magistrate exercising almost regal powers, acting as prosecutor, investigator and judge, limited simply by the principles of collegiality and annuality and by appellatory safeguards which might be invoked only in exceptional cases. A second stage of development was marked by the appearance of the magisterial-comitial process, the *iudicia populi*. This procedure involved a magisterial investigation (*anquisitio*) held before a *contio* on a specified day (*diei dictio*), which had to be adjourned at least twice. After

this, according to the traditional interpretation,³ the magistrate pronounced his sentence - an acquittal terminated the matter while on condemnation of death (*iudicium*) or heavy fine (*multae irrogatio*), an appeal could be invoked to the *comitia centuriata* (for capital cases) or to one of the tribal assemblies. If an appeal was made, there followed a *trinundinum* and a *contio* where the accusation was levelled for a fourth time after which a vote was taken merely on the correctness of the magistrate's decision. In this second trial the magisterial role was that of a prosecutor.⁴

But major difficulties arise from this interpretation, not least in accounting for the development of criminal jurisdiction from the magisterial-comitial process to the creation of the *quaestiones perpetuae* (also referred to as the *iudicia publica*) during the second century B.C., where the position of the magistrate as president of the court was still influential, but the task of prosecution was entrusted to a private person, sometimes after a *divinatio*, and the verdict devolved on jurors, selected from an *album*.⁴ A radical change has to be postulated.

In my view, Roman law exhibited a greater degree of sophistication than has generally been assumed even from the expulsion of the Kings.⁵ At this period, many of the neighbouring Etruscan cities and the Greek settlements of Magna Graecia had well developed forms of political and legal machinery. Indeed the codification of the Twelve Tables evidences a relatively advanced legal corpus, covering a range of family, social and economic matters of some complexity although certain primitive forms of self-help (*talis*) are still present. It is highly likely that when the alliance of powerful aristocratic families succeeded in overthrowing the monarchical government at Rome, it would have taken great pains to ensure collective control of the judicial and legislative processes in the city. Therefore, it seems to me improbable that there existed such supremely dominant officials, whose king-like powers to pass judgement and to condemn other citizens were constrained merely by the principles of collegiality and annuality of office tenure. The risk of a prominent individual outmanoeuvring his rivals and seizing power for

himself and his *gens* would be too great. In short, if Mommsen's belief that all early Roman criminal jurisdiction stemmed from the unlimited *imperium* of the higher magistrates is unfounded, then a more complicated but plausible picture emerges.²⁶

Two technical objections arise with regard to Mommsen's views on the efficacy of the magistrate's *imperium*; firstly, the significant judicial role of the tribunes in many early and mid Republican comitial trials, and secondly, the fact that a great majority of public prosecutions of offenders which led to a comitial trial, was undertaken not by the consuls as one might expect, but by officials like the aediles, quaestors and *duumviri*, who did not possess *imperium*.²⁷

It is my belief that senatorial participation formed an integral part of the judicial process from the inception of the Republic. Tradition asserts that Romulus bestowed upon the senators the right to judge crimes of lesser gravity²⁸ while by 496 B.C. the senate was recorded as ordering the resumption of judicial activity after the cessation of foreign wars.²⁹ Variant accounts of the condemnation of both Spurius Cassius in 486 B.C.³⁰ and Spurius Maelius in 439 B.C.³¹ suggest that they were put to death after prior declarations of their guilt by the senate. Dionysius of Halicarnassus explicitly states that the right to hear capital cases was transferred from the patricians to the assembly.³² Accounts of three major trials during the mid-Republic indicate extensive collaboration of the magistrate with the senate. In 331 B.C., when an outbreak of poisoning caused consternation in the city, an informant approached the curule aedile Q. Fabius Maximus who alerted the consuls and they, in turn, referred the matter to the senate. One hundred and seventy matrons were condemned although the exact details of their trial are unknown.³³ Plutarch relates that in 226 B.C. Marcellus, as aedile, was forced to impeach C. Scantinius Capitolinus before the senate for committing *stuprum* with his (Marcellus') son Marcus.³⁴ Witnesses were summoned to give evidence before the senators. The fine exacted on Capitolinus was spent by Marcellus on silver libation bowls. Conflicting details are

recorded about the arraignment and death of Q. Pleminius, legate of the Elder Scipio in 204 B.C. on a charge of gross misconduct in South Italy. The question was extensively discussed in the senate who advised the consuls to choose ten *legati* to act as a *consilium* to the praetor in order to investigate the matter on the spot.¹⁴⁴ At a preliminary hearing, Pleminius and thirty-two others were condemned and sent to Rome in chains where they were impeached before the populace by the tribunes.¹⁴⁵ In his postscript to this incident, Livy refers, on the authority of Clodius Licinus, to a senatorial decree ordering Pleminius' execution after a failed arson and escape attempt in 194 B.C.¹⁴⁶ There is evidence for other types of criminal cases being brought to the attention of the senate who deliberated on the matter with the higher magistrates or else appointed special commissions.¹⁴⁷

Thus, the sources for early criminal law present a major problem of interpretation. For many trials there are completely conflicting accounts (e.g., on Spurius Cassius and Spurius Maelius) which may stem from the differing ideological bias of the early first century annalists. For example, Valerius Antias might be responsible for the improbable attribution of a *lex provocationis* to the consul of 509 B.C., so injecting a popular element into Roman politics from the beginning of the Republic.¹⁴⁸ Conversely, other historians displayed a pro-Sullan, senatorial bias. It is highly problematic to reconcile the traditionally accepted procedure of the *iudicia populi* with the fairly extensive knowledge of senatorial involvement in criminal law. If the magistrate proceeded automatically to the *anquisitio* as has generally been assumed, then the senate could have played no role as a body in the trial. However, it is possible that the *anquisitio* procedure took place only after an initial *quaestio* by a magistrate, against whose decision the defendant had appealed. If the former interpretation is preferred, the arbitrary power of the magistrate to investigate, prosecute and sentence Roman citizens in the first instance is evidenced. If the latter, an alternative to such widespread powers could be provided by the availability of the senate, acting in the capacity of a

consilium to the magistrate. The presence of a *consilium* was a perennial feature of many spheres of Roman public and private⁴⁰ life since the Romans placed a moral obligation on those in a position to make important decisions to seek out, and to show deference to, the advice of senior, experienced persons. One of the tyrannical characteristics attributed to Tarquinius Superbus was his habit of judging capital cases ...*sine consiliis per se solus...*⁴¹ In 138 B.C. the consuls ordered an adjournment twice during the investigation of the murder of important people in the Sila forest ...*de consilii sententia*,⁴² a phrase which recurs in Festus s.v. *parum*: '*parum cavisse videri*' *pronuntiat magistratus, cum de consiliis] sententia capitis quem condempnaturus est.*⁴³ Cicero refers to the *iudicium senatus* as though it were an old-established alternative to the *iudicium populi* and *quaestiones*.⁴⁴ The same author makes a definite reference to the senatorial *consilia* when he threatened publicly to prosecute Verres when he (Cicero) became aedile, if Verres escaped prosecution *de repetundis* by bribery.⁴⁵ Senatorial opinion was also sought during the *anquisitio* as an old *commentarium anquisitionis* on the indictment of Trogus on a capital charge by the quaestor M' Sergius evinces.⁴⁶ By the second century B.C. Polybius attests to extensive senatorial jurisdiction both in civil disputes and in cases involving treason, conspiracy, poisoning and assassination in Italy,⁴⁷ while the appointment of several *quaestiones extraordinariae* represented a significant growth in the judicial role. In theory, as Polybius relates, the senate was empowered to investigate serious crimes against the state only when their *s.c.* was confirmed by the people,⁴⁸ but in practice the senate arrogated to itself, on occasions, tremendous judicial preogatives. The *quaestiones* of 186 and 132 B.C. from whose decision there was no appeal sanctioned the execution of many hundreds of Roman citizens and members of allied communities and, moreover, were set up *ex senatus consulto* without popular approval.⁴⁹ These ad hoc courts probably provided the model for the permanent or standing courts (*quaestiones perpetuae*) of the late Republic whose composition was, at first, exclusively senatorial and which gradually superseded the *iudicia populi*. The break between

the two systems does not appear so absolute if one assumes the continuity of the participation of the senate, in an albeit consultative role, throughout the history of Republican criminal law.⁵³ This would help explain both the lack of comment about the change in the sources and the intense senatorial anger provoked by the judiciary law of C. Gracchus.

'This last law most of all curtailed the power of the senators; for they alone could serve as judges in criminal cases, and this privilege made them formidable both to the common people and to the equestrian order.'⁵⁴

Finally, another piece of evidence casts doubt on the reality of arbitrary magisterial authority. When Scipio Aemilianus as censor in 142 B.C. summoned C. Licinius Sacerdos to appear before him, he refused to condemn Licinius despite personal knowledge of his perjury because no one else was prepared to testify to the miscreant's guilt, declaring 'I myself cannot be both prosecutor and judge.'⁵⁵ This separation of function between judge and accuser, which was, I believe, an important principle of Roman jurisdiction, was clear in civil law where the praetor supervised the conduct of the case yet delegated the power of decision to an *iudex*. Further, the task of informing against, and impeaching, violators of a series of social regulations before the aediles or minor magistrates was entrusted to private prosecutors - *quadruplicatores* - who initiated *actiones populares*.⁵⁶ Indeed, a common form of civil action, the *actio sacramenti*, was frequently employed in the enforcement of social laws too, e.g., libel, fraud, *lex Plaetoria*.⁵⁷ The *lex Calpurnia* of 149 B.C. which instituted the first *quaestio perpetua* employed this same civil procedure.

Considerable changes occurred in the operation of Roman public law during the early Principate. Although the standing courts, the *quaestiones perpetuae* or *iudicia publica*, continued to perform important service at first - indeed Augustus made a notable addition with his *lex Iulia de adulteriis coercendis* - they were gradually replaced by novel forms of judicial procedure. Weighty judicial powers

were invested in the senate over whom the consul presided. Ominously, new rights of criminal jurisdiction were arrogated by the emperor himself, in council.⁴⁴ In these courts, important political trials were heard involving senators or other highly privileged citizens on charges such as *maiestas*. It is difficult both to date these changes and to establish the precise procedure that was employed in the court of the emperor. In the senate, following a preliminary *postulatio* the accuser (*delator*), supported by *subscriptores*, made a *nominis delatio* to the consuls who convened the senate to try the case.⁴⁵ Furthermore, the ancient right of *provocatio ad populum* was supplanted by *appellatio ad Caesarem*. These judicial developments, in tandem with the novel legislative powers assumed by the emperor, are indicative of the autocratic tendencies of the period. From Augustus onwards, the law courts were regularly employed as an instrument to intimidate political opponents of the imperial house.

To sum up, magistrates at Rome did not exercise general police or 'law and order' powers, stemming from an originally unlimited *imperium-coercitio*. Even in the case of non-citizens, summary punishment was frowned upon. On the contrary, their powers were carefully circumscribed and every malefactor was tried under a definite statute,⁴⁶ which had been passed by the *comitia* and which specified in detail both the procedure and the type of penalty. The painstaking precision of the *lex Acilia* bears witness to the degree of sophistication which Roman law had attained by the mid second century B.C. Since neither 'ordinary' nor 'political' crimes were subject to the arbitrary whim of the magistrate, the natural body for such officials to turn to for advice in matters of jurisdiction was the senate.

As the task of compelling obedience to various kinds of laws would be entrusted to the competency of specific magistrates, it will be worthwhile to investigate in detail the particular *curae* of Roman officials in order to suggest as accurately as possible how the complex body of social legislation in Rome was meant to be enforced.

Censores

The prerogative claimed by ancient state authorities to encroach upon the private life of its citizens found its most powerful expression in the regular and comprehensive scrutiny of the Roman censors. From its inception, traditionally dated to 433 B.C., the censorship was to develop into an office of the highest dignity, indeed the summit of the *cursus honorum*.¹¹ Although its original functions centred upon the vital task of citizen registration (*census*), significant for its assessment both of taxable wealth and of the availability of manpower and which, if performed successfully, was confirmed by a religiously symbolic purification (*lustrum*), this magistracy experienced a remarkable accretion in its authority. The *lectio senatus*, *recognitio equitum* and the superintendance of large state contracts testify to the diversity of its roles. Its extensive powers to determine the position within the citizen body both of individuals and groups conferred upon this office a sustained, formal control of social mobility and of the distribution of political power which can have few parallels in Western constitutional history.¹²

Furthermore, such censorial regulation, designed to uphold the strongly timocratic character of Roman society, found explicit sanction for its actions in its guardianship of morality - in particular the preservation of the *mores maiorum*. This duty was made explicit in one of the few texts of a censorial edict that has survived:

We have been informed that certain people have founded a novel type of schooling and that our youth assemble in their institutions: that these people term themselves 'Latin rhetors': that there our youth idle away their time. Our ancestors laid down what they wanted their children to learn and to what schools they should go. These novelties which are at variance with the usage and custom of our forefathers do not please us nor seem correct.¹³

Departure from accepted norms led to visible public degradation; expulsion from the senate, withdrawal of one's public horse, and the *ignominia* consequent upon the affixation of a *nota* beside one's name in the census list.

Outstanding moral virtue might be rewarded by decoration with crowns and chaplets, with promotion into the senate or the supreme honorific title *princeps senatus*.

The two magistrates were required to be elected on the same day in the *comitia centuriata* under the supervision of a consul soon after the latter had entered upon his office.⁶³ Both censors swore on oath to obey the laws, pledging themselves to be swayed neither by friendship nor enmity in the exercise of their judgement.⁶⁴ After 393 B.C. a censor was compelled to resign if his colleague died in office.⁶⁵ Iteration of office was forbidden shortly after 265 B.C. at the instigation of C. Marcius Rutilius who was the only censor to be elected twice.⁶⁶ Originally, no specific time-limit was set for the completion of their duties although at first a four year period was customary but a *lex Aemilia* of 434 B.C. reduced the length of office to 18 months.⁶⁷ Qualifications for office varied. Initially it was restricted to patricians, who took over what was originally a consular function. The first plebeian censor is recorded for 351 B.C. - his election perhaps facilitated by the *lex Licinia* of 367 B.C. - while plebeian participation in the censorship was explicitly enjoined by the *lex Publilia* of 339 B.C.⁶⁸ The office functioned for over 400 years but its history was sadly chequered in the first century B.C. as prominent figures, Sulla, Iulius Caesar and Augustus either tampered with the exercise of its functions or arrogated to themselves its most important roles. The last regularly held censorship was that of L. Munatius Plancus and Paullus Aemilius Lepidus in 22 B.C. and thereafter its duties were gradually subsumed under the all-embrasive powers of the emperors.

The primary function of the censors was the completion of the *census* - a thorough-going registration of the citizens and their property which was conducted in the Campus Martius, where the censors had their *villa publica*. An extract from the *ensoriae tabulae* indicated its original military significance: *omnes Quirites pedites armatos, privatosque, curatores omnium tribuum, si quis pro se sive pro altero rationem dari volet, voca inlicium huc ad me.*⁶⁹

Probably using the previous census as a basis, the censors summoned each *paterfamilias* to appear before them according to his tribe. The *paterfamilias* was required to give his name and that of his father, his *origo*, his age, his wife's name and the names and ages of his children and dependants. Freedmen stated the name of their patron while *tutores* represented single women who were *sui iuris* and *orbi orbaeque*.¹⁰⁰

In accordance with rules stipulated in advance by the censors (*leges censui censendo*)¹⁰¹ the citizens furnished returns (*rationes*) of their property - firstly its size and secondly its value - which was held *ex iure Quiritium*. Landed property, its use and situation, was of primary interest but all movable property including slaves, cattle and tools were included. Specific details of valuable objects as well as an overall estimate of one's wealth was required in order to fix the rating of the *tributum*, normally levied at 1 per 1000, until its abolition in 167 B.C. Moreover the censors might pose specific questions to citizens who had to answer after their best knowledge (*ex animi tui sententia*). The magistrates were aided in their task by special officers such as *praecones*, who summoned the citizens, *iuratores*, who helped to administer the oath, *scribae*, *viatores* and *nomenclatores*.¹⁰² Lists of citizens were drawn up indicating their position in the *tribus*, where the assignment of landed-proprietors in the country tribes conferred greater voting power and prestige relative to those registered in the four *tribus urbanae*; and in the centuries, where distribution varied according to property and age, so supplying vital information on those eligible to serve in the army.

The *recognitio* or *recensio equitum*, which was either instituted or reorganised by the censor of 304 B.C. Q. Fabius Maximus Rullianus, was conducted in the forum.¹⁰³ Each member of the *equites equo publico*, 1800 of whom originally formed the core of the state cavalry, serving on horses furnished and maintained at public expense, was individually inspected by the censors as he led his horse past by the bridle (*transvectio equitum*).¹⁰⁴ If the knight had fulfilled

his term of service (normally 10 years) he was entitled to an honorable discharge, with praise and rewards. If found guilty of misconduct, an additional period of tenure was imposed at his personal expense during periods when the state needed his services.⁷ However, at a later date, ignominious discharge might result, with the application of a *nota* and even demotion to the *aerarii*.

The *lectio senatus* was an additional task entrusted to this magistracy, conferred perhaps by the *lex Ovinia* although this may have simply formalised a duty already undertaken by the censors:

'praeteriti senatores' quondam in opprobrio non erant, quod, ut reges sibi legebant, sublegebantque, quos in consilio publico haberent, ita post exactos eos consules quoque et tribuni militum consulari potestate coniunctissimos sibi quosque patriciorum, et deinde plebeiorum legebant; donec Ovinia tribunicia intervenit, qua sanctum est, ut censores ex omni ordine optimum quemque curiatim in senatum (vel curiati in senatu) legerent. quo factum est, ut qui praeteriti essent et loco moti, haberentur ignominiosi. Festus p.290 L.

This plebiscite is generally dated to the late fourth century B.C. since in 311 B.C. the consuls ignored the *lectio* of the previous censors who were alleged to have drawn up the list *ad gratiam ac libidinem*.⁸ The inference to be drawn from the Festus passage is that prior to the *lex Ovinia* the kings and later the consuls merely drew up a list of their friends to act as a senate. The ability to choose whomsoever they wished as senators would of course have conferred enormous authority on the supreme officers of the state. I believe it is more likely that, prior to the *lex Ovinia*, the consuls were in some way responsible for the adlection of new members to the senate although there was an obligation in practice to select ex-curule magistrates in the first instance.⁹ The phrase *ex omni ordine optimum quemque* suggests precedence for those of prominent social and moral standing.¹⁰ In undertaking the duty of reviewing the senatorial roll the censors would eject those who were unworthy by the affixation of a *nota* together with an explanation (*subscriptio censoria*) beside their name which was omitted

from a public *recitatio*.'' The most revered member of this order received the highest titular appellation, *princeps senatus*.''

Fourthly, the censors undertook important duties in financial administration in conjunction with senatorial advice. They contracted out, at Rome, to the highest bidder a wide range of public leases (*locationes* or *venditiones*), in particular the collection of public *vectigalia* from such sources as *ager publicus*,'' *portoria*, mines, saltworks, forests and fisheries.'''

On completion of the census, lots were drawn to determine which of the censors should perform the *lustrum*.'' A sacrifice (*lustratio*) took place in the presence of the army in the Campus Martius at which an ox, sheep and pig were offered to the gods and *vota* were made.'''

The exact nature of censorial jurisdiction raises highly problematic questions. Although the censor possessed neither *imperium* (and so had no lictors) nor the right to name a colleague by co-option or to preside over the election of his successors, nor the *ius rogandi*, he did hold the *maxima auspicia*, and the *potestas* conferred upon him by the *lex centuriata* entailed a quasi-judicial authority which could not be obstructed by a tribune'' but was, of course, subject to the veto of his colleague.'''

However, many scholars have attributed to this office, especially in connection with the *cura morum*, an almost unlimited discretionary power.''' Such undefined and arbitrary power would be, in my opinion, foreign to Roman legal and constitutional practice whereby domestic magisterial competency was most carefully circumscribed.'''

Since the censors could not create substantive law, they were not empowered to innovate in the sphere of social or sumptuary legislation despite the impression given in certain sources. It is true that several censorial edicts have been preserved on subjects which cannot be traced to a specific statute, namely; (1), 189 B.C. edict prohibiting the sale of *unguenta exotica*,'' (2), 115 B.C. edict banning *ars ludicra* from the city,'' (3), the well-known edict of 92 B.C. concerning the Latin rhetors,'' (4), the maximum price on Greek and Aminnium wine set by the edict of 89 B.C.''' But

since our knowledge of Roman law is so fragmentary it is surely unsafe to attribute too much importance to these examples. Rather than creating new law, it is preferable to assume that they were implementing or adapting existing legislation. The edict of 92 B.C. was just one in a long list of sanctions against foreign or foreign-inspired philosophers and rhetoricians, e.g., a s.c. of 161 B.C. instructed the praetor to overlook the expulsion of such people.¹⁴ Several passages in the Elder Pliny amply testify to the legal basis and traditional nature of the censorial edict, especially in connection with the enforcement of sumptuary law. The much deplored practice of fattening hens was forbidden in the old *interdicta*, particularly by the *lex Fannia* of 161 B.C.,¹⁵ a provision which was subsequently renewed (*translatum*) throughout later sumptuary restriction. During his censorship in 184 B.C. the Elder Cato inveighed against the serving of wild boar meat (*aprunum callum*) while Pliny, in his digression on the culinary artistry of M. Apicius, noted that the innumerable delicacies obtainable from sows had provoked *censoriarum legum paginae*.¹⁶ Another passage refers to the *censoriae leges* governing dormice (*glires*) and other items too insignificant to detail. Once again the existence of a definite statute on the subject is attested.¹⁷ Moreover although the censors of 220 B.C. C. Flaminius and L. Aemilius were active in promoting a measure to curtail the fullers, it was left to a plebeian tribune Metilius to move the bill before the people.¹⁸ I suggest censors might incorporate into their edict the text of sumptuary laws which had been regularly passed through the *comitia*. The censors' task then was fundamentally interpretative. On entry into office, each pair of censors would specify the measures they intended to take to check luxury in this edict. In the Republican period no clear evidence for the trial of a person who infringed a *lex sumptuaria* exists but it may well be that the censors might employ disregard for these measures as a ground for expulsion from the senate. In the early Empire, however, there is good evidence for the implementation of these measures.¹⁹

It was in connection with their *cura morum* that the censors' ability to enforce social legislation was most clearly evidenced. For the purposes of the census, the citizen was required to furnish intimate details of his family and property on oath while judicial proceedings might be instituted against those who distorted or suppressed relevant information. It is likely that the *ensoriae tabulae* were divided into a plurality of categories. The Elder Cato delivered censorial speeches *de vestitu et vehiculis* and *de signis et tabulis*.¹⁹³ Caelius, referring to the over-zealous activities of the censor of 50 B.C. Appius Claudius, queried: *scis Appium censorem hic ostenta facere? de signis et tabulis, de agri modo, de aere alieno acerrime agere?*¹⁹⁴ The censors Gellius and Lentulus specified as reasons for expelling Antonius from the senate: *...quod socios diripuerit, quod iudicium recusavit, quod propter aeris alieni magnitudinem praedia mancipavit bonaque sua in potestate non habeat.*¹⁹⁵ Accordingly, a whole range of improper or immoderate consumption habits might be formally penalised by these officials, so mirroring one of the most serious accusations levelled by Roman politicians or moralists - dissipation of one's *res familiaris*.¹⁹⁶ Censorial disapproval was made plain against those who indulged in luxurious living, e.g., the possession of too much silver plate,¹⁹⁷ the payment of excessively high rent¹⁹⁸ or for the possession of a villa inappropriately large for the size of the farm.¹⁹⁹ Sexual depravity, adultery, *stuprum*, effeminacy etc was severely criticised. In addition, the censors could make public pronouncements on pressing topics, e.g., Q. Caecilius Metellus Macedonicus' oration *de ducendis uxoribus*.²⁰⁰

The forms of punishment at the censors' disposal were various. They might be content with a simple rebuke. Before 167 B.C. a serious financial penalty might be incurred by imposing a high rate of taxation. The Elder Cato levied exceptional taxes on specific items of luxury.²⁰¹ More commonly, a *nota censoria* was affixed beside the miscreant's name in the census lists followed, in some cases, by demotion from the tribe (*tribu movere*) to the *aerarii* (*aerarios referre*). The *nota* (sometimes referred to as an

animadversio) entailed a powerful social stigma, indeed *ignominia*.¹¹³

In private life, the grounds for incurring a *nota* were numerous: (1), the misuse of *patria potestas*, either for showing indulgence or severity, e.g., cruelty to slaves or improper conduct towards his children or wife; (2), defrauding a client; (3), theft; (4), attempted suicide; (5), false witness; (6), groundless divorce; (7), celibacy, which was discouraged by an additional tax on bachelors;¹¹⁴ (8), neglect of the religious duties of the *gens*; (9), performing in a disreputable occupation;¹¹⁵ (10), bad husbandry or neglect of agricultural duties.¹¹⁶ In addition a knight might be publicly rebuked or deprived of his horse for lack of personal fitness, especially corpulence,¹¹⁷ for keeping a horse which was unkempt or skinny (*inpolitus*) or for cowardice in war.

Exactly how was their judgement executed?¹¹⁸ With regard to the *cura morum* I suggest that the censors did not proceed in the arbitrary manner taken for granted by many scholars. Firstly, the person who was under suspicion of wrong-doing was summoned before both censors who stated the grounds for complaint clearly to him.¹¹⁹ Secondly, it is possible that an ordinary citizen was required at least to be a witness, if not to make the accusation, as the incident which occurred between the censor Scipio Aemilianus and C. Licinius Sacerdos evidences.¹²⁰ This interpretation may be supported by a clause inserted in P. Clodius' bill designed to restrict the abuse of censorial power. It stipulated that: ... *ne quem censores in senatu legendo praeterirent, neve qua ignominia afficerent, nisi qui apud eos accusatus et utriusque censoris sententia damnatus esset*.¹²¹ Thirdly, the existence of many fragments of speeches delivered on behalf of, or in opposition to, a person accused before the censors suggests a quasi-judicial procedure where allegations and defences were made after the fashion of a criminal trial.¹²² Plutarch records how C. Gracchus acquitted himself adroitly when he was denounced before the censors on his return from Sardinia.¹²³ Cicero employs the expression *causam agere* in connection with the censorship, while the emperor Claudius put a stop to the customary

practice of advocates representing the accused before the censors.¹¹¹ In some cases, subsequent censors might rescind the decision of their predecessors.¹¹²

In conclusion, the Roman censors were in a position to effect a complete structuring of Roman society based on highly conservative moral and economic principles. Often unscrupulous office-holders would employ morality as a pretext to attack personal or political rivals.¹¹³ Some, like the Elder Cato or Scipio Aemilianus, used their term of office to make a pronounced moral stand against what they perceived to be pernicious influences or trends and left an indelible stamp on the minds of later generations of Romans.

Aediles

Less exalted than the censors but equally as significant in enforcing a whole range of sumptuary restraint, the aediles exercised an extensive and varying criminal jurisdiction during the Republic and early Empire. Uncertainty clouds the tasks, status and judicial competence of these magistrates throughout the history of their office.

Two popular misconceptions of their duties ought to be firmly dispelled; firstly, that their punitive measures were confined to, or primarily concerned with, indecency as opposed to the censors' supervision of immorality;¹¹⁴ secondly, that the aediles were responsible for the maintenance of public order at Rome, visiting summary punishment on those who committed petty or comparatively insignificant crimes which were beneath the attention of more senior magistrates. The concept of a general 'police' function was alien to ancient societies.¹¹⁵ In fact, their judicial activities corresponded closely to the administrative functions allotted to these officers, namely their *cura annonae*, *cura ludorum sollemnium* and *cura urbis*. Within each *cura*, the aediles did not exercise a vague jurisdiction but undertook specific tasks whose *modus operandi* they would detail in their edict on entry into office.

Traditional accounts of the institution of the plebeian aedileship in 494 B.C. suggest that they were nominated as subordinate plebeian officials by the *tribuni plebis* and corresponded to the relationship of the quaestors to the consuls.¹⁴³ The *lex Publilia* established that the two *aediles plebis* were to be elected in the *concilium plebis* under the presidency of a tribune of the plebs. Their original functions may have centred upon the superintendance of the Temple of Ceres where the early state archives were deposited and assisting the *tribuni plebis*.

The curule aedileship was initially a purely patrician magistracy when it was founded in 367 B.C.,¹⁴⁴ but it was soon decided that the office should be shared by the appointment of two patricians or two plebeians in alternate years.¹⁴⁵ They were to be elected in the *comitia tributa* under the supervision of a magistrate who possessed *imperium*, usually a consul.

Although the two offices formed a *collegium*, there were several differences in their status and *insignia*. The close association of the plebeian aediles with the plebeian assembly and their tribunes conferred on these officers a degree of *sacrosanctitas*.¹⁴⁶ Candidates had to belong to plebeian *gentes* while from 454 B.C.¹⁴⁷ they possessed the *ius multae dictionis*, the *ius edicendi* and the *ius contionis*. Their office did not confer senatorial rank and they sat on the *subsellium* clothed in an ordinary toga. The curule aedileship, however, was the most junior office to confer senatorial rank although it was not an essential rung in the *cursus honorum*,¹⁴⁸ rating above the quaestors and below the praetors. They possessed the right to wear the *toga praetexta*, to sit on a *sella curulis* and the *ius imaginum*. They did not have full *imperium* although they held *minora auspicia* and were assisted by *viatores*, *scribae* and *praecones*.¹⁴⁹

cura ludorum sollemnium

The early link between the plebeian aediles and the worship of Ceres provided the foundation for their later

importance in staging major festivals and games at Rome. The plebeian aediles organised the *ludi Ceriales*, the *ludi Plebeii* and the *ludi Florales*, while the *ludi Romani* and the *Megalasia* fell to the curule aediles. At an early stage in their supervision, it became customary for these magistrates to supplement the state-allocated sum out of their private funds. Ancient authors dwell upon the lavishness of the spectacles provided, many of which originated during or soon after the Hannibalic War. The expectations of public luxury were progressively heightened until it reached astounding proportions by the mid first century B.C. Their duties included theatrical arrangements and the selection of plays (*ludi scaenici*), seat arrangements and the maintenance of good behaviour amongst the actors and spectators during the performances.¹⁵⁰ The aediles' reaction to the indignant complaint of Vatinius when he was stoned recorded by Macrobius nicely illustrates the operation of their powers:

*lapidatus a populo Vatinius cum gladiatorium munus ederet, obtinuerat ut aediles edicerent nequis in harenam nisi pomum misisse vellet.*¹⁵¹

It was in connection with this *cura* that, during the late Republic, the aediles may have supervised the implementation of the *leges teatrales* to which a definite *poena theatralis* was attached either by the *lex Roscia* or a *lex Julia*. There is explicit evidence for the enforcement of these laws in the Roman satirists although they merely refer to the activities of relatively unimportant theatre marshalls in combatting symbolic usurpation. Augustus, however, had transferred the *cura ludorum* from the aediles to the praetors, bestowing on the former minor tasks such as fire-watching.¹⁵²

cura annonae

The care of the corn supply constituted an important part of a wider market surveillance and entailed incidental powers to enforce observance of sumptuary regulations.¹⁵³ The aediles' special concern was to ensure a regular and

moderately-priced supply of basic commodities, in particular corn and oil. This involved both the purchase of supplies with state assistance and in some cases with a personal supplement,¹³⁴ and the restraint of the cornerers-of-the-market (*praemeratores*).¹³⁵ At a later date, they assisted in the organisation of monthly corn rations specified in the *leges frumentariae*.¹³⁶

Their power to regulate prices and their oversight of the provision market would have placed these officials in an excellent position to enforce an array of measures concerned to combat *luxus mensae*, for example, the maximum prices on certain types of food specified by Sulla or on wine by the censors' edict of 89 B.C., or the prohibition of some delicacies - fattened hens by the *lex Fannia*, dormice, shellfish and imported birds by the *lex Aemilia*. But the aediles were subject to competing pressures - the public expectation of lavish entertainment at the *ludi*, the satisfaction of which was crucial for a successful political career, provided a strong disincentive for the punctilious implementation of sumptuary law. However, under the changed conditions of the early Empire, the aediles complained vociferously to the emperors on occasions when their attempts to prevent the abuse of these measures were frustrated¹³⁷ and on two occasions, firstly Tiberius and afterwards Claudius relieved them, temporarily perhaps, of this duty.¹³⁸ There is evidence too of aedilician inspection of weights and measures¹³⁹ and for their suppression of usury¹⁴⁰ while their concern for honest commercial transactions regarding slaves and cattle gave them a degree of civil jurisdiction.¹⁴¹

cura urbis

The term *cura urbis* which is attested in a passage in Cicero¹⁴² should not be interpreted as denoting a general superintendence of law and order throughout Rome. In many instances the exercise of aedilician power can be traced directly to the *cura* of specific places.

One important duty was to ensure that a number of public facilities were kept clean or in a state of good repair. Several of their tasks overlapped with the censors.¹⁴³ Their concern for the water supply included the upkeep of fountains, aqueducts and public baths¹⁴⁴ and they too ensured that no private construction encroached on public land.¹⁴⁵ Roads had to be adequately paved and kept free from obstacles.¹⁴⁶ This *cura* placed the aediles in a good position to undertake the enforcement of the *leges de funeribus* since the size and composition of the cortege comprised a major part of funeral luxury. Several inscriptions attest to their regulation of tomb construction and burial deposit. *in hoc monumento siue sepulc(ro) corp(us) per aedil(es) inferri licebit.*¹⁴⁷ In the mid first century B.C. an *s.c.* specifically advised that the aedilician edict on funerals should be suspended to allow a special tribute to be paid to the eminent orator, politician and jurist Servius Sulpicius Rufus.¹⁴⁸ The aediles' *procuratio sacrarum aedium*¹⁴⁹ extended on occasions to the prohibition of undesirable religious practices. They were actively involved in the suppression of foreign superstitions in 213 B.C.¹⁵⁰ and of Bacchanalian rites in 186 B.C.¹⁵¹ There is firm evidence that the aediles helped to suppress dicing, outlawed by several *leges aleariae*,¹⁵² while prostitutes were required to register with these magistrates.¹⁵³ Gellius records an incident when a curule aedile A. Hostilius Mancinus was thwarted by a *decretum tribunorum* from impeaching a courtesan Manilia before the people after he alleged that he had been struck by a stone thrown from her apartment at night.¹⁵⁴ From the late third century onwards, a series of trials point to a high degree of aedilician involvement with immorality charges, especially concerning *stuprum* and *probrum*. M. Flavius, arraigned by the aediles on a charge of *stuprum* with a *materfamilias*, was acquitted by the people in 328 B.C.¹⁵⁵ In 295 B.C. Q. Fabius Maximus Gurges (probably as curule aedile) fined several *matronae* for *stuprum*.¹⁵⁶ In 226 B.C. M. Claudius Marcellus indicted C. Scantinius Capitolinus for committing *stuprum* with his son,¹⁵⁷ while the plebeian aediles C. Villius Tappulus and M. Fundanius Fundulus took action against more Roman matrons

which resulted in their condemnation and exile in 213 B.C.¹⁵⁰ Aedilician involvement with cases concerning *stuprum* continued into the first century B.C. as the prosecution of Cn. Sergius Silus for an illicit relationship with a *materfamilias* by the curule aedile Q. Caecilius Metellus Celer in 71 B.C. demonstrates.¹⁵¹

Other measures to check luxurious living impinged upon the aediles' jurisdiction. The emperor Tiberius instructed the aediles to enforce severe restrictions on the sale of delicacies in the *popinae* and *ganae*, even to the extent of prohibiting the sale of pastries.¹⁵² The emperor Claudius rebuked a senator who as aedile had flogged a bailiff and fined some tenants of the emperor's own estates for transgressing sumptuary regulations.¹⁵³ Finally, Suetonius relates that the aediles were employed by Augustus to enforce one of his measures on *habitus et cultus*.¹⁵⁴

An investigation into the judicial competence of the aediles necessarily involves a wider consideration of their role in the context of Roman criminal law. It has been argued above that all prosecutions flowed not from any undefined magisterial power but either from the superintendance of particular *curae*, as specified in their edict or from the implementation of statutes regularly passed through the comitial procedure.¹⁵⁵ Like other Roman magistrates, the aediles could institute criminal proceedings for a breach of Roman law and a wide range of cases are recorded in the early and mid Republic. While the impeachment of C. Veterius in 454 B.C. by the plebeian aedile L. Alienus is probably fictitious¹⁵⁶ a series of trials involving charges of poisoning from the mid fourth century B.C. strongly suggest aedilician criminal competence from an early period.¹⁵⁷ In 249 B.C. Claudia was indicted on a charge of *maiestas* for her insulting jibe at the Roman plebs when she was jostled on leaving a festival.¹⁵⁸ In 57 B.C. Clodius as aedile launched an accusation *de vi* against Milo.¹⁵⁹ Many other prosecutions of lesser importance can safely be attributed to the specific *curae* of these magistrates and normally resulted in a pecuniary fine.¹⁶⁰ Furthermore, in criminal trials the aediles did not exercise

a summary jurisdiction. A consideration of important cases in the mid republic suggests that *consilia* were provided from the senatorial body.''' A Roman citizen might exercise his *ius provocationis* against capital sentences or those involving heavy fines to the *comitia* where the aedile would plead the case for the prosecution at *contiones* before the vote was held.

Senatus consulta

The importance of the senate in connection with social regulation was enormous. Although the senate was in theory a consultative body summoned at the behest of a magistrate or tribune, its advice was only exceptionally ignored during the Republic despite the fact that it had no binding legal validity.''' If vetoed by a superior magistrate, a resolution (*auctoritas*) projected the highly influential opinion of the body. Copies of the *senatus consulta* were deposited in the plebeian sanctuary of Ceres and, later, in the *aerarium*.

A brief summary will suffice to exhibit their scope. *S.c.* were employed frequently during the Hannibalic War, notably to restrict mourning as was the case also during the Social War.''' Through the second century B.C. *s.c.* were used to regulate the entry into, or domicile at, Rome of non-citizens, especially during periods of agitation for the extension of citizenship rights. Appian records the steps taken at the time of C. Gracchus' *civitas* proposal'' while passages in Gellius and the Elder Pliny'' record the expulsion of philosophers and rhetors from Rome and even, in the case of physicians, Italy.

The senate's supervision of many aspects of the state religion is illustrated by their suppression of the cult of Bacchus in 186 B.C.''' and their part in the dismantlement of the temples of Serapis and Isis in 52 B.C. The prevention of the construction of a stone *theatrum* in 154 B.C. may have been based on religious objections.'''

Many resolutions touched upon economic or sumptuary matters. In the late 170's B.C. a *s.c.* restrained the

importation of wild beasts (*Africanæ*) into Italy. In 161 B.C. an *s.c.*, which preceded the *lex Fannia*, advised that the *principes* should spend a maximum of 120 *asses*, in addition to vegetables, wine and bread at the *exchange banquets* (*mutationes*) during the Megalesian games, and that native, and not foreign wines should be served.¹⁷⁶ Several resolutions censured the practice of erecting statues by unauthorised persons.¹⁷⁷

A series of *s.c.* was passed in a fruitless attempt to check the formation of a monopoly in hedgehog quills¹⁷⁸ while other decrees were reputed to have deprecated the practice of mining in Italy.¹⁷⁹

In conclusion, the *s.c.* was a useful ad hoc expression of the ruling order's disapproval of novel or potentially destabilising types of behaviour, especially in cases when a legislative proposal might have proved cumbersome or impracticable. In many instances, a major function of the *s.c.* would have been interpretational, suggesting to a magistrate a course of action which was in accordance with the law. They gave crucial moral backing to a magistrate in the exercise of his duty. Above all, they fulfilled an important explanatory role, compensating for the somewhat laconic texts of the *leges publicae populi Romani* which lacked the long, informative preambles so characteristic of sumptuary statutes of Mediaeval England and continental Europe.¹⁸⁰

Tresviri Capitaes

The *tresviri* (or *triumviri*) *capitaes* ranked highly amongst the *minores magistratus* at Rome although little can be said for certain about their origin,¹⁸¹ the mode of their election or their specific functions. Their significance lies in the enforcement rather than in the creation of social regulation. Claims that in the absence of any other appropriate officials they fulfilled a general police role are difficult to substantiate.¹⁸²

Although the *tresviri* may have originally been appointed by the higher magistrates, they were later formally elected

by the *comitia tributa*, after which a *lex curiata* was passed, and they possessed the lower auspices.¹¹⁰³

One of their most important tasks was to assist the higher magistrates in the execution of their criminal jurisdiction, in particular with the preliminary imprisonment, in certain cases, of those under accusation and to ensure that the capital punishment was carried out - a duty which clearly necessitated the oversight of the prison.¹¹⁰⁴ In short, they gave substance to the judicial powers exercised by the higher magistrates since they were instrumental in the execution of an order by supervising the apprehension and internment of a suspect or the flogging and beheading of the condemned. If the identification of the *tresviri capitales* with the *tresviri nocturni* is correct,¹¹⁰⁵ an additional responsibility entrusted to these officers was the supervision of fire-fighting.

It is worthwhile to review briefly the relevant passages in ancient texts concerning these officials, some of which suggest that they exercised an independent criminal jurisdiction.¹¹⁰⁶ In two incidents, one of which is definitely dateable to the Second Punic War, the improper appropriation of an *honos* was punished by incarceration. In the first case, L. Fulvius, an *argentarius*, wore a chaplet of roses to which he was not entitled and was interned on the authority of the senate while in the second, the *tresviri* ordered P. Munatius to be thrown in chains for taking a chaplet of flowers from the statue of Marsyas and placing it on his own head.¹¹⁰⁷ The senate's determination to regulate closely social behaviour during this critical period was demonstrated by another incident which also involved the *tresviri*, this time in 213 B.C. Then, the aediles and the *tresviri* were severely rebuked by the senate for not responding quickly enough to an outbreak of superstition involving foreign cults and the neglect of Roman rites. When their attempts to suppress these practices proved ineffectual the praetors were called upon to deal with the situation.¹¹⁰⁸ In a similar context, the *tresviri* were asked to help suppress the Bacchanalian 'conspiracy' of 186 B.C.¹¹⁰⁹ At an unknown date, the *tresvir* C. Pescennius led C. Cornelius to prison for committing a homosexual act

(*stuprum*) where the culprit died¹⁹⁰ and the poet Naevius was incarcerated by the *tresviri*: ...*cum ob assiduam maledicentiam et probra in principes civitatis de Graecorum poetarum more dicta...*¹⁹¹ Naevius might have been charged for transgressing an ancient statute of the Twelve Tables which forbade the utterance of a malum carmen.¹⁹²

Several passages in Plautus point to active involvement of the *tresviri* in the implementation of moral legislation. Here, a private person could initiate a prosecution by laying hands on (*manus iniectio*) a suspect and supplying evidence of his guilt (*nominis delatio*) to these officials who were empowered either to act themselves as *iudices* or to appoint *iudices* to decide the issue. Interestingly, in the *lex Colonia Genetivae Iuliae* any concerned member of the colony might sue a person culpable of transgressing the banqueting or gift laws for a sum of 5000 HS by the procedure known as *actio petitio persecutioque* through *recuperatores* before a *duovir* or *praefectus*.¹⁹³

Finally, there is good evidence to suggest that the *tresviri* took cognizance of petty crimes committed by slaves, foreigners and the lesser privileged in Roman society but even in these cases they were probably assisted in their task by a *consilium*.¹⁹⁴ Their tribunal was situated at the *columnia Maenia*.¹⁹⁵

The power of envy

The apparent lack of a 'police force' to detect infractions of, and to compel obedience to, the law in ancient Rome has frequently excited comment. Many scholars have attempted to compensate for the lack of evidence by ascribing this function to lesser magistrates - aediles, *tresviri capitales* or even attendants of officials such as lictors. In fact the explanation lies partly in the difference in the conceptualisation of 'law and order' between ancient societies and post eighteenth century Europe¹⁹⁶ and partly in the wide scope offered to private prosecutors in assisting state authorities in the complex task of upholding Roman law. In particular, as the

discussion above has already indicated, a prominent role was assumed by informants (*quadruplatores*) who might notify the magistrates, e.g., the *tresviri capitales*, of law-breakers by laying information (*nomen deferre*) before them, following which a *manus inectio* might be allowed and, on conviction, a *poena quadrupli* was exacted.¹¹¹

The precise meaning of the word *quadruplator* has proved difficult to pinpoint. The scholiast on *Cicero: Div. in Caec.* 24 offers two possibilities; (1), that he was an informer of public crimes who took a quarter of the proscribed goods, (2), that he was a person who sued for crimes containing a quadruple penalty. Festus s.v. *quadruplatores* (p.309 L) states: *quadruplatores dicebantur, qui eo quaestu se tuebantur, ut eas res persequerentur, quarum ex legibus quadrupli erat actio.* J. M. Kelly has suggested that the *quadruplator* may originally have denoted a sort of caluminator, i.e., one who makes his living by doing things to which a four-fold penalty was attached but this is not a compelling definition.¹¹²

I propose that from the evidence available it is reasonable to assume that the *quadruplator* was an informant who enriched himself by suing other people for infractions to social regulations which carried a four-fold (or similar) penalty, retaining, if his suit was successful, a portion (perhaps a quarter) of the fine.¹¹³

Voluntary prosecutions were an established feature of judicial practice in Athens from the time of Solon who believed that the opportunity offered to any person to litigate on behalf of the injured party promoted solidarity amongst the citizens.¹¹⁴ Although it is desirable to offer the chance of legal representation and remedy for those too weak to look after their own interests, this facility was put to a very different use in Ancient Rome where it was widely employed to assist the state authorities' supervision of social practices which did not immediately threaten the well-being of other citizens.

A passage crucial for an understanding of the operation of private accusers occurs in Plautus *Persa* 62f which is worth quoting in full:

*neque quadrupulari me volo, neque enim decet
sine meo periculo ire aliena ereptum bona,
neque illi qui faciunt mihi placent. planen loquor?
nam publicae rei causa quicumque id facit
magis quam sui quaesti, animus induci potest,
eum esse civem et fidelem et bonum...*

*(68) atque etiam in ea lege adscribier:
ubi quadruplator quempiam iniexit manum,
tantidem ille illi rursus iniciat manum,
ut aequa parti prodeant ad tris viros:*

Prostitutes and panders were a group of people who risked such proceedings being taken against them:

*iam hercle ego tibi, inlecebra, ludos faciam clamore in
via,
quae adversum legem accepisti a plurimis pecuniam;
iam hercle apud novos omnis magistratus faxo erit nomen
tuom,
post id ego te manum iniciam quadrupuli, venefica,
suppostrix puerum.*¹⁰³

Ulpian 1.2 relates that the *lex Furia testamentaria* inflicted a penalty of four times the sum accepted by a person in excess of the 1000 asses permitted by the law.¹⁰² A scholiast on Cicero relates that gamblers too were liable to the quadruple penalty.¹⁰³ Furthermore, although it has often been claimed that the *lex Cincia* was a *lex imperfecta* on which no punitive measures might be enjoined, it is known from Cassius Dio that Augustus stipulated a four-fold penalty for those orators who accepted fees for their services as advocates in defiance of this law.¹⁰⁴

If *quadruplatores* were, as I have proposed, capable of receiving substantial rewards for the enforcement of unpopular social regulation, this would explain the pejorative connotation acquired by this noun which had become virtually synonymous with *delator* by the first century B.C. It is significant that the Roman noble Appius Claudius refused to accept the reward to which he was entitled following a successful prosecution.¹⁰⁵

The continued use of private prosecutors was crucial to the success of Augustus' programme of moral and social reform.

No doubt, those individuals who took up the challenge of litigation were congratulated by the authorities for their vigilance and public-spiritedness. ""

In fact, the ruling order at Rome sought to harness, in pursuit of their own interests, the formidable powers of social envy and greed. At the same time as they escaped the odium attached to direct, authoritarian intervention into the private affairs of individuals so they obviated the need to set up an expensive and cumbersome enforcement agencies to implement their objectives. It was probably the only way that behavioural patterns which were at variance to social practice could be supervised. So, the intimate details of the family and personal lives of citizens, the integrity of private and marital relationships, the reliability of census returns, "" the gratification of individual predilections came under the scrutiny of 'concerned' neighbours or acquaintances.

During the Republic there is little indication in the sources that the Roman people were unduly worried by this state of affairs. Litigation probably affected only a tiny proportion of the population since it was highly expensive and its procedures were complex. But the dangers inherent in this policy were starkly revealed in the early Empire. This was the age in which the professional denouncer (*delator*), the successor to the shadowy figure of the *quadruplator* of the Republic, flourished when he was given a more or less free reign by unscrupulous emperors to entrap opponents of the imperial regime. Motives were mixed. Ambition was added to avarice since successful litigants could be assured of imperial favour. Others pursued personal vendettas. To be wealthy or politically prominent was equally perilous. Narratives of this period, the *Annales* and *Historiae* of Tacitus, Cassius Dio's *Roman History*, chronicle the climate of fear in which members of the aristocracy lived. "" Minor infractions to a legal code, which often enjoined types of behaviour long since obsolete, could lead to dire consequences - expropriation of property, disgrace, banishment or worse.

The grateful relief expressed by the Younger Pliny at the suspension of the activities of these figures testifies to

the devastating effect that the unleashing of these invidious forces might wreak on delicate social relationships.

huius tu metum penitus sustulisti, contentus magnitudine qua nulli magis caruerunt, quam qui sibi maiestatem vindicabant. reddita est amicis fides, liberis pietas, obsequium servis: verentur et parent et dominos habent... omnes accusatore domestico liberasti, unoque salutis publicae signo illud, ut sic dixerim, servile bellum sustulisti.'''

NOTES

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- 1 Diod. Sic. 12.21.1-2: cf Athen. *Deipn.* 429.
- 2 J.M. Kelly in *Roman Litigation* (Oxford, 1966), p.171 describes this punishment as a "gesture of legislative despair."
- 3 The Romans' exacting attention to technical detail is evidenced in many spheres of their public life from military organisation to their scrupulous observance of religious ritual and the precise wording of formulaic procedure in civil law.
- 3 Loeb trans. of Pliny *N.H.* 36.8. So, in A.D.11, Augustus despairingly permitted *equites* to fight as gladiators since no penalty might deter them; Cass. Dio 56.25.7.
- 4 See especially the suggestive comments of Ch'U (1961), p.172f in respect to Imperial China. As he observes, exposure to ridicule in closely-knit primitive societies was so effective it could even lead to suicide.
- 5 Plut. *Luc.*41; Pliny *N.H.* 9.172 on Q. Hortensius.
- 6 A.H. Greenidge in *Infamia: Its place in Roman Public and Private Law* (Oxford, 1894), p.2 well describes the concepts of *existimatio* and *dignitas* as 'the notion of outward respect in which a man is held, which is based upon his deserts and measured by his position in society.'
- 7 Cass. Dio 57.13.3; cp. Tac. *Ann.* 2.33; 3.52; 3.54: *nam si velis quod nondum vetitum est, timeas ne vetere; at si prohibita impune transcenderis, neque metus ultra neque pudor est.*
- 8 I do not concur with A.H. Greenidge's close identification of the censorial *nota* with *infamia*.
- 9 For a succinct discussion see A.H. Greenidge's article on *infamia* in *Smith's Dict.*; J.A. Crook in *Law and Life of Rome* (London, 1967), 83-5.
- 10 See ch.4.

- 11 See J.L. Strachan-Davidson 'Mommsen's Roman Criminal Law. Review of *Romisches Strafrecht* by T. Mommsen' *EHR* 16 1901, 220f. For Mommsen's definition, see *Straf.* p.4-5.
- 12 Strachan-Davidson (1901), p.238.
- 13 See *OCD* s.v. Law and Procedure, Roman, p.588.
- 14 *Ibid.* p.585. For a straightforward example of how this system operated see M. Beard & M. Crawford (1985), 57-8.
- 15 For example, the identity of the person who initiated the prosecution, the substance of the charge or the precise role of the magistrate.
- 16 H.F. Jolowicz & B. Nicholas (1972), p.305.
- 17 Mommsen *Straf.* p.135 where criminal law is defined as the effecting of punishment of a public or private offence which has violated the rights of the Roman community and which belongs to the rights and duties of a magistrate.
- 18 Mommsen *Straf.* p.543.
- 19 See E.S. Staveley 'Provocatio during the fifth and fourth centuries B.C.' in *Historia* 3 1955, 412-28 for a discussion of the authenticity and scope of these measures. He rightly rejects the reliability of the tradition for the 509 B.C. law. See also A.H.M. Jones *The Criminal Courts of the Roman Republic and Principate* (Oxford, 1972), ch.1.
- 20 Dion. Hal. 10.50.2. It imposed a *multa maxima* on magisterial sentences.
- 21 A. Heuss 'Zur Entwicklung des Imperiums des römischen Oberbeamten' *ZSS* 64 (1944), 57-133, esp. p. 104f and J. Bleicken 'Ursprung und Bedeutung der Provocation' *ZSS* 76 (1959), 324-77, have powerfully contended that *provocatio* was an institution arising from the turbulent situation of the Struggle of the Orders. Cf. Cic. *Rep.* 2.54 for the notices in the pontifical books.
- 22 Strachan-Davidson (1901), p.246f.
- 23 Cic. *Domo* 45 preserves the most detailed extant account of this process but *provocatio* is not mentioned.
- See especially C.H. Brecht 'Zum römischen Komitialverfahren' *ZSS* (1939), 261-314 who suggests that there was no bi-partite magisterial-comitial process, ie., a trial followed by an appeal, but that the first stage was merely a magisterial proposal after a preliminary hearing. *Provocatio* was only invoked

against a full magisterial sentence and so is not heard of in connection with a tribunician prosecution. See Livy 1.26.6f and Cicero *C. Rab.* 11f where it is clear that the trial before the *duumviri* was separate from that held before the people on *provocatio*.

For a succinct outline of the vexed problems of interpretation associated with the development of Roman Criminal law see P.A. Brunt's review of W. Kunkel *Untersuchungen zur Entwicklung des Römischen Kriminalverfahrens in Vorsullanischer Zeit* [Bay. Akad. d. Wissen. Heft 56 (1962)] in *Tijdschrift voor Rechtsgeschiedenis* 32 (1964), 440-9.

- 24 This is one of the problems raised by W. Kunkel (1962) in his thorough-going criticism of Mommsen's views. Another of Kunkel's contentions was that the mag.-comitial trial was at all times a specifically political action (p.130f) and that 'ordinary', non-political offences were subject to a private suit by *legis actio sacramenti*; see also Jolowicz (1972), p.308f & Brunt (1964), p.442. However, it is difficult to square this view with the threatened impeachment of the courtesan Manilia before the people by the curule aedile A. Hostilius Mancinus in Gellius *N.A.* 4.14.1. and the trial of C. Scantinius Capitolinus for *stuprum* in Plut. *Marc.*2.3.
- 25 For the existence of sumptuary regulation in the fifth and fourth centuries B.C. see G. Colonna (1977) & T.J. Cornell (1978/9), and A. Watson *JRS* (1972) 100 for the general plausibility of the legislation in the Regal period.
- 26 There is no doubt that the *imperium* of the consuls as head of the army was incontestable but this need not involve complete domestic authority. The theoretical political institutions and ideas advanced by Cicero in *Leg.* 3.6; 3.8f upon which excessive reliance has been placed by Mommsen and his followers should be treated with great caution.

Early evidence of political maturity can also be observed in the establishment of the purely religious post of the *rex sacrorum* who undertook the sacral duties

of the Kings, as A. Momigliano in *'Il Rex Sacrorum e l'origine della Repubblica'* in *Quarto Contributo* (Rome, 1969) 395-402 pointed out. See also T.J. Cornell and J. Matthews (1982), p. 24 on this innovation.

27 See Jolowicz (1972), p. 306f.

28 Dion. Hal. 2.14.1.

29 Dion. Hal. 6.22.1f. The article by E. Ruoff-Vaanänen 'The Roman Senate and Criminal Jurisdiction during the Roman Republic' in *Arctos* 12 (1978), 125-43 proved a valuable source of references for senatorial judicial involvement.

30 Dion. Hal. 8.79.1; cf. Livy 2.41.11.

31 Dion. Hal. 12.4.2f; cf. Livy 4.31.1; Dion. Hal. 12.1.1f.

32 Dion. Hal. 9.44.7.

33 Livy 8.18.4f.

34 Plut. *Marc.* 2.3; see also *Marc.* 23.1 for the trial of Marcellus before the senate in 210 B.C.. In Val. Max. 6.1.9. the senate stopped Plotius from committing *stuprum* and put him in prison.

The widely held belief that aedilician fines (eg. on grazers etc.) flowed from the exercise of summary justice may well be inaccurate too, perhaps stemming from the bare record of these events contained in the pontifical books.

35 Livy 29.20.4.

36 Livy 29.21.12.

37 Livy 29.22.10.

38 See Ruoff- Väänänen (1978) p.130f for a full list of references.

39 Eg. provincial governors like Verres, (Cic. *Verr.* II.5.114). See W. Kunkel's (1962), p.79 observations on the *συμβούλιον κριτῶν* set up by Augustus in the 4th Cyrene edict.

40 The theoretically extensive *patria potestas* was qualified by this custom. See Val. Max. 2.9.2 for the action of the censors of 307 B.C.: *L. enim Annium senatu removerunt, quod quam virginem in matrimonium duxerat repudiasset nullo amicorum [in] consilio adhibito.*

Contrary to the assertions of many scholars (e.g. R.A. Nisbet (1964), 260; 264) the authorities at Rome were

quite prepared to intervene on matters which impinged on the authority of the *paterfamilias*. The custom of allowing the family to execute punishment on its members convicted of public crimes does not alter this fact (e.g. Livy 39.18.6; Val. Max. 6.3.7; 6.3.8 & J.L. Strachan-Davidson (1912), 32/3). This is not to deny that the *paterfamilias* in conjunction with the *domesticum consilium* played a highly important role in family affairs despite the lack of information on its operation; Suet. *Tib.* 35.1; Val. Max. 6.1.5; 6.1.6.

41 Livy 1.49.4.

42 Cic. *Brut.* 85-6.

43 Festus s.v. *parum* p.274 L.

44 Cic. *Dom.* 33.

45 Cic. *Verr.* II.1.5.13.

46 Varro *L.L.* 6.91.

47 Polyb. 6.13.4.

48 Polyb. 6.16.1.

49 Strachan Davidson (1912), ch.13 comprehensively catalogues the *quaestiones extraordinariae* set by *s.c.* or *plebiscitum*.

Polyb. 6.14.6 states that the people could hear many cases in which the punishment was a heavy fine and was the only body which might try capital cases.

50 This interpretation would also reflect the process of structural differentiation observable in other spheres of Roman social and political life. For a full discussion of this concept see K. Hopkins (1978), 74-96.

51 Loeb trans. of Plut. *C. Gracch.* 5.2; Appian *B.C.* 1.22. See the discussion of P. A. Brunt in Appendix II 'The *Equites* in the Late Republic' in *The Second International Conference of Economic History at Aix* (1962). 117-49 on the vexed problem surrounding C. Gracchus' judiciary legislation. He argues for the institution of a mixed *album* of senators and equites for civil and criminal cases in addition to the exclusion of senators from serving as jurors in the *repetundae* court.

52 Plut. *Mor.* 200e; Val. Max. 4.1.10 adds the position of witness (*testis*) to that of *the roles of iudex* and *accusator* which Scipio refused to undertake himself in

order to ensure the condemnation of Sacerdos; Cic. *Cluent.* 134; cp. the comment of the Elder Cato in Gell. *N.A.* 13.25.12.

- 53 See the discussion at the end of this chapter.
- 54 Strachan-Davidson (1912), p.33f and Mommsen *Straf.* p.090 on *stuprum* and *adulterium*. They do not allow procedural differences to disguise the fact that all such trials belong to the sphere of Roman Criminal Law. See *lex Acilia* 23.
- 55 For an amplification of this outline see A.H.M. Jones ch. 3 'The Criminal Courts of the Principate' in *The Criminal Courts of the Roman Republic and Early Empire* (Oxford, 1972) who adds to the list of new criminal courts that of the prefect of the city. On Augustus' powers notice Suet. *Aug.* 33; 51; Cass. Dio 55.7.2. For various explanations as to how these innovations were instituted, see A.H.M. Jones ch.5 'Imperial and Senatorial Jurisdiction' in *Studies in Roman Government and Law* (1960); R. Bauman *The Crimen Maiestatis in the Roman Republic and Augustan Principate* (1967).
- 56 See Jones (1972) 110-11. After the senate had listened to the evidence put forward by the prosecution and defence, they debated the question in the usual fashion.
- 57 Cp. the trial of Furius Chresimus under an unusual charge which we happen to know was specified in the Twelve Tables (Table 8.1).
- 58 *Loci classici* Plut. *Cat. Mai.* 16.1f; Cic. *Leg.* 3.7.
The seniority of censors was evidenced in the possession of the *sella curulis*, the right to wear the *toga praetexta* during their term of office. Polyb. 6.53.7. records that at funerals, those who represented the censors wore togas entirely of purple.
- 59 In addition to the power to promote or demote citizens, these officials governed the entry of freedmen or those who had been newly enfranchised into the citizen body; cp. Livy 9.46.11(c.309 B.C.); Diod. Sic. 20.36.2 (220 B.C.).
- 60 Suet. *Rhet.* 1.2; Scipio Aemilianus Fr. 6 *Malc.*; Gell. *N.A.* 5.13.4.
- 61 Unlike other magistrates whose election was confirmed by

a *lex curiata*, the bestowal of censorial power was ratified by a *lex centuriata*. Cic. *Leg. Agr.* 2.26f.

62 Zon. 7.19.

63 Livy 5.31.6.

64 Plut. *Cor.* 1.1; Val. Max. 4.1.3.

65 Livy 4.24; 9.29; Frontin. *Aq. I.* 5;

Any incompleated task was undertaken by the praetors or consuls, or by the succeeding pair of censors although on occasions an extension might be granted in order that a particular task might be completed. A.E. Astin 'The Censorship of the Roman Republic: Frequency and Regularity' *Historia* 31 1982, 174-87 has argued for three distinct phases in the intervals between censorships and has shown that by the late third century B.C. a regular pattern of five year periods was clearly emerging.

66 Livy 8.12.16. See J. Suolahti *The Roman Censors* (Helsinki, 1963) for a comprehensive investigation into the social background of the holders of this office, especially pp. 137-9. R.V. Cram 'The Roman Censors' *HSCP* 51 (1940), 71-100 is a useful source of reference.

67 Varro *L.L.* 6.86: the *census* of the allies normally took place in their home towns *id.* 6.93.

68 Livy 3.3.9. It is possible that the *capite censi* were represented by their *curatores tribuum* except in special cases.

69 Livy 43.14.5.

70 Plautus *Trin.* 872; *Poen.* 55; Livy 39.44.2; Elder Cato Fr. 137 *Malc.* Mommsen *Staats.* 3. 490, 494-5 on *nomenclatores*; 2. 332-469 on censors in general.

71 Livy 9.46.15; Val. Max. 2.2.9; Plut. *Pomp.* 22.4.

72 The *transvectio equitum* was preserved by Augustus and several of the early Emperors; Suet. *Aug.* 38.3; *Cal.* 16.2; *Claud.* 16.1; *Vesp.* 9.2.

73 During the Hannibalic War, too; see Livy 27.11.15 and 24.18.3 & Val. Max. 2.9.8 for M. Atilius Regulus' punishment of those who planned to forsake Rome after Cannae.

The phrases *traduc equum* and *vende equum* signified continuation of, or dismissal from, service respectively.

74 Livy 9.30.2; 9.46.10; Diod. Sic. 20.36.1f. In exceptional

times a dictator might be chosen to increase the numerical strength of that order, eg. Fabius Buteo in 216 B.C. Livy 23.22.10; Plut. *Fab.* 9.4.

The censors' power was qualified by the *lex Cassia* of 104 B.C. which stipulated that: ...*quem populus damnasset cuive imperium abrogasset in senatu non esset.* Asc. In *Corn.* p.78.

75 From 123 B.C. curule aediles were automatically included; from 102 B.C. *tribuni plebs*; from 81 B.C. quaestors.

76 Notice the basis of Cicero's definition of *optimates* in *Sest.* 96-7.

77 See Festus s.v. *praeteriti senatores* p.290 L.

78 E.g. Livy 34.44.4.

79 In the *ensoriae tabulae* there was a full list of *ager Romanus* and land owned by the state.

80 New *vectigalia* were occasionally established by the censors while the terms of these contracts were specified in *leges censoriae*, the details of which might be altered by the praetors see Cic. *Verr.* II.1.55.143. The censors could initiate quite extensive building programmes although their expenditures were carefully monitored by the senate and were termed *ultra tributa*; see Polyo. 6.13.3; Livy ep. 48; Vell. Pat. 1.15.3.

81 Varro *L.L.* 6.86.

82 On the *suovetaurilia* see Cato *Agri.* 141; Varro *R.R.* 2.1.10.

83 Val. Max. 4.1.10. Mommsen suggested *Staats.* 2.332 n.1 that the phrase *lustrum condere* connoted a complete refounding of the city every five years. Others have interpreted the expression as conveying a purge of the citizen body of unworthy, extraneous elements. More recently, R.M. Ogilvie in '*Lustrum Condere*' *JRS* 51 (1961), has drawn attention to the importance of the ritual of procuring fire as an agent of purification.

84 Censors, like other magistrates, might be impeached after their term of office; Gell. *N.A.* 4.17.1; Cic. *De Orat.* 2.275.

85 Mommsen *Staats.* 2. 461-8.

86 For example J. Suolahti (1963), p.25; J.A.C. Thomas *Textbook of Roman Law* (Amsterdam, 1976), p.15 '...no

limit to the grounds on which a citizen might incur their disapproval.'

- 87 Many scholars have been misled both by the plurality of grounds for which a *nota* might be incurred and by the moralising fervour of ancient authors. A good example is Plutarch's (*Ti. Gracch.* 14.3) picture of citizens hurriedly putting out their lights at night as Tiberius Sempronius Gracchus (censor 169 B.C.) returned home after dinner, lest they might incur his disapproval.
- 88 Pliny *N.H.* 13.24.
- 89 Cassiod. *Chron.* 115
- 90 Suet. *Rhet.* 1.2.
- 91 Pliny *N.H.* 14.95.
- 92 Gell. *N.A.* 15.11.1.
- 93 Pliny *N.H.* 36.4.
- 94 Pliny *N.H.* 8.209.
- 95 Namely, the *lex Aemilia*.
- 96 Pliny *N.H.* 35.197.
- 97 In some Greek city-states special officers were appointed to watch for infractions to sumptuary and other social laws; see Athen. *Deipn.* 245b.
- 98 Frs. 107 & 109 *Malc.*
- 99 Cic. *Fam.* 8.14.4; *Att.* 6.9.5, see D.R. Shackleton Bailey *ad loc.*; Varro *R.R.* 1.2.9.
- 100 Asc. p.84 C.
- 101 Macrob. *Sat.* 2.4.25 for Augustus' rebuke of a Roman *eques* for squandering his property.
- In the early Empire, aediles were regularly employed to enforce sumptuary laws for by this time the censorship had been eclipsed.
- 102 For C. Fabricius Luscinus'expulsion of P. Cornelius Rufinus from the senate in 275 B.C. see Dion. Hal. 20.13.1; Livy *Per.* 14; Val. Max. 2.9.4; Gell. *N.A.* 4.8.7. I consider it likely that this action was based on a sumptuary law.
- 103 Vell. Pat. 2.10.1.
- 104 Pliny *N.H.* 18.32.
- 105 Gell. *N.A.* 1.6.1; frs. 8 & 9 *Malc.*; cp.Val. Max. 6.4.2; Cass. Dio 40.63.2; Cic. *Fam.* 8.12.2; 8.14.4. On adultery see Cass. Dio 54.16.5; 55.4.3; Livy *Per.* 59.

106 Livy 39.44.1;

107 See Livy 4.24.7 for the censors' imposition of an *octuplicatus census* on Mamercus who was demoted to the *aerarium*.

Conviction in a criminal trial and in specified civil actions was noted by the censors and entailed *ignominia* but probably not *infamia*; see Cic. *Rep.*4.6; *Cluent.* 119.

In public life the *nota* might be incurred for (1), improper acts as a magistrate; (2), insubordination of a citizen towards a magistrate, or of a junior before a senior magistrate; (3), improper behaviour by jurors; (4), the usurpation of *insignia*; failure to respond to the levy; (5), cowardice in the face of the enemy.

Appian *B.C.* 3.43 relates that the Roman armies kept a record of the character of every soldier.

108 Plut. *Cam.* 2.2; Val. Max. 2.9.1; Plaut. *Merc.* 1016.

109 Cass. Dio 67.13.1; Cic. *Rep.* 4.10.

110 Pliny *N.H.* 18.11; Elder Cato Fr. 133 *Malc.*

111 Plut. *Cat. Mai.* 9.5; Gell. *N.A.* 6.22.1.

112 The long discussion in Cicero *Cluent.* 117f should be evaluated in the knowledge that Cicero was concerned to devalue the significance of the censorial *nota* in order to represent his client in the best possible light.

113 Plut. *Flam.* 19.1; Elder Cato Fr. 87 *Malc.*

114 Cic. *Cluent.* 133; Plut. *Mor.* 200e; Val. Max. 4.1.10; notice Livy's (39.42.7) comment on Cato's severe orations *...longe gravissima in L. Quinctium oratio, qua si accusator ante notam, non censor post notam usus esset...*

115 Asc. *In Pis.* p.8 C. Notice also Suet. *Aug.* 38.3 *sed neque detrahi quemquam in trahendo ab accusatore passus est, quod fieri solebat...*; cp. Cass. Dio 54.16.5.

116 E.g. The Elder Cato's speech *In Lentulum* before the censors in Gell. *N.A.* 5.13.4; Frs. 74; 87; 90 *Malc.* Cp. Suet. *Claud.* 16.2.

117 Plut. *C. Gracch.* 2.4; Cic. *Cluent.* 131; Gell. *N.A.* 4.20.7.

118 Suet. *Claud.* 16.4.

119 In connection with their financial supervision of *opera*

- publica* the censors exercised a different type of jurisdiction. They were empowered to order the dismantlement of private buildings which encroached upon public land and to prevent the illegal channelling of public water. Fines might be exacted for infringement of the regulations governing *ager publicus* whereby the censors might judge the case in person or appoint an *iudex*. Cic. *Rep.* 2.60. They might also ensure the correct conduct of contractual obligations; see Greenidge (1901) 233; Varro *L.L.* 6.71; Cic. *Verr.* II.3.7.16.
- 120 The rivalry between C. Fabricius and Cornelius Rufinus well illustrates this point; Cic. *Orat.* 2.268.
- 121 H.L.A. Hart *Law, Liberty and Morality* (Oxford, 1962), p. 44 and the anonymous article 'The Censor as Aedile,' *TLS* August 4, 1961.
- 122 See the discussions in Mommsen's *History of Rome*, 1. 445f and A. Lintott Violence in Republican Rome (Oxford, 1968), p. 92 chapter entitled 'The Aedile as Policeman'. Cf. the interesting article by W. Nippel 'Policing Rome' *JRS* 74 (1984), 20-9.
- 123 Dion. Hal. 6.90.2; Zon. 7.15 suggests that from their inception, the aediles were chosen by the people as assistants to the plebeian tribunes to look after the state archives. Mommsen *Staats.* 2.471f; for aediles in general, 2. 470-552.
- 124 Livy 6.42.
- 125 Livy 7.1.
- 126 Dion. Hal. 6.90.
- 127 By the *lex Aternia Tarpeia*; see *Smith s.v. aedilis*.
- 128 Aspiring politicians, however, ignored it at their peril, e.g., Plut. *Sulla* 5; Cic. *Off.* 2.57f.
- 129 Gell. *N.A.* 13.15.1.; See Lintott (1968), p.93-4 for a discussion of *coercitio*.
- 130 Plautus *Persa* 159; *Trin.* 990.
- 131 Macrob. *Sat.* 2.6.1.
- 132 Suet. *Aug.* 14; 40.1; for his use of an *apparitor* to expel a soldier who had seated himself in the first 14 rows; Juv. *Sat.* 3.154 for the summary ejection of the impoverished and undeserving from the first 14 rows; cp. the discussion in M. Reinhold (1971), p.282;

- Cass. Dio 54.2.3; Augustus gradually deprived the college of many of its major duties.
- 133 The functions of the Roman aediles were similar in many respects to those of the Greek ἀγορανόμοι.
- 134 Pliny *N.H.* 15.2; 18.15; Livy 10.11.9; 33.42.8; Plut. *Cic.* 8.1 for an example of cooperation between aedile and grateful provincials to lower food prices.
- 135 Plaut. *Capt.* 492; Livy 38.35.
- 136 Cic. *Fam.* 8.6.5.
- 137 Tac. *Ann.* 3.55 & 3.54; C. Bibulus and other aediles specifically complained that the maximum prices of foodstuffs were being exceeded and that stern measures were required.
- 138 Tac. *Ann.* 3.55: *auditis Caesaris litteris, remissa aedilibus talis cura*; Suet. *Claud.* 38.2.
- 139 Juv. *Sat.* 10.102.
- 140 Livy 10.23.11; 35.41.10; 7.28.9; Pliny *N.H.* 33.1.19.
- 141 Greenidge (1901) 211; Gell. *N.A.* 4.2.1.
- 142 *Leg.* 3.7.
- 143 Perhaps the aediles assumed many of their duties when these magistrates were not in office.
Livy 7.16.9; 10.13.14. Fines were exacted for transgressions of the agrarian laws; on this see Lintott (1968) p.97.
- 144 Cic. *Fam.* 8.6.4 records an intervention to prevent collusion between *tabernarii* and *aquarii* to filch more than their allocated share of the public water supply; Cass. Dio 49.43.1.
- 145 For the whitening of pillars, see Cic. *Verr.* II.1.55.145.
- 146 Cass. Dio 59.12.3; Suet. *Vesp.* 5.3.
- 147 Especially *CIL* 6.12389 = Bruns p.385; 6.1375; *CIL* 1.591 s.c. *de Montana Pago*; cf. an inscription from Rome recording: - *isdem corporibus tralatis perm(issu) trib(unorum) pl(ebis)*; Dessau 8389 = Bruns p.386. See Mommsen *Staats.* 2.512f on their *cura urbis*. Cic. *Att.* 12.35 relates that if the maximum sum to be spent on a funerary *monumentum* was surpassed, an amount equal to the excess had to be paid into the public treasury.
- 148 Cic. *Phil.* 9.7.1f; Ovid *Fasti* 6.663 for the aedilician limit of 10 musicians.

- 149 Cic. *Verr.* II. 5.14.36.
- 150 Livy 25.1.10.
- 151 Livy 39.14.9. For later intervention, see Cass. Dio 49.43.5 (Agrippa).
- 152 Ovid *Trist.* 2.471; Hor. *C.* 3.24.84; Mart. *Ep.* 5.84.5; 14.1.3; Cic. *Phil.* 2.56; Asc. p.93 C.
- 153 Suet. *Tib.* 35.2; Tac. *Ann.* 2.85: *nam Vistilia, praetoria familia genita, licentiam stupri apud aedilis vulgaverat, more inter veteres recepto, qui satis poenarum adversum impudicas in ipsa professione flagitii credebant.* Gell. *N.A.* 16.7.12.
- 154 Gell. *N.A.* 4.14.1.
- 155 Livy 8.22.3; Val. Max.8.1.abs.7; Cn. Sergius Silo was condemned on a similar charge, Val. Max. 6.1.8.
- 156 Livy 10.31.9.
- 157 Plut. *Marc.* 2.3; Val. Max. 6.1.7.
- 158 Livy 25.2.9.
- 159 Val. Max. 6.1.8.
- 160 Suet. *Tib.* 34.1. The nature of aedilician jurisdiction changed substantially with Augustus and it is unwise to make inferences about their competency in the Republic from evidence supplied in the early Empire.
- 161 Suet. *Claud.* 38.2: *qua de causa etiam coercionem popinarum aedilibus ademit.* See also Plaut. *Capt.* 823; Cic. *Fam.* 8.6.4.
- 162 Suet. *Aug.* 40.5.
- 163 Exemplified by the indictment of C. Furius Chresimus by the curule aedile Sp. Albinus (Pliny *N.H.*18.41-2):...*ceu fruges alienas perliceret veneficiis.*
- 164 See R.A. Bauman 'Criminal Prosecutions by the Aediles' *Latomus* 33 (1974), p.245-64.
- 165 331 B.C. Livy 8.18.4; Val. Max. 2.5.3; Oros. 3.10.2.
- 166 Suet. *Tib.*2.3; Livy *Per.*19; Gell. *N.A.* 10.6.1f; Val. Max. 8.1.4.
- 167 Cic. *Ad Quint. frat.* 2.3.2.
- 168 See Bauman (1974) 254f and Lintott (1968) 97f for a full list of references to pecuniary fines, eg. Livy 7.16.9; 10.23.11; 10.31.9; 10.33.9; 10.47.9; 33.42.10; 35.10.11; 35.41.9; 38.35.5; Ovid *Fasti* 5.285.
- 169 Plut. *Marc.* 2.3; Val. Max. 6.1.7.

- 170 See the article on *senatus* in *OCD*. The **legal** status of the *senatus consultum* and *decretum patrum* changed in the empire. Recently, M. Beard and M. Crawford (1985), 58-61 have pointed out the inadequacy of describing the senate's role purely in terms of its advisory functions.
- 171 Appian *B.C.* 1.43; Pliny *N.H.* 21.7.
- 172 Appian *B.C.* 1.23.
- 173 Gell. *N.A.* 15.11.1; Pliny *N.H.* 29.16.
- 174 Livy 39.14.4; 39.18.7; CIL 1.581.
- 175 Val. Max. 2.4.2.
- 176 Gell. *N.A.* 2.24.2.
- 177 Pliny *N.H.* 34.24; 34.93.
- 178 Pliny *N.H.* 8.135.
- 179 Pliny *N.H.* 3.138; 33.78. As Michael Crawford has pointed out to me, this measure may well have been occasioned by tears for the security of the country. The fiscal repercussions of a swift exploitation of mineral wealth may have been a contributing factor.
- 180 Furnishing crucial proof of the legislator's avowed intentions.
- D. Daube *Forms of Roman Legislation* (Oxford, 1956) p.8f examines the differing phraseology employed in *s.c.*, *mag. edicts* etc and points out (p.78) that part of the explanation lies in the fact that, strictly, *s.c.* were issued as advice to magistrates. However, I do not agree with his conclusion that the decrees were not framed with the people at large in mind.
- 181 Perhaps established in the early years of the third century B.C.; Livy *Ep.* 11; Plaut. *Truc.* 761.
- 182 W. Kunkel in *An Introduction to Roman Legal and Constitutional History* trans. by J.M. Kelly (Oxford, 1972), p.69 refers to the 'police court' of the *tresviri*. *Contra* W. Nippel (1984), p.20f.
- 183 Gell. *N.A.* 13.15.4; Cic. *Cluent.* 39.
- 184 By the first century B.C. it became the practice to allow Roman citizens condemned on a capital charge to withdraw into voluntary exile. See W. Kunkel (1972), p.68-9 for the traditional view that offenders of a 'lower social stratum' might be summarily put to death by the *tresviri*.
On their prison duties see Cic. *Leg.* 3.6; Pomp. *Dig.*

- 1.2.2.30... *tresviri capitales qui carceris custodiam habuerit.*; Val. Max. 6.1.10; Pliny *N.H.* 21.7; Plaut. *Amphit.* 155.
- 185 Livy 9.46.3; 39.14.10; Val. Max. 8.1.damn.5 (169 B.C.); 8.1.damn.6 (56 B.C.) condemnation for neglect of duties.
- 186 See W. Nippel's discussion (1984), p.22.
- 187 Pliny *N.H.* 21.7; 21.10.
- 188 Livy 25.1.6-12.
- 189 Livy 39.14.10.
- 190 Val. Max. 6.1.10.
- 191 Gell. *N.A.* 3.3.15. Cp. Varro *L.L.* 5.81 for the charge of *maleficia* and *tresviri*; Val. Max. 6.1.10; Plautus *Miles* 211.
- 192 Cic. *Rep.* 4.12: *si quis occentavisset sive carmen condidisset, quod infamiam faceret flagitiumve alteri.*
- 193 *lex Col. Gen.* 132.
- 194 Val. Max. 8.4.2; Hor. *Epod.* 4.11; Asc. p.37 C.
- 195 Schol. on Cic. *Div. in Caecil.* 50; Cic. *Cluent.* 39.
- 196 See W. Nippel (1984), 20f.
- 197 Plautus *Aul.* 416: *quia ad tris viros iam ego deferam nomen tuom.*; *Asin.* 131: *...ibo ego ad tres viros vostraque ibi nomina faxo erunt...*; *Festus s.v. sacramentum* p. 468 L.
- See further the discussions by Fr. La Rosa 'Note sui *Tresviri Capitales*' in *Labeo* 3 (1957), p.231f and Lintott (1968) p.104f; M. Voigt (1890) p.276f. For examples of *manus iniectio* see Plautus *Persa* 70; *Truc.* 762.
- 198 J.M. Kelly (1966), 171, i.e., by 'taking money to caluminate others'. In the *edicta praetorum*, ch.9 *de calumniatoribus* (Bruns p.216) a fourfold penalty is imposed on those who accept money *causa calumniae*.
- 199 Notice a sepulchral inscription from Ostia CIL 14.850 = Bruns p.382 which, after specifying the type of punishment for violation, adds: *delator quartas accipiet.*
- 200 Plut. *Sol.* 18.5. There, as R. Osborne observed in his discussion of Dem. XXII.25f, the unequal capacities of people to obtain legal redress for injury was recognized by the provision of a range of procedures available for the prosecution of miscreants. Different strategies carried varying risks for the plaintiff in the event of

- failure and penalties of varying severity for the guilty party; 'Law in Action in Classical Athens' *JHS* 105 1985, 40-58. For a convenient summary of the different types of actions, see *OCD* s.v. DIKE.3.
- 201 Especially Plaut. *Truc.* 759f for a possible infraction of a law against pandering or prostitution; *Persa* 72f.
- 202 Gaius 4.23 informs us that a *manus inectio* was permitted in the case of a person who was not exempted from the operation of this law. This procedure was allowed by the *lex Maenia* concerning usury. See A. Watson *The Roman Law of Succession*. Notice that in the *s.c. de aquaeductibus* 11 B.C. *caput* 127 *FIRA* I. 280, a penalty of 10,000 H.S. was imposed of which a half was reserved as a reward for the accuser.
- 203 Schol. *In Cic. Div.* 24.
- 204 Cass. Dio 54.18.2. The evidence for *leges imperfectae* is late. See Ulpian *Reg.* 1-2. 2.17.3. Despite the neat list of categories offered by most legal handbooks, I doubt whether this classification existed at all in the Republic. See Rotondi (1912), p.253.
- 205 Asc. p.54 C.; cp. *Cic. Div. in Caec.* 24; 68.
As J.M. Kelly (1966) has pointed out, the quadruple penalty was an abnormal punishment which might suggest that it was difficult to secure a conviction, e.g., one major category of those affected, the usurers, were in a position of such financial strength that they were often above the law. For quadruple penalty see *Cato Agri. prooemium*; *Tac. Ann.* 6.16; *Livy* 7.28 for aedilician action against usurers.
- 206 Plaut. *Persa* 62.
- 207 H. Schoeck' (1969) 27 comments on Swedish tax returns.
In Renaissance Venice secret boxes were put up where anonymous accusations might be made; Newett (1907).
- 208 On adultery trials see Cass. Dio 58.24.5; 60.8.5; *Suet. Aug.* 5; 67.2; *Dom.* 8.3.
- 209 Pliny *Pan.* 42.1-3f.

VI

OPPOSITION AND REPEAL: ALTERNATIVE VIEWS ON SOCIAL CHANGE

Initiative and support for sumptuary regulation emanated, in the first instance, amongst the privileged sections of Roman society. In the case of the *lex Licinia* 107 B.C. (?), so fervent was the backing on the part of the *optimates* that a senatorial decree was issued directing the observation of its provisions as soon as it was promulgated, before the people had formally expressed their concurrence. Julius Caesar's zeal in ensuring compliance with his expenditure curbs provoked comment while in the early Principate, it was the senatorial and equestrian orders who petitioned insistently for legal restrictions on a wide range of goods and symbols.¹ But the merits of these statutes had to be made sufficiently clear to convince the Roman populace at large. Indeed, during the Republic, many of the major acts of social reform were passed through the plebeian assembly.²

As was suggested in chapter 2, this legislation was presented in the context of the anti-luxury polemic which advertised the fearful consequences of moral decline and which formed an important part of the dominant ideology. The apprehensions of the ruling order were disseminated through the available avenues of communication. Such rogations, decrees or *edicta*, it was argued, were of crucial importance for the safety of the Republic.

However, the assent of the Roman plebs could not be taken for granted although it is not easy to evaluate the comments in the ancient sources on this aspect. Plutarch's account of the electoral endorsement that the Elder Cato's candidature for the censorship received in 184 B.C., and the accolade he received on the completion of the *lustrum*, suggests

consentaneity with his stern policy of moral reform, yet not ten years had lapsed since the *lex Oppia* had been overturned with the agreement of all thirty-five tribes.⁴ In *Ode* 4.5.19-24 Horace might celebrate Augustus' social reforms as an unqualified success though in A.D.9 overt disenchantment with his *lex Iulia de maritandis ordinibus* produced a scathing public harangue from the first *princeps*. As might be expected, the classical historians largely reflect the preoccupations of the governing authority on this subject.

But this orthodoxy, which was so seriously at variance with social practice, inevitably came under fire. On what occasions was the received doctrine challenged? When and for what reasons were different perspectives or alternative courses of action advanced?

In the introduction to this thesis, I highlighted the importance of the legal/judicial process by likening it to a juncture - a place where the ideas, fears and aims of governing bodies were translated into concrete action, where policy was put into effect. It would be a mistake to posit a one-way process, a simple imposition of diktat. At such a point, the limitations as well as the capabilities of power are evidenced. Resistance might surface in open defiance, confrontation, partial observance or neglect. In the Republic, popular participation in, for instance, the elections for office, declarations of war and peace and the voting of laws exerted a significant bearing on the type of programme that the ruling order might enact.

The problem for the Roman aristocracy lay in the very mechanisms of political competition. The lavish feasts, spectacular shows and other subsidies which attended canvassing for, and occupancy of, magisterial office were eagerly anticipated by the populace. As large sections of the plebs became increasingly dependent on this largesse, there was a corresponding growth in the demand for such entertainment in the late Republic. In his dissuasion of a proposal to extend citizenship rights in 122 B.C. the turncoat C. Fannius cynically manipulated the selfish instincts of the Roman plebs:

*si Latinis civitatem dederitis, credo, existimatis vos ita, ut nunc constitistis, in contione habituros locum aut ludis et festis diebus interfuturos. nonne illos omnia occupaturos putatis?'*¹³

Competitive spending on these functions introduced an element of auctioneering into electoral contests with rival candidates vying to outbid each other for ever higher stakes.

Restrictions on private consumption fared no better. The realities of consumer behaviour, imperfectly understood today, baffled ancient commentators.

Opposition manifested itself in a variety of ways. Constitutionally, it might be expressed through the formal abrogation of a measure. The *lex Valeria-Fundania* and the *lex Aufidia de feris* fall into this category. In addition, fragments of speeches made by the Elder Cato suggest that a serious attempt was made to repeal the *lex Orchia* while the worth of the *lex Aemilia* was questioned soon after its promulgation.

The first century B.C. witnessed some spirited rejoinders to further attempts to restrict expenditure. M. Duronius' heretical outburst against P. Licinius Crassus' comprehensive reimposition of legal restraint on *luxus mensae* provoked censorial disapproval. In a remarkable deviation from the governing-order's ideological straightjacket, the belief in the antique ideals of *frugalitas* and *parsimonia* was scorned in an outspoken assertion of popular freedom.¹⁴

freni sunt iniecti vobis, Quirites, nullo modo perpetiendi. alligati et constricti estis amaro vinculo severitatis: lex enim lata est, quae vos esse frugi iubet. abrogemus igitur istud horridae vetustatis rubigine obsitum imperium. etenim quid opus libertate, si volentibus luxu perire non licet.

Political opportunism dictated a voluntarist stance. More immediate considerations of self-interest were thought to have prompted Q. Hortensius Hortalus' dissuasion of the *rogatio Licinia-Pompeia* :

For they [the consuls of 55 B.C.] endeavoured to bridle the cost of living which had risen dramatically although they themselves had set the pace in luxury and splendour;

however, this very point stopped them from legislating. For Hortensius, being one of the most prodigal of men, surveying the magnitude of the city and commending both the extravagance of their abodes and their magnanimity towards others induced them to change their minds, utilizing their way of life as part of his case. Shamed by his opposition and, besides, fearing to seem to be preventing others, through envy, from enjoying those things in which they took pleasure, they retracted their bill of their own accord.'

Tacitus records the dismal failure of a later attempt by Pompey to correct the moral failings of society:

tum Cn. Pompeius, tertium consul corrigendis moribus delectus et gravior remediis quam delicta erant suarumque legum auctor idem ac subversor, quae armis tuebatur armis amisit.'

In fact, the charge of humbug was, with considerable justification, one of the most effective counters to overeager endeavours at legal imposition.

"felicis tempora, quae te moribus opponunt. habeat iam Roma pudorem, tertius e caelo cecidit Cato. sed tamen unde haec emis, hirsuto spirant opobalsama collo quae tibi? ne pudeat dominum monstrare tabernae. quod si vexantur leges ac iura, citari ante omnes debet Scantinia: respice primum et scrutare viros; faciunt nam plura, sed illos defendit numerus iunctaeque umbone phalanges. magna inter molles concordia."

This devastating expose of double standards, which Juvenal put into the mouth of Laronia, was sparked by the odious machinations of Domitian.' It will serve to introduce a catalogue of active proponents in the sphere of sumptuary restraint who were themselves culpable or indulgent extravagance. M. Aemilius Scaurus, for example, made an astounding bid of 700,000 HS for the grammarian Lutatius Daphnis.' The dictator Sulla flagrantly contravened his recently enacted restrictions on banqueting and funerary expenditure in his attempt to drown his sorrows on the death of Metella.' In the early part of his career Julius Caesar incurred huge debts in his attempt to win popular favour by fabulous largesse.' Little needs to be appended to Macrobius' comments on the impudence of M.

Antonius' foray into the area of sumptuary restraint while Augustus' favourite pastime was dicing, an activity blacked by legal statute except on the occasion of the *Saturnalia*.¹⁴ The hypocrisy of Seneca, a notable advocate of restraint, became proverbial even amongst classical authors who made generous allowance for the gap between ideal and practice.¹⁵

But no incident captures more tellingly the ambiguities of the situation than the unseemly quarrel of the censors of 92 B.C., L. Licinius Crassus and Cn. Domitius Ahenobarbus. When the latter severely rebuked his colleague for living extravagantly especially for his use of 10 pillars of Hymettian marble, imported for his aedilician *ludi scaenici*, to embellish his own house, Crassus challenged Ahenobarbus to offer an evaluation of his property. Six million sestertii came the reply but without the ten *loti* (nettle trees), only half this amount:

*tunc Crassus: 'uter igitur luxuriosior est, egone, qui decem columnas centum milibus nummum emi, an tu, qui decem arbuscularum umbram tricies sestertii summa compensas?'*¹⁶

Objections to the prevailing conformity on this subject continued to be raised in the early Principate. Asinius Gallus' striking critique of orthodox views on tradition and luxury was, like the speeches of M. Duronius and Q. Hortensius, elicited by attempts to extend sumptuary restraint in A.D. 16:

*auctu imperii adolevisse etiam privatas opes, idque non novum, sed e vetustissimis moribus: aliam apud Fabricios, aliam apud Scipiones pecuniam; et cuncta ad rem publicam referri, qua tenui angustas civium domos, postquam eo magnificentiae venerit, gliscere singulos. neque in familia et argento quaeque ad usum parentur nimium aliquid aut modicum nisi ex fortuna possidentis. distinctos senatus et equitum census, non quia diversi natura, sed ut sicut locis, ordinibus, dignationibus antissent, ita iis quae ad requiem animi aut salubritatem corporum parentur, nisi forte clarissimo cuique pluris curas, maiora pericula subeunda, delenimentis curarum et periculorum carendum esse.*¹⁷

Static ideals of old-world thrift were supplanted by insights into the relativity of luxury. Personal opulence,

one is advised, should be adjudged according to the economic criteria of the age and the fortunes of the state. Disparities in means and expenditure could be justified with respect to the dignity of the individual. This frank admission of hierarchical realities testifies to alterations in the political circumstances and in the preoccupations of the senatorial order.

Notwithstanding Gallus' *sub nominibus honestis confessio vitiorum* the clamour for sumptuary restraint was renewed six years later. On this occasion it was parried by the emperor himself mindful of the inefficacy of previous enactments and the odium which might be incurred through searching governmental intrusion into private affairs. After bemoaning the ubiquity of the evil and the impossibility of a return to ancient ways, Tiberius countenanced caution in the extension of public regulation. Social pressures might well prove more effective than statute. The fabled *parsimonia* of their ancestors was traced both to their innate temperance and the absence of empire. While he was prepared to discharge those pressing responsibilities upon which the existence of the state depended: *reliquis intra animum medendum est: nos pudor, pauperes necessitas, divites satias in melius mutet.*"

On occasions, resistance to prominent acts of reform might surface in open demonstrations of dissent. Tradition records that female disenchantment with the *lex Oppia* was overtly demonstrated. Caesar Octavian was forced to abandon his earliest attempt to correct morals in 28 B.C." Resentment simmered throughout his reign from those very groups which his laws were designed to affect. Cassius Dio describes how Augustus, exasperated by a show of dissent by knights at a public show, segregated the bachelors from the married and subjected the former to an unpleasant harangue." Belated modification of the severest clauses in his marriage laws exhibits a degree of recognition of this opposition.

Frequently, unrealistic attempts to discipline behaviour or to curb expenditure resulted in widespread disobedience or circumvention. The ancient sources bemoan the general propensity to disregard sumptuary legislation. Macrobius,

deploring the tenacity of vice and extravagance, records that Antius Restio never ventured to dine out for the rest of his life for fear of witnessing contempt for his own law.¹¹ Athenaeus preserves a sadder testimony. Out of thousands of people only three bothered to observe the Fannian law and even these law-abiding individuals, Mucius Scaevola, Aelius Tubero and Rutilius Rufus, (motivated by Stoic precepts) paid lip-service to the letter of the law since they discovered ample scope for loopholes.¹²

Indeed evasion was a common response to the efforts of Roman sumptuary legislators. A tralatitian clause in the censorial edict forbade the serving of any bird at dinner save one hen (*gallina*) which had not been fattened: *inventumque deverticulum est in fraudem earum gallinaceos quoque pascendi lacte madidis cibis: multo ita gratiores adprobantur.*¹³ A chance fragment from a speech of the Elder Cato in connection with the *lex Orchia* perhaps demonstrates just how difficult it was to ensure observance of these laws: *percunctatum patris familiae nomen ne quis servum mitteret, lege sanctum fuisse ait Cato in ea, qua legem Orchiam dissuadet.*¹⁴ Similarly the clause in the *lex Colonia Genetivae Iuliae*, which expressly brought women within the orbit of the law, may have been motivated by a desire to foreclose a loophole exploited in the banqueting restrictions.¹⁵ A final example is afforded by the dodge of Vatinius who sidestepped Cicero's *lex de ambitu* by exhibiting what he termed beast-fighters (*bestiarii*) instead of gladiators proscribed by the law.¹⁶ Such hair-splitting distinctions were encouraged by the extreme punctiliousness of the Roman attitude towards legal practice. As a cursory glance at almost any surviving inscription will demonstrate, enormous pains were taken to specify the exact substance, time and location of the outlawed practice. This precision was grist-to-the-mill of the Roman *legirupio*.¹⁷

Emblematic Usurpation

Impatience with legal restraint also surfaced in the form of emblematic usurpation.¹⁸ Where possibilities for social

advancement were foreclosed by statute, disadvantaged individuals devised covert, or in many cases illicit, methods to surmount these hurdles in order to gain access to favoured social categories. The aspirations of wealthy freedmen to equestrian status from which they were legally excluded resulted in the irregular assumption of three distinctive symbols - the gold ring, theatre privileges and Roman *nomina*.

By the late Republic the right to wear a gold ring became identified with the attainment of equestrian *dignitas*.⁴⁹ Occasionally, senior Roman magistrates might reward those who had provided exceptionally loyal or courageous service to the Republic with the *ius anuli aurei*, a practice which was continued by the early emperors.⁵⁰ Actors were another group who were affected by the rules governing acquisition of equestrian status. When a Roman *eques*, Decimus Laberius, was forced to participate in his own mimes by Julius Caesar, he suffered instant degradation although at a later stage the dictator restored him to his former dignity by specifically granting him the gold ring and the right to take his place in the *quattuordecim ordines*.⁵¹

The stern measures taken by the early emperors suggest an increasing incidence of this type of irregularity. Claudius, in particular, was incensed at the conduct of freedmen who posed as Roman knights and, in the case of men of foreign extraction who fraudulently employed Roman *gentilicia nomina*, execution was enjoined.⁵²

Association with equestrian standing was achieved by another subterfuge - the use of gilt rings.⁵³ In fact, on a wider scale, cheap forgeries of costly status symbols proved popular during this period.⁵⁴

The resentment amongst free-born Roman citizens occasioned by the illegal occupation of privileged theatre seating by rich freedmen found resonance in the satirists.⁵⁵ Further, the plutocratic realities of the status hierarchy in the early Empire are evidenced in the comments of Juvenal who deplored the visible signs of inter-generational mobility amongst the offspring of those who had plied trades traditionally regarded as ignominious:

*nil habet infelix paupertas durius in se,
quam quod ridiculos homines facit. 'exeat,' inquit,
'si pudor est, et de pulvino surgat equestri
cuius res legi non sufficit, et sedeant hic
lenonum pueri quocumque ex fornice nati;
hic plaudat nitidi praeconis filius inter
pinnirapi cultos iuvenes iuvenesque lanistae':
sic libitum vano, qui nos distinxit, Othoni.*"

The preceding discussion illustrates what modern sociologists term 'status dissonance' - a phenomenon which is particularly evident in the case of those who fail to command a positive correlation between their financial and social standing.³⁷ The imperial authorities' task of policing the orders was complicated by the propensity of members of privileged groups, both men and women, to incur voluntary degradation. It involved the pursuit of activities traditionally held unbecoming to representatives of their order.³⁸ Participation in public exhibitions proved irresistibly attractive to certain senators and equestrians.³⁹ Appearances on the stage, in the arena and circus were the commonest faults. Some *femmes fatales* eschewed the dignity of *matronae* and opted for prostitution. As a consequence of the severe penalties to which members of specified orders were liable, many were prepared to suffer formal disgrace.⁴⁰

*feminae famosae, ut ad evitandis legum poenas iure ac
dignitate matronali exsolverentur, lenocinium profiteri
coeperant, et ex iuventute utriusque ordinis
profligatissimus quisque, quominus in opera scaenae
harenaeque edenda senatus consulto teneretur, famosi
iudicii notam sponte subibant;*

Suetonius *Tib.* 35.2.⁴¹

The reason for their determination is unclear. In the case of women, classical authors attributed their failings to sexual perversity. Avoidance of clumsy, legal imposition of ancient ideals of conduct provides a more compelling explanation. Public spectacles provided an obvious context for the display of individual prowess, whether it involved artistic or physical excellence, by which large numbers of spectators might be impressed.⁴² Such opportunities to receive ecstatic popular acclamation encouraged narcissistic tendencies even amongst emperors.⁴³

Morals and forensic practice

Proudly invoked on epitaphs,⁴⁴ explicit in censorial and praetorian edicts,⁴⁵ highlighted in *commendationes*,⁴⁶ specified in the texts of laws or imperial missives,⁴⁷ the *mores maiorum* permeated almost every important aspect of social and political life at Rome.

Nowhere does discussion of morality achieve a higher profile than in forensic practice. In Roman litigation, as much trouble was taken to establish the character of the accused (and the probity of the witnesses) as in proving or refuting the validity of the charges levelled against him. It is as though the nature of the evidence was subordinated to the question 'Is he the type of person who is capable of committing such a deed?'⁴⁸ In his rebuttal of the suit, the defendant relied more on that complex bundle which comprised his social and political history - his *dignitas*, his occupation, his family and personal connections, his individual and ancestral achievements - than on arguments *ad rem*.⁴⁹

Indeed the lax social climate of the late Republic and early Principate facilitated the task of a prosecuting lawyer with a sharp eye for spotting manifestations of moral depravity or departure from publicly acceptable canons of behaviour. The topics of luxury and decadence, with their emotionally-charged associations with contemporary problems and their nostalgic evocation of the halcyon virtues of a past age, offered ample scope for rhetorical exaggeration and for political point-scoring.

Cicero expatiated on Verres' disreputable youth and stubborn addiction to a plurality of vices. His connections with *lenones*, *aleatores*, and *perductores*, his indulgence in nocturnal orgies (*bacchationes*) were the stock-in-trade allegations of accusers, anxious to impugn their adversary's reputation and to press home their case.⁵⁰ Witnesses for the defence were denigrated in a similar fashion - drenched in perfume, inebriated, keeping up all hours of the night - were common charges.⁵¹ The orator stigmatised his political opponents Calpurnius Piso and Gabinius; the former for frequenting *ganeeae* and *popinae* and for his lavish *epulae*,⁵²

the latter for his sexual lubricity and his lewd dancing (*saltatio*).⁵⁴ Failings were stressed or glossed, virtues magnified or depreciated as the requirements of the case dictated. In his defence of Fonteius, Cicero dwells upon his client's uprightness, utilising the received doctrine of moral decline in order to ascribe a singularity to his moral qualities and selfless devotion to the Republic:

(40) *frugi igitur hominem, iudices, frugi, inquam, et in omnibus vitae partibus moderatum ac temperantem, plenum pudoris, plenum officii, plenum religionis videtis positum in vestra [jurors'] fide ac potestate... (42) fuit enim maior talium virorum in hac re publica copia:*⁵⁴

Flaccus' outstanding rectitude was exhibited in the fact that he did not succumb, even at a tender age, to the *multiformae voluptates* that the province of Asia had to offer.⁵⁵ On another occasion Cicero was concerned to highlight his client's close association with the country to exculpate him of a grave misdemeanour:

*qua in re praetereo illud, quod mihi maximo argumento ad huius innocentiam poterat esse, in rusticis moribus, in victu arido, in hac horrida incultaque vita istius modi maleficia gigni non solere.*⁵⁶

Indeed a disquisition *de moribus* formed a crucial component in the structure of an advocate's brief. From a passage in *Pro Sulla*, it emerges that it was customary to deliver this part early in the case although its position was not fixed.⁵⁷ In a major trial, different aspects of the defence brief were allocated to particular advocates. During the trial of Sestius for example, while other speakers responded severally to the specific charges, it was left to Cicero to declaim *...de omni statu P. Sesti, de genere vitae, de natura, de moribus, de incredibili amore in bonos, de studio conservandae salutis communis atque otii...*⁵⁸ In the dialogue *De Oratore*, important advice is offered to aspiring rhetoricians whose task it is to win over the sceptical. Concentrate on the person's *dignitas, res gestae* and *existimatio vitae* - qualities which are easier to embellish if present than to invent. *Vetustatis exempla* can be introduced to substantiate one's position. Then the

person's *mores* should receive elaboration - *iustus, integer, religiosus*, enduring in hardship are the key notes. Moreover, this topic, whether it occurs in the introduction, narration or summing-up of the case is of such significance that it can even outweigh the importance of the evidence concerning the charge itself.⁵²⁹ In addition, prominent politicians or even communities might be called upon to supply character references (*laudationes*).⁵³⁰

At first sight, this in-built tendency to focus upon the moral qualities of the litigants would appear to reinforce the conservative orthodoxy on social change and related matters. The prosecuting counsel would obviously be concerned to illuminate the moral failings of the accused against the golden back-drop of the *mores maiorum*. The defence might draw upon the same ideal. Its importance was strengthened by the view, prevalent in antiquity, that one's character was basically fixed. Little room was allowed either for personal development or for chance, inexplicable actions which might, today, be termed 'out of character.'⁵³¹

One must suppose that the jury, selected from the most privileged orders of Roman society, would be highly receptive to this sort of argument. A single anecdote from Valerius Maximus will suffice to illustrate how sensitive the Roman audience was to flagrantly immoral behaviour. C. Cosconius, arraigned on a charge arising from the *lex Servilia*, was facing certain condemnation, when he was suddenly acquitted following the recitation of a jocular verse composed by his accuser Valerius Valentinus in which the latter celebrated his seduction of a *puer praetextatus* and an *ingenua virgo*.⁵³²

On the other hand, defending lawyers, anxious to mitigate imputations of their client's misconduct, might choose to adopt more realistic perceptions of social practice by declaiming on the perennial exuberance of youth - 'the sowing of wild oats' - or the influences of prosperity and imperial expansion on behavioural patterns. Indeed there is evidence to suggest that over-zealous attempts to denigrate the moral integrity of opponents led to this charge becoming hackneyed or simply disbelieved and rebounding in the faces of its proponent. Such a tactic was exploited by Cicero in

his defence of Caelius where he took considerable pains to mitigate the fierce attacks of the plaintiffs, above all of Lucius Herennius Balbus, the *subscriber* of Atratinus, who had expatiated: *...multa de luxurie, multa de libidine, multa de vitiis iuventutis, multa de moribus...* Cicero makes several perceptive points: firstly, he admits the possibility of character change, 'turning-over-a-new-leaf'; a person whose youth was devoted to the pursuit of pleasure might well develop into a serious-minded, responsible and even illustrious adult(28); secondly, he suggests that Caelius' accusers had loaded upon his client all the failings of contemporary Roman youth - in short, they had declaimed against a *topos* rather than the person under suspicion (29); thirdly, he subtly observes that the exacting standards of moral conduct, epitomised by the heroic figures of the past were appropriate to a much earlier stage in Roman history: *ex hoc genere illos fuisse arbitror Camillos, Fabricios, Curios omnesque eos, qui haec ex minimis tanta fecerunt. verum haec genera virtutum non solum in moribus nostris, sed vix iam in libris reperiuntur.*(39-40) Nor had this change only taken place amongst the Romans. The Greeks too had lapsed from their former pinnacles of glory. Furthermore, to demand of even the strong-minded and virtuous complete abstinence from all bodily and mental relaxation and pleasure is clearly unreasonable(39).⁴⁴ Finally, a plea is entered on behalf of youth: *sit adolescentia liberior; non omnia voluptatibus denegentur; non semper superet vera illa et directa ratio:*(42).

In his diatribe on L. Calpurnius Piso's vulgar libertinism, delivered before the senate in 55 B.C., Cicero is prepared to concede that an element of luxury may not be entirely unbecoming for a Roman gentleman:

*luxuriam autem nolite in isto hanc cogitare: est enim quaedam, quamquam omnis est vitiosa atque turpis, tamen ingenuo ac libero dignior: nihil apud hunc lautum, nihil elegans, nihil exquisitum - laudabo inimicum - quin ne magno opere quidem quicquam praeter libidines sumptuosum.*⁴⁵

In his defence of Verres, Hortensius, concerned to parry the devastating indictment of his client's behaviour, may have gone so far as to suggest that the 'golden-age' of Rome's greatness was more imaginary than real - a possibility Cicero was determined to refute or preempt: *non me fugit, iudices, vetera exempla pro fictis fabulis iam audiri atque haberi; in his temporibus versabor miseris ac perditis.*'' In fact Cicero took pains to close off the escape route which argued that Verres' behaviour was merely in line with the prevailing degeneracy. Granted that serious miscarriages of justice were occurring elsewhere, all the more reason for an example to be made of Verres' glaring improbities.''

Thus, the very adversative mechanisms of Roman forensic practice may have contributed towards the articulation of alternative views on social change, provoking maturer reflections on the relativity of luxury and suggesting that less exacting codes of behaviour need not involve decline or spell disaster for the state. Advocates could not afford to indulge in blanket denunciations of all hedonistic pursuits. They had to be judicious in their choice of *exempla* and to avoid oversimplified assertions. Experienced legal practitioners like Q. Hortensius Hortalus put their knowledge gained at the bar to wider political use.'''

Roman attitudes towards change

In general, the Romans were highly apprehensive about admitting innovations. Those impatient with established constitutional practice were depicted as plotting *revolution* (*novae res*).'' Radical proposals to relieve debt (*novae tabulae*) fell into this category too.''' The setting of precedents was frowned upon. An early tradition recorded by Livy preserves the disapproval incurred by the consul Cn. Manlius for promulgating a law in his camp rather than through the recognised procedure in Rome.''' Another such novel and bad example was set by the praetor M. Iuventius Thalna in 167 B.C. who proposed a law to the people without first having consulted the senate.''' Livy's dramatic set-

piece on the pros and cons of segregating the senators from the rest of the people at the Megalesian games in 194 B.C. contains a comment to which most conservatively-minded Romans would have concurred: *adeo nihil motum ex antiquo probabile est; veteribus, nisi quae usus evidenter arguit, stari malunt.*⁷³ The onus was placed on those who advocated departure from past practice to prove that change was justified.⁷⁴ Athenaeus, in a passage which owes a heavy debt to Poseidonius, praises the Romans of earlier times for their adherence to ancestral custom and simultaneous adoption of the worthy practices of their subjects. He lists their astute military borrowings but gloomily concludes that Romans of a later time imitated that which was both useful and deleterious. Decadence was perceived in the abandonment of the venerable qualities of self-restraint, frugality, endurance, good faith and simplicity in worship.⁷⁵ In a similar vein, Polybius castigated the despoliation of Syracuse by Marcellus in 211 B.C. observing that Rome's rise to greatness had been achieved by retention of its ancestral virtues, eschewing all unnecessary extravagance.⁷⁶

In a famous debate on the admission of the *primores Galliae Comatae* into the ranks of the senate, the emperor Claudius, anticipating chauvinistic disparagement of his plans, enumerated the diverse constitutional innovations that had occurred since the founding of the city. Just as the addition of new offices had regularly been sanctioned, so ought the extension of citizenship and the injection of new blood into the senatorial order.⁷⁷ In Tacitus' redaction of the speech, the contribution of peoples from Latium, Etruria, other regions of Italy and even from beyond the Po is extolled. The Sabine origins of the Claudian *gens* were advanced by way of example. From the Roman state, excellence had never been turned away.⁷⁸ The parochial exclusivity of the Greek city-states had been the occasion of their downfall. That which is now considered of great antiquity was, at one time, a novelty: *inveterascet hoc quoque, et quod hodie exemplis tuemur, inter exempla erit.*⁷⁹

But these sentiments stand out precisely because they are so rare. Moreover, they were not spontaneous animadversions

on the desirability of continuity or innovation. In the case of Claudius, his intention was to placate powerful political opposition.¹¹³

This ostensible resistance to change was part of a wider conservatism which dictated a hostile attitude towards luxury, extravagance, indeed any immoderate gratification or pleasure. Given these premises, a perception of decline, gradual or precipitous, became inevitable in the face of rapid alterations in economic and social circumstances. Improvements in moral welfare were rarely detected. Where amelioration was spotted, it was either localised or influenced by political *apologia*.

In the former category fall the chance value-judgements of the Elder Pliny on foreign marble and Macrobius' trite comments on *luxus mensae*.¹¹⁴ In the latter, the miraculous about-turns engendered by the accession of a new emperor.

The new turning-points

Moral decadence has a primordial counterpart - the Golden Age. In the early Principate political interests ushered in its return.¹¹⁵ Poets favourably inclined to the regime celebrated the restoration of ancestral ways. For some, ideals long-cherished had become, or were in the process of becoming, a social reality.¹¹⁶ No single conception of the *Saturnium regnum* was relied upon. Instead those who communicated the glad tidings drew upon a variety of motifs, concepts and images.¹¹⁷ The cessation of civil wars, the blessings of material prosperity and a host of other felicitous associations surrounded the advent of Caesar Augustus. As Jupiter is made to prophesy in *Aeneid* 1.289f:

*hunc tu olim caelo, spoliis Orientis onustum,
accipies segura; vocabitur hic quoque votis.
aspera tum positis mitiscent saecula bellis;
cana fides et Vesta, Remo cum fratre Quirinus
iura dabunt.*

Historians posited an abrupt reversion in the fortunes of the Roman state. Velleius Paterculus enthused:

finita vicesimo anno bella civilia, sepulta externa, revocata pax, sopitus ubique armorum furor, restituta vis legibus, iudiciis auctoritas, senatui maiestas, imperium magistratuum ad pristinum redactum modum, tantummodo octo praetoribus adlecti duo. prisca illa et antiqua rei publicae forma revocata.'''

The political and social rejuvenation which was portended by the victory of Caesar Octavian over the forces of Antony and Cleopatra logically precluded a further restoration of the state a few decades later but the fulsome apologist of the imperial house does not show any awareness of inconsistency as he lavishes similar praise on his chosen successor, Tiberius.

revocata in forum fides, sumkota e foro seditio, ambitio campo, discordia curia, sepultaeque ac situ obsitae iustitia, aequitas, industria civitati redditae; accessit magistratibus auctoritas, senatui maiestas, iudiciis gravitas; compressa theatralis seditio, recte faciendi omnibus aut incussa voluntas aut imposita necessitas.'''

For Valerius Maximus too there was no more blessed age than the period of Tiberius' sway.''' Striking epigraphic evidence preserves a vivid picture of Augustus as "the saviour", rescuing the empire from certain disintegration and heralding a new dawn for the world. In his celebration of the Princeps' birthday, the proconsul of Asia Paullus Fabius Maximus proclaimed:

ἦν τῆι τῶν πάντων ἀρχῆι ἴσθην δικαίως ἂν εἶναι ὑπ[ολά]βοιμεν,
καὶ εἰ μὴ τῆι φύσει, τῶι γε χρησίμωι, εἴ γε οὐδέ[ν ο]ύχι
διαπεῖπτον καὶ εἰς ἀτυ-
χῆς μεταβεβηκὸς σχῆμα ἀνῶρθωσεν, ἑτέραν τε ἔδωκεν παντὶ τῶι
κόσμωι ὄψιν, ἥδιστα ἂν δεξαμένωι φθοράν, εἰ μὴ τὸ κοινὸν
πάντων εὐ-
τύχημα ἐπεγεννήθη Καῖσαρ. διὸ ἂν τις δικαίως ὑπολάβοι τοῦτο
ἀτῶι
ἀρχὴν τοῦ βίου καὶ τῆς ζωῆς γεγονέναι, ὃ ἔστιν πέρας καὶ ὄρος
τοῦ με-
ταμέλεσθαι, ὅτι γεγέννηται.

Such atavism reinforced previous evaluations of the past. A powerful element of retribution was injected into their explanation of recent disasters. Moral vices were diagnosed as responsible for the political instabilities of the late Republic. Their correction was advised. Augustus relished the task. The convenient juxtaposition of his *pax* with the bloody strife of the preceding generations lent plausibility to his claims of a successful renaissance.

Some were unconvinced by these assertions. Progress in morals was easier to affirm than to spot. Ovid, above all, took issue with the major assumptions of the official orthodoxy. Had this age of virtuous perfection ever existed, he queried? Lust for gain tainted even the primeval Romans though the chances to indulge their passions were fewer.⁸⁰ This demolition of the treasured myth about the past undermined a central premise of the ideology of decline. Nor were the venerable traditions of pastoral simplicity and rustic piety worth recalling. The poet much preferred the sophistication and culture that the contemporary era conferred.⁸¹ Further, while officially-inspired sentiment celebrated Augustus' expiation of the vices of their fathers the poet, as Andrew Wallace-Hadrill acutely observed, insinuates that this narrative of sin was a preoccupation of the imperial house.⁸² Ovid mocked at suggestions of a new golden age and called into question Augustus' divine pretensions. The present epoch was aureate only in so far as money could buy love.⁸³ He could not resist an impertinent swipe at Julius Caesar's deification.⁸⁴ One by one he chipped away at the foundations of the official ideology. Humiliated by the conduct of his grand - daughter and by the sustained frivolity of Ovid Augustus' patience finally snapped. Actions and words were chastised with equal vigour.⁸⁵

Tacitus' analysis of changes in moral practice are more difficult to evaluate. In several passages, notably *Annales* 3.54f, he demonstrates a perspicacity which is lacking in most of his contemporaries. After outlining his general contention that luxury had reached its zenith during the century from the battle of Actium to the victory of Galba, he countenances the rejection of a simple unilinear

conception of social development. Things were not always better in the past. The present generation has its merits, too, which are worthy to be passed on for posterity to emulate. Several grounds for optimism are put forward: illustrious aristocratic houses, learning from the bitter lessons of the past, curtailed their sumptuous magnificence; *novi homines* adlected to the senate from municipal towns, colonies and even provincial communities introduced native standards of simplicity which they retained, despite enrichment, to old age.⁹⁵ But above all stood the potent example of Vespasian: *sed praecipuus adstricti moris auctor Vespasianus fuit, antiquo ipse cultu victuque*. Another model for social development was advanced: as with seasonal variations, so with *mores*, a kind of cyclical alteration in behavioural patterns may be indicated. A rare perception that moral changes can take place independently of political factors is adumbrated. It has been cogently argued that Tacitus' refreshing insights into the workings of social forces were prompted by observations drawn from developments in oratory.⁹⁶ However, two points ought to be made: firstly, that these passages cannot be taken as representative of Tacitus' views on the subject as a whole. Moral pessimism is a feature of his historical narrative.⁹⁷ Secondly, the influence of successful Flavian propaganda on this celebrated passage cannot be dismissed.⁹⁸ Indeed, few would concede that significant alterations in moral values can be effected by the replacement of one autocrat by another.

It has been a contention of this thesis that ideas are not autonomous. From as early as connected literary records permit to the end of the period under investigation, a battery of political, economic and social imperatives dictated a complex bridling of pleasures. Similarly, alternative views on moral change were rooted in social practice. Some were sparked by the mechanisms of forensic procedure, others by resistance to impetuous sumptuary legislators or by policy changes implemented by the imperial administration. Even so few would have dared to concur publicly with the assertion, attributed to Heracleides of Pontus by Athenaeus, that luxury actually exalted man:

Tyrants and kings, who are masters of all the goods that life holds and who have tested each one, prefer pleasure because pleasure promotes in the nature of man greatness of soul. Everyone who honours pleasure and opts for luxury is eminent and magnificent, like the Persians and the Medes. For they above all mankind esteem pleasure and luxury being the most courageous and illustrious of all the barbarians. Further, it is a token of freebirth to take one's pleasure and to live sumptuously since this relieves the soul and uplifts it. To labour is the sign of those of a servile or humble station on account of which their natures are attenuated too. Thus the city of the Athenians, so long as it prospered richly, was grand and produced lordly men... such men who were victorious at the battle of Marathon, the only ones to subdue the power of all Asia.¹⁰⁰

Finally, as the dismal failure of expenditure curbs on *luxus mensae* became apparent, witty *gaillards* reduced sumptuary legislation to a subject of derision - the very thing which the authorities feared most. Valerius Valentinus, whose scurrilous jocularities had earned him disrepute in an important criminal trial, composed a parody of a *lex convivalis* which became known as the *lex Tappula*.¹⁰⁰ His hilarious pastiche of the opening formula to a *plebiscitum* is partially preserved on a bronze tablet believed to be of Augustan date and forms a fitting conclusion to this chapter on Opposition and Repeal.

[Lex] Tappula .
 ... ius Tapponis f. Tappo cis[tella]
 [posita ad edicta conlegarum eorum ad
 4 quos e(a) r(es) p(ertinet)] M. Multiuori P. Properocli..
 Melronis plebem Romanam [iure
 rogavit, pllebesque Romana iure sciuit....
 ... in aelde Herculis a.d. XI k. Vndelcembres
 8 primus pro triblu Satureia principilo sciuit
 Talpponis f. pane repetit[o]
 e qui quaeue.....¹⁰¹

NOTES

VI

- 1 Macrob. *Sat.* 3.17.7; Suet. *Iul.* 43.2.
- 2 For example, the *lex Metilia*, *lex Oppia*, *lex Orchia*, *lex Antia*, *lex Cincia*, *lex Publicia* and probably the *lex Licinia*. Early on in his reign, Augustus employed his tribunician *potestas* to enact his major acts of social reform. The *lex Fannia* and *lex Aemilia* were proposed by consuls. Recently, F. Millar 'Politics, Persuasion and the People before the Social War (150-90 B.C.)' in *JRS* 76 (1986), 1-11 has drawn attention to the significance of the popular element in Roman Republican politics.
- 3 The censors, however, were elected in the more conservatively organised *comitia centuriata*.
- 4 Livy 34.8.3
- 5 C. Fannius fr.3 *Malc.*
- 6 Val. Max. 2.9.5; translated at the beginning of chapter 3.

7

...ἀμαρτόντες ἐπεχείρησαν μὲν γὰρ καὶ τὰ ἀναλήματα τὰ κατὰ τὴν δίκαιαν ἐπὶ μακρότατον προηγμένα συστεῖλαι, καίπερ ἐς πᾶν αὐτοὶ καὶ τρυφῆς καὶ ἀβρότητας προκεχωρηκότες, ἐκωλύθησαν δὲ ὑπὸ αὐτοῦ τούτου διανομοθετῆσαι. ὁ γὰρ Ὀρτήσιος φιλαναλωτῆς ἐν τοῖς μάλιστα ὦν ἔπεισεν αὐτούς, τό τε μέγεθος τῆς πόλεως ἐπεξίων, καὶ αὐτούς ἐπὶ τε τῇ οἴκοι πολυτελείᾳ καὶ τῇ ἐς τοὺς ἄλλους μεγαλοφροσύνη ἐπαινῶν, καταβαλεῖν τὴν γυνάμην, ὅτε καὶ συναγωνιστῆ τῶν λόγων τῷ βίῳ σφῶν χράμενος. τὴν τε γὰρ ἐναντίωσιν αἰδεσθέντες, καὶ προσέτι καὶ κατοκνήσαντες φθόνῳ τινὶ τοὺς ἄλλους, ὦν αὐτοὶ ἐποίουν, δοκεῖν ἀπειργεῖν, ἐκόντες ἀφῆκαν τὴν ἐσῆγησιν.

Cass. Dio 39.37.2-4.

- 8 Tac. *Ann.* 3.28.1.
- 9 Juv. *Sat.* 2.38-47.
- 10 See also Juv. *Sat.* 2.29-35. In fact the whole second satire comprises a scathing denunciation of insincerity in the matter of morality. Laronia is believed to have been an adulteress who transgressed the *lex Julia de adulteriis*, revived by Domitian; see E. Courtney *A Commentary on the Satires of Juvenal* (London, 1980), on *Sat.* 2.29f.
- 11 Pliny *N.H.* 7.128; cf Suet. *Gram.* 3 for a variant

- tradition.
- 12 Plut. *Sulla* 35.2; id. *Comp. Lys. & Sulla* 3.2 for Sallust's criticism of Sulla's personal morality and activity as a sumptuary legislator.
 - 13 Suet. *Iul.* 45.3 for his unconventional attire and id. 46.1 for his extravagance in *aedificatio*.
 - 14 See Suet. *Aug.* 68 for Antony's propaganda about Octavian's early sexual immorality; *Aug.* 69 on his adulterous behaviour. However, his eating habits were reputed to have been relatively frugal, id. *Aug.* 76.
 - 15 Seneca, the proud possessor of 500 citrus wood tables with ivory legs (C. Dio epit. 61.10.1-4 also condemns the moral philosopher for pederasty), could expostulate on this very vice; *Ben.* 7.9.2; see *Ep.* 86 for his admiration of the rudimentary amenities enjoyed by Scipio Africanus & *Ep.* 90 for his strictures on contemporary luxury. See Tac. *Ann.* 14.52 for Seneca's belated recognition of the odium that his wealth had attracted.
 - 16 Val. Max. 9.1.4; cp. Pliny *N.H.* 17.1-5; Cic. *De Orat.* 2.45. For other examples see Suet. *Cal.* 52 for Caligula's adoption of effeminate silk apparel; *Nero* 30 for this emperor's wanton profligacy. For the Younger Pliny's aversion to moral duplicity, note *Ep.* 8.22. Cp. Athen. *Deipn.* 542d for Duris' complaint on the luxury of Demetrius Phalerum '...who laid down rules and regulated the lives of others while eschewing any restrictions on his own conduct'; cp. id. 593. Cp. D.H. Shively (1964) on the conflict between the personal extravagance and legal ideals of the Shogun Tsunayoshi.
 - 17 Tac. *Ann.* 2.33. On this whole passage, see the discussion of F.R.D. Goodyear *The Annals of Tacitus: vol 2, Ann. 1.55-81 & Ann. 2* (Cambridge, 1981).
 - 18 Tac. *Ann.* 3.53-4.
 - 19 An inference drawn on the basis of passages in Horace *C.* 3.24; 3.6; Prop. *El.* 2.7; Livy 1 *Praef.* 9; Suet. *Aug.* 34.1.
 - 20 In A.D. 9, Cass. Dio 56.1.2f gives a dramatic oration in which Augustus rehearses the stock arguments on the blessings of marriage and child-rearing for personal and societal benefit. From Suet. *Aug.* 34.2, it is clear that it was the *lex Iulia de maritandis ordinibus* that

- provoked the greatest outcry. Cp. Livy 34.1.1f and Val. Max.9.1.3 for the tradition on the threatened 'secession of women.'
- 21 Macrob. *Sat.* 3.17.13.
- 22 Athen. *Deipn.* 274c-e. Interestingly, both Scaevola (in his electoral campaign of 117 B.C.) and Tubero (on the occasion of a funeral feast) incurred popular disapproval for their strict adherence to public parsimony.
- 23 Pliny *N.H.* 10.140.
- 24 Cato fr. 142 *Malc.*
- 25 Chs. 132-3.
- 26 Cic. *Sest.* 135; *Vat.* 37.
- 27 In the early Empire, members of the senatorial and equestrian orders were so determined to indulge their sexual appetites or to appear on the stage and arena that they were prepared to undergo formal degradation to achieve their aims. Tacitus (*Ann.* 2.85) and Suetonius (*Tib.* 35.2) report that matrons registered as prostitutes with the aediles in order to avoid the heavy penalties of the Augustan marriage laws.
- 28 For a survey of the various types of illegalities practised see M. Reinhold 'Usurpation of Status and Status Symbols in the Roman Empire' *Historia* 20 1971, 275-302.
- 29 For Tiberius' regularisation of the equestrian order see Pliny *N.H.* 33.32. Cass. Dio 48.45.8 categorically states that the gold ring had always been reserved for members of the senatorial and equestrian orders.
- 30 For the Republic, note Cic. *Verr.* II.3.80.185-7; Cass. Dio 48.45.7; for the Empire, D.C. Braund (1985) no. 737.
- 31 Macrob. *Sat.* 2.7.2; 2.3.10; 7.3.8; Suet. *Iul.* 39.2. Sulla bestowed the gold ring on Roscius, Macrob. *Sat.* 3.14.11-13; L. Cornelius Balbus on Herennius Gallus at Gades, Cic. *Fam.* 10.32.2.
- 32 Suet. *Claud.* 25.1; for the assumption of *nomina* see id. 25.3; Juv. *Sat.* 5.127; on usurped *cognomina* see Courtney (1980) on Juv. *Sat.* 4.32 and his reference to the *edictum Claudii de civitate Anaunorum FIRA* 1.71. Pliny *N.H.* 33.33 records that the knight Flavius Proculus indicted 400 bogus equestrians before Claudius as censor in A.D. 48. See A.M. Duff (1928) 52-6 for a full discussion of

- the nomenclature of freedmen, esp. p.55 on how mean birth was evidenced on inscriptions.
- 33 Petr. *Sat.* 32; Pliny *N.H.* 33.23.
- 34 For discussion and classical references see M. Reinhold (1971), 284.
- 35 Hor. *Sat.* 1.6.40; *Epod.* 4.16. These regulations were strictly enforced by Domitian; Mart. *Ep.* 5.8; 5.14; 5.23; and for the use of purple clothing M. Reinhold (1971), 282f.
- 36 Juv. *Sat.* 3.152f; cp. 14.234; Hor. *Epist.* 1.1.62; Pseud. Quint. 302; Mart. *Ep.* 5.25; 5.38.
- 37 For a discussion of this concept see K. Hopkins 'Elite Mobility in the Roman Empire' *P&P* 32 1965, 14f. As he points out, estate systems presuppose a high degree of congruence - an even ranking of a person's attributes along several major dimensions, e.g. property-ownership, occupation, lineage. P.R.C. Weaver (1967) exemplifies the process of status dissonance in relation to the opportunities for social mobility offered by the *familia Caesaris*.
- 38 For a thorough documentation of the evidence for this phenomenon see B. Levick 'The *Senatus Consultum* from Larinum' *JRS* 73 1983, 97-115.
- 39 The policy of the authorities on this matter fluctuated. For prohibitions, see Cass. Dio 43.23.5 (46 B.C.); 48.43.3 (38 B.C.); 54.2.5 (22 B.C.); 57.14.3 (A.D. 15); 60.7.1 (A.D. 41); Tac. *Hist.* 2.62. For relaxations, see Cass. Dio 51.22.4 (29 B.C.); 53.31.3 (23 B.C.); 55.10.11 (2 B.C.); 56.25.7 (A.D. 11); 59.10.2 (A.D. 38); 60.9.1 (A.D. 55); 62.17.3 (A.D. 59); 62.19.2 (A.D. 59); 69.10.1; Tac. *Ann.* 14.14; 15.32; 15.37.
- 40 This behaviour was due in part to the stiffening of the adultery regulations by Augustus' *leges Iuliae*.
- 41 Cp. Tac. *Ann.* 2.85; *s.c. de Larino* 13 with B. Levick's comments on *infamia* (1983), 108-10.
- 42 K. Hopkins has emphasised the glamour element and sexual overtones present on such occasions. On a wider level, he argues, the popularity of gladiatorial combats reflected the militaristic mentality of Roman society: (1983), 21f.
- 43 Caligula and Nero are prime examples; Tac. *Ann.* 14.14.

- 44 The *loci classici* are the Scipionic inscriptions, *CIL* I. 6-16.
- 45 See Garnsey (1970), 230 for discussion of the praetorian edict and references to the *Digest* 47.10.15.2.
- 46 Ygr Pliny *Ep.* 1.14; 2.9. The *patronus-cliens* relationship was sanctified above all by the moral bond of *fides*. Appian *B.C.* 3.43 records that the Roman army kept a file on the character of every soldier.
- 47 For example Tacitus *Ann.* 6.29; 13.17.
The author of the *Commentariolum Petitionis* recommends (52-3) that the candidate take pains: *...ut etiam, si qua possit <ratio>ne, competitoribus tuis existat aut sceleris aut libidinis aut largitionis accommodata ad eorum mores infamia.*
- The Ygr Pliny (*Ep.* 3.20) records the old practice of candidates for office appearing before the senate to give an account of their life, furnishing at the same time character-witnesses (*laudatores*). Often competitors would dispute the birth, age or morals of fellow candidates.
- 48 A comparison between the testimony of Roman legislative procedure provided by Cicero's speeches and that of contemporary recorders of Crown-court proceedings reveals striking differences in the nature of the evidence admissible and the techniques of the prosecuting and defending counsel.
- 49 This process took place from an early stage as the Elder Cato's speech *De suis virtutibus contra <L> Thermum* reveals.
- 50 Cic. *Verr.* II.1.12.33; for a similar list see *Sest.* 20; *Cat.* 2.10 for the *alea* and *convivia* of the supporters of Catiline.
- 51 Schol. on Cic. 128 Stangl; Cic. *Verr.* II.3.12.31 of Apronius the tax-collector; cp. II.3.44.105-6 for a whole cluster of concepts *luxuria, insolentia, licentia, nequitia.*
- 52 Cic. *Pis.* 13; 22; cp. *Phil.* 2.66; 2.77 on Antony's passion for gambling and taverns.
- 53 Cic. *Pis.* 22; for charges of a similar nature against others see *Mur.* 13; *Sest.* 18; 20; cp Schol. on Cic.

- 104 Stangl for Decianus' *probrum*.
- 54 Cic. *Font.* 40; 42.
- 55 Schol. on Cic. 96 Stangl.
- 56 Sextus Roscius Amerinus in *Rosc. Amer.* 75; cp. 39. See Tac. *Ann.* 3.69 for Cornelius Dolabella's indictment of C. Silanus' morals in the latter's trial for extortion.
- 57 Cic. *Sulla* 69; *Mur.* 11.
- 58 Cic. *Sest.* 5.
- 59 Cic. *De Orat.* 2. 182f; 2. 320; affirmed in *Sulla* 69.
- 60 Pompey delivered one on behalf of P. Sestius, see Cic. *Fam.* 1.9.7; cp. *Flac.* 36. In one of the clearest examples of dual standards, note how Pompey himself outlawed the practice of delivering encomia for persons on trial yet eulogised Plancus in court. One of the jurors happened to be the Younger Cato who muffled his ears with his hands in disgust, Plut. *Pomp.* 55.3-6.
- 61 Cic. *Sulla* 70: *Catilina contra rem publicam coniuravit. cuius aures umquam hoc respuerunt conatum esse audacter hominem a pueritia non solum intemperantia et scelere sed etiam consuetudine et studio in omni flagitio, stupro, caede versatum?*
- 62 Val. Max. 8.1.abs.8.
- 63 Cic. *Cael.* 25.
- 64 Cp. Asinius Gallus' sentiments in Tac. *Ann.* 2.33.
- 65 Cic. *Pis.* 67. Another rare example in Antiquity of the explicit connection between luxury and status is provided by Demetrius of Phalerum's grandson's blunt rejoinder to the Areopagites' accusation that he was leading to sumptuous a way of life; Athen. *Deipn.* 167e.
- 66 Cic. *Verr.* II.3.78.182.
- 67 Cic. *Verr.* II.3.89.207.
- 68 Q. Hortensius Hortalus' dissuasion of the *rogatio Licinia-Pompeia* is an example.
- 69 E.g. the Gracchi or Catiline, Cic. *Sest.*99; Livy 6.18.3 on Sp. Manlius.
- 70 Livy 6.35.1.
- 71 In 357 B.C. Livy 7.16.8.
- 72 Livy 45.21.4; cp. 38.36.8. Gell. *N.A.* 6.19.5.
- 73 Livy 34.54.8. Other examples are provided by Val. Max. 1.3.1. on the *novus mos* of the Bacchanal followers; Veil.

- Pat. 2.125.1 on the madness of the mutinous legions in Germany who were demanding a *novus aux*, *novus status*, *nova respublica*; 2.129.2 on Drusus Libo's designs.
- 74 Diodorus Siculus 12.17.2 records Charondas' grim proviso that anyone proposing a new statute should put his neck in a noose. See also *OCD* s.v. *graphe paranomon*.
- 75 Athen. *Deipn.* 273e-274c.
- 76 Polyb. 9.10.11.
- 77 See E.M. Smallwood (1967), no. 369.
- As M.T. Griffin has pointed out in a recent consideration of the significant differences between the Lugdunum inscription and Tacitus' version (*Ann.* 11.25-5) the emperor's account is designed to placate criticism that preference should be given to Italian rather than provincial nobility on the question of entry into the senate while Tacitus concentrates on the perspective of the old Republican aristocracy; 'The Lyons Tablet and Tacitean Hindsight' *CQ* 32 (ii) 1982, 404-19.
- 78 Similar sentiments were expressed by Canuleius in Livy 4.5.13.
- 79 *lat.* *Ann.* 11.34. But notice Claudius' careful appeal to precedent to sanction his promotion of a freedman's son; Suet. *Claud.* 24.
- 80 Notice Seneca's sarcastic references to Claudius more 'liberal' policy in *Apoc.* 3: 6.
- Notice also the apologetic flavour of Cicero's gloss of Pompey's early career and his advocacy of his extraordinary command against the pirates: *Pro lege Manilia* 60.
- For the modern scholarly debate on elements of tradition and innovation in Roman politics see ch. 7.
- 81 Pliny *N.H.* 36 5. Macrobi. *Sat.* 3.17.13; & 10. 3.14.2 for Furius Albinus' sobering observation that the ancients despite their many virtues had vices too.
- 82 For the wider implications of this see my concluding remarks in ch. 7.
- 83 For examples see also chapter 7.
- 84 For the contradictions in their conceptions particularly respecting the existence of legislation and private property see A.F. Wallace-Hadrill's interesting analysis

- of the ideological function behind this theme; 'Golden Age and Sin in Augustan Ideology' *P&P* 95 1982, 19-36
- 85 Vell. Pat. 2.89.3.
- 86 Id. 2.126.2.
- 87 8.13. *praef.*; cp. *id.* 9.11.4 and *Vitr. Arch.* 1 *praef.* 1-2 for the benefits Augustus had brought to the empire.
- 88 *EJ* 98. For an appreciation of his virtues see *id.* 98 (a) 25; (b), 4.
- 89 *Fasti* 1. 191-226.
- 90 See Ovid *Ars Amatoria* 3.114-128 where a fine distinction between refinement and luxury is maintained; *Fasti* 1.191-226. As B. Otis, in his illuminating discussion of the poet's work observes, Ovid reacted against the studied antiquarianism of Virgil and Horace and the elegiac tradition as represented by Gallus, Propertius and Tibullus. He admired what was most widely castigated, the frivolous, emotionally-detached amour of contemporary women; 'Ovid and the Augustans' *TAPA* 69 1938, 188-229.
- 91 On his interpretation of *Met.* 89-176, (1982), p.28.
- 92 *Ars Amatoria* 2.275-80; 3.113; *Amores* 3.8.29.
- 93 *Amores* 3.8.52.
- 94 Syme (1939), p.468 suspects that the punishment of Ovid served to focus public attention away from the more serious crimes of Julia and her accomplices.
- 95 For the old-fashioned, Italian virtues note, above all, the Ygr Pliny *Ep.* 1.14: *patria est ei Brixia ex illa nostra Italia, quae multum adhuc verecundae, frugalitas atque etiam rusticitatis antiquae retinet ac servat*; cp. *Tac. Ann.* 16.5.
- 96 See F.R.D. Goodyear in 'Cyclic Development in History: A Note on *Tac. Ann.* 3.55.3' *BICS* 17 1970, 101-6. On the question of differences in literary style and taste notice M. Aper's defence of modernity and rejection of an uncritical preference for antiquity; *Dial.* 16.4-24. Cp. sentiments recorded in *Hist.* 1.3; *Ann.* 6.16; 3.34.
- 97 *Esp. Hist.* 2.38: *vetus ac iam pridem insita mortalibus potentiae cupido cum imperii magnitudine adolevit erupitque; nam rebus modicis aequalitas facile habebatur*; 2.69; 3.51; *Ann.* 1.4.1; primitivism 3.26; 3.65; 3.66; 14.15; 14.20.

- 98 See chap. 7.
- 99 Athen. *Deipn.* 512a-c. Despite the categorical assertion of Athenaeus it is hard to explain why a prominent Pythagorean-Platonic philosopher should choose to elevate pleasure and luxury. The solution may lie in the fact that his treatise περὶ ἡδονῆς from which Athenaeus took excerpts was a dialogue. Cp. the sentiments expressed by Demetrius, the grandson of Demetrius of Phalerum, in response to the reproach of the Areopagites at his style of life; id. 167e ; 7c for the luxury of the Cyrenaic Aristoxenus; Cic. *Tusc.* 2.15; 2.17; 3.42-8 for a hostile presentation of Epicurean philosophy; Athen. *Deipn.* 281c/d for the comment of Eratosthenes of Cyrene on the tergiversation of his master Ariston of Chios who had professed adherence to Stoic precepts: "Many a time before this have I caught him in the act of digging through the wall which divides pleasure from goodness and popping up on the side of pleasure." Loeb trans. *Deipn.* Book 12 forms a treatise on the subject of luxury.
- 100 Festus p.496-7 L. *Tappulam legem convivalem ficto nomine conscripsit iocosa carmine Valerius Valentinus, cuius meminit Lucilius hoc modo: "Tappulam rident legem, conterunt Opimi." ...Tappula dicta est lex quaedam de conviviis.*
- 101 Bruns (1909), p.119.

VII

CUI BONO? THE POLITICS OF MORALITY

*mores leges perduxerunt iam in potestatem suam,
magisque is sunt obnoxiosae quam parentes liberis.*
Plautus *Trin.* 1037-8.'

To a contemporary observer, reared in the political tradition of Western Europe which denigrates state interference into private concerns in proportion to its elevation of the 'rights of the individual', this inseparability of law and standards of morality appears unfamiliar, even alarming. The citizen of Ancient Rome, however, would not have regarded as exceptional the supervision of personal behaviour or family relationships by competent representatives of state authority. Polyarchus' insight into the artificial fabrication of virtues testifies not only to the lucidity of his intellect but the gulf between then and now in the principles which sustain civil government. Contrasting premises on what constitutes legitimate spheres of political activity rest on fundamental differences in the make-up, mode of operation and objectives of governmental bodies.

The preceding discussion has been concerned to explain the emergence of a powerful historical orthodoxy towards social change. Fears about an actual or imminent moral decline, with the corresponding call for a return to ancestral ways, were complemented by legal insistence. Those who might have been expected to extol luxury as an indicator of social prestige denigrated it with a sustained vehemence. Rather than attempt to furnish a detailed survey of this coincidence in its various instances, this final chapter will examine the functioning of this legal discourse in three of its major manifestations: firstly, as a regulatory device of the senatorial aristocracy, as revealed

in the emergence of connected literary sources from the close of the third century B.C. onwards; secondly, as a crucial source of legitimation by the aspiring politician-generals of the first century B.C. and lastly, its use as a key disciplinary tactic by the increasingly absolutist regimes which characterised the Principate.²

The Maintenance of Privilege

From the Hannibalic War to the eclipse of the Republic one and a half centuries later, the senatorial aristocracy, jealous guardians of its social and political privileges, fearful of the injurious effects consequent upon the accelerating pace of economic change, took measures to ensure the continuation of its hierarchical preeminence. The policy had diverse results. It involved the creation of several myths surrounding the conduct and style of living of the inhabitants of early Rome. Past political and military successes were attributed to the moral superiority of their ancestors. The outstanding virtues of temperance, probity, honesty, good-faith and so forth were rooted in a highly idealised way of life, typified by simplicity, if not primitivism, in material possessions and dominated by a single-minded dedication to the needs of the Republic.

Explanations for contemporary political instabilities and problems were traced to moral failings - in particular, the inferior manners of human actors. In turn, this perceived change in *mores* justified extensive encroachment into intimate spheres of personal and family life. A mass of social regulations resulted. A series of brakes on the economic expenditure of individuals would have entailed a complexity of problems in any society. In Rome of the second century B.C., continued military expansion into materially prosperous and culturally sophisticated regions of the Mediterranean, combined with the existing competitive aristocratic practices and instincts presented the legislators with acute difficulties in regard to the framing and enforcement of such regulations.

In fact, it proved to be a largely paradoxical exercise. Ostensible deprecation of luxury had to be uncomfortably accommodated within the ever rising requirements of status and political rivalry. Moreover the mechanisms of consumer behaviour were imperfectly understood. Under intense economic and social pressures, luxury expenditure displayed its inherent tendency to spiral. The problem was partly semantic too. No distinction was made between varying degrees of refinement. Almost everything gravitated towards the two poles of *frugalitas* and *luxuria*. This paucity of verbal discernment led to the implausible castigation of almost every alteration in social practice and made the mandates of the ruling ideology increasingly difficult to validate. Despite frequent intervention, senatorial policy proved unable to contain the expansion of competition.³

The clearest indication of what the senatorial order sought to avoid is provided by the actions of successful politician-generals during the last century of the Republic. The complex mechanisms of power-sharing carefully built-up by the aristocracy were overturned as a dominant individual backed by a powerful faction exercised a stranglehold over political operations.

A series of political posts and military commands, many of which were obtained irregularly - either prematurely, in defiance of the carefully-structured pattern of seniority laid down by the *cursus honorum* or illegitimately, through blatantly corrupt practices or even extorted by the threat and application of force - placed figures like Sulla, Pompey, Julius Caesar and Caesar Octavian in a position of unquestioned supremacy by the potent combination of military clientela⁴ and access to enormous economic resources.

An essential ingredient of their domination was their indulgence in unrestrained public largesse which entailed utter disregard for regulations such as the *leges sumptuariae*, *leges funerariae*, *leges de ambitu* etc. Two examples will suffice to illustrate this point. Plutarch records how Sulla feasted the people with forty year old wines and with so much meat that much of it had to be tossed into the Tiber.⁵ Suetonius catalogues the frequent *largitio* of Julius Caesar during his reign; lavish donatives to the

soldiers; grain, oil and meat to the people; gladiatorial combats, *ludi*, athletic contests, circus races, *venationes* etc.''

The ruling order was largely successful in imposing its view on history. Even Sallust couched his mordant criticisms within the framework set by the dominant ideology. He judged the performance of the aristocracy according to its own standards. The chasm between attitude and practice explains the vehemence of his censure. Rampant *avaritia* and *ambitio*, he insisted, were responsible for destroying the cherished ideals of the Roman Republic.'

The Problem of Legitimation.

During the course of the first century B.C. the chorus of laments on the moral deterioration of the Roman character intensified. Superficially, there were striking similarities in the way in which political problems were perceived, described and addressed. The idiom of change was pronounced. Signal breaks with the past went hand-in-hand with fond retrospection to a nebulously located golden era of moral goodness. Responsibility for the bane of civil war, too, was laid at the door of moral decline.' But value-systems, like the societies they reflect, undergo change. The loose cluster of concepts and keynotes that comprise ideologies are prone to significant shifts of emphasis as outdated or irrelevant notions are discarded, greater prominence conferred on those hitherto considered unimportant and new ideas injected. The very malleability of the ideology of decline helped to promote its survival.

A substantial alteration took place not so much in the vocabulary of decadence but in the use to which this idiom was put. The impetus for this change was rooted in the ambitions of the politician-generals and their respective parties which, for a complexity of reasons, could no longer be contained within the structure of Republican politics.

Recent scholarship has investigated the mechanisms by which the economically powerful in society secure their grasp over political authority with the minimum of overt

force. The concept of cultural hegemony has been advanced by progressive thinkers such as Antonio Gramsci' to account for the willingness of large sections of the population to tolerate manifestly iniquitous social circumstances.''' The linguist, Murray Edelman, expanding on the implications of this type of analysis, has revealed how the pronouncements of ruling groups serve to mould the language structures and symbols through which the mass public assimilate, and respond to, information about their world.'' In manipulating opinion on often very complex and abstract matters and processes, metaphor and myth are often employed to construct key interpretations of historical occurrences and forces in a way which is highly congenial to the wishes and needs of the ruling class.'''

Of course, the acquiescence of the many to the dictates of the few is not only secured through linguistic forms. A nexus of gestures, bonds, economic exigencies and the threat or application of physical force help to underscore signal disparities in the possession of material goods, social status and political power. However, cognitive structures provide a vital support for the maintenance of power and its transmission from one generation of rulers to the next.

As chapters I and II sought to demonstrate, the senatorial aristocracy, exercising its preferential access to the major channels of public debate, successfully imposed its own perspective on the historical process, isolating certain factors which were projected as being of crucial significance in the past development and for the future well-being of the Republic, tacitly rejecting structural deficiencies or economic imbalances as a basis for the understanding of contemporary failures. Their definition of the problem was all-important since it determined the nature of remedial action. They strove to maintain that their suggested course of action was in the best interests of the people as a whole. It was on inherited and personal virtue, they asseverated, that the security of the state depended. Since they promoted themselves as being the repository of moral worth, this dialogue became powerfully self-justificatory.

The problem of legitimation sharpens where the transfer of power involves the abnegation, partial or complete, of that which had previously been widely regarded as the acceptable form of authority.' ' Several politician-generals of the late Republic were concerned, in their different ways, to sunder the normal rules and conventions of aristocratic power-sharing with its limited popular participation. The impatience of Sulla and Pompey with constitutional restraints has been well documented.' ' Julius Caesar and Augustus had more highly developed dynastic plans. Yet none of these figures was bold enough to dispense with all previous forms of sanction of political power. The patent inability of the aristocracy to control competition for office amongst its own members made popular resistance to novel types of authority unlikely. But the skills and services of the senatorial and equestrian orders were necessary for leaders to pursue effectively their political and military objectives.

Those who usurp power strive to regularise their position. This is achieved in most cases by a high degree of adaptation to existing political structures and systems of ideas. On the first count, the most successful of the dynasts, Augustus, was so concerned to establish his link with traditional forms of government that he took immense pains to convince the people that the Republic had, in fact, been restored, disguising the realities of his new regime under the façade of traditional institutions.' ' On the latter point, was it merely a coincidence that Sulla, Pompey, Julius Caesar and Augustus, after achieving preeminence through force of arms, initiated major programmes of moral and social reform by legislating on such familiar areas as personal consumption, funerary expenditure, luxury taxes, adultery and marital relationships? Such action served a dual purpose. It displayed their determination to remedy problems which had been held to account for the failures and instabilities of the previous decades and whose solution the previous administration had abjectly failed to produce. It was a policy calculated to find resonance amongst large sections of the populace who had long been cued to respond to just

this sort of prompting. In addition to validating their positions, the ostentatiously pursued restoration of the *mores maiorum* provided a convenient focus of attention, diverting scrutiny from the real breaks with the past that a military autocracy obviously entailed. Comment was guided into areas consonant with their aims and capabilities.

The availability of source material makes this policy most readily observable in the case of Caesar Augustus who, despite an early career marred by serious illegalities - a march on Rome, irregular office-holding, complicity in the proscriptions of 43 B.C. and the mass displacement of Italian peasantry to secure land for veterans - proved, with his powerful network of friends and supporters, to be nighly adept at mobilising support.

A striking feature of the Augustan Principate was the progressive extension of patronage over diverse avenues of communication and artistic expression; literary, architectural, numismatic and sculptural. While it is true that during the Republic some prominent politicians had been concerned to gather about them the ablest *literati* of their day - philosophers, dramatists, historians - to enhance their own prestige or to belittle their opponent's, Augustus' ministrations differed both in its scope and purpose. For although the earlier literary adherents of statesmen such as Scipio Aemilianus, Laelius or the Elder Cato were often legally incapacitated, allegiance to a single patron was not a life-time's obligation. Indeed poets such as Ennius for whom literary fame entailed a large degree of independence seemed to have been free to change their patrons. Furthermore the plurality of benefactors ensured a variety of viewpoints. The supremacy of an individual or faction never passed unchallenged. The literary skills of Roman aristocrats added to this diverse and healthy criticism; the caustic satire of Lucilius, the Elder Cato's rhetorical mastery, the historiographical flair of Sallust or Cicero's oratorical genius.

Under Augustus, the possibilities for competitive views were curtailed as creative talents were focused on the figurehead and policies of the *princeps*. No rival

organisation of artistic support on this scale was feasible.' It has long been noted that the most gifted upholders of the new order did not spring from the ranks of the illustrious houses.' The families of Virgil, Horace and Propertius had been seriously affected by the land confiscations of the 40's B.C. It is improbable that they were insensitive to the material and social advantages available to talented advocates of the new state of affairs.

Maecenas played a crucial role in fostering literary adherence. According to Gordon Williams, his mediation can be detected in the discernible shift in tone from the gloomy and insular mood that characterises the early works of Horace, Propertius and Virgil to the optimism and confidence of later compositions.'

No mere celebration of Augustus' achievements was solicited although extravagant personal compliments abounded. To address a single individual as the saviour of the state was not in itself unprecedented but for a Roman writer to eulogise a living person as a future divinity was startling.' The range of political and social objectives contained in their literary pronouncements is remarkable.

The theme of restoration was pronounced. Augustus' sovereignty was given poetic expression by its identification with the return of the Saturnian golden age to Italian soil:

*hic vir, hic est, tibi quem promitti saepius audis,
Augustus Caesar, Divi genus, aurea condet
saecula qui rursus Latio regnata per arva
Saturno quondam, super et Garamantas et Indos
proferet imperium....'*

This image was given substance by the detailed account of the tangible benefits which the return of *pax*, consequent upon Octavian's decisive victory over Antony and Cleopatra at Actium, had brought. A cluster of felicitous associations linked the new order with the blessings of agricultural prosperity, safety of the seas and political stability.'

Repeated and highly supportive references were made to Augustus' programme of moral and social reform. Early setbacks to his over-eager attempts to effect a regeneration of Roman manners and customs are evidenced in the pessimistic passages of several writers. Livy's despair at

his contemporaries' inability to brook either their vices or their cure and the deeply forboding sentiments expressed by Horace in his early compositions surely reflect the temporary rebuff to Augustus' social legislation in 28/7 B.C. But as the lyric poet, one of the most avid champions of the *princeps*, surmised, what was the point of laws without moral instruction: *quid leges sine moribus / vanae proficiunt?* Poem 6 of his third book of odes - *delicta maiorum* - contains a classic exposition of the traditional explanation for political failure in Republican Rome. Several projects and themes which were of central importance to imperial policy are emphasised. The restoration of temples and shrines to the Roman deities was one pressing concern. Another was a perception of moral corruption, in particular sexual laxity which was held to have deriled correct marital and familial relationships:

*fecunda culpa saecula nuptias
 primum inquinavere et genus et domos:
 hoc fonte derivata clades
 in patriam populumque fluxit.*

*motus doceri gaudet Ionicos
 matura virgo et fingitur artibus
 iam nunc et incestos amores
 de tenero meditatur ungui*

*mox iuniores quaerit adulteros
 inter mariti vina, neque eligit
 cui donet impermissa raptim
 gaudia luminibus remotis,*

*sed iussa coram non sine conscio
 surgit marito, seu vocat institor
 seu navis Hispanae magister
 dedecorum pretiosus emptor.*

*non his iuventus orta parentibus
 infecit aequor sanguine Punico
 Pyrrhumque et ingentem cecidit
 Antiochum Hannibalemque dirum;*⁴

This censorious tone of moral condemnation is heightened by contrast with ancestral virtue embodied in the sturdy yeoman of Sabine origin whose labours in the fields equipped him to match the might of Pyrrhus, Antiochus the Great and the Punic threat. The poem ends on a pessimistic note.

Horace's *carmen saeculare* was little short of a commissioned exhortation to the Roman people to participate in the entire renaissance of the state. Divine blessing was invoked to help foster the newly promulgated matrimonial legislation of 18/17 B.C.:

*diva, producas subolem patrumque
prosperes decreta super iugandis
feminis prolisque novae feraci
lege marita,*

*certus undenos deciens per annos
orbis ut cantus referatque ludos
ter die claro totiensque grata
nocte frequentes.*''

The importance that Augustus attached to marriage and fecundity was reflected in the prominent role assigned to *matronae* in the celebration of this event.``

The uncertainty and gloom of earlier compositions give way to the enthusiastic assurance of the fourth book of odes. The metaphors of spring and light continue the idea of rejuvenation. No trace of the continued grumbling amongst the privileged orders of Roman society is discernible in *divis orte bonis* which presents the *leges Iuliae* as an unqualified success. Even Augustus' determination to ensure compliance merits praise:

*tutus bos etenim rura perambulat,
nutrit rura Ceres almaque Faustitas,
pacatum volitant per mare navitae;
culpari metuit fides,*

*nullis polluitur casta domus stupris,
mos et lex maculosum edomuit nefas,
laudantur simili prole puerperae,
culpam poena premit comes.*''

These few passages suffice to show how artistic expression had been marshalled to help in the revision of existing political machinery and system of values. Poetry was a highly influential avenue of communication. Seldom has propaganda been furbished in such attractive hues. It contrasts with the outcome of the tame reception of values - the panegyric - which prevailed in the first century A.D.

Tradition and Innovation

Augustus ostensibly set out to remedy the same type of problem that previous administrations had been grappling with for over two centuries. In many respects his methods were similar to those of his predecessors. The Roman populace was made acutely aware of the damage which decline had wrought. Legal injunctions were perhaps tighter and certainly more comprehensive in scope. His resolve to implement was reflected in the enforcement procedures.

Recent scholarship has generated a lively debate on the complex questions concerning the extent of continuity and novelty in Roman social and political practice during the first century B.C. E.S. Gruen in *The Last Generation of the Roman Republic* was concerned to counter-balance the stress on change that is evident in both ancient and modern historiography. Conventional, indeed traditional, modes of behaviour predominated in these tumultuous years. The spate of legislative activity can be explained not so much in terms of the decline or failure of existing institutions but as energetic and alert responses by the governing order to the changing nature of problems with which it was faced. The plethora of criminal trials, too, might evince the vitality of the political process rather than a quantum increase in violence and corruption. On the other hand Michael Crawford had emphasised the innovative capacities of the Roman ruling class. He holds that the flexibility of their ideology permitted changes in diverse spheres of activity from governmental conduct to cultural pursuits. The overthrow of the Republic itself might be countenanced within the existing framework of ideas.

It is necessary to maintain a clear distinction between political thought and practice, between the presentation of policies or expressed attitudes and the actualities of governmental behaviour. Continuity can be perceived in the concern of successive Roman administrations to portray their actions as rooted in traditional canons of behaviour and procedure. Reform entailed the revival of old rather than the introduction of novel practices. Precedents were considered necessary to sanction proposed courses of

political action and to justify the actions of individual politicians. *nam quod exemplo fit, id etiam iure fieri putant:*... The past not only offered happy associations of success but also tremendous psychological reassurance in times of uncertainty. Rarely did Roman politicians make an explicit claim to novelty. More often than not, as John North observes in the sphere of Roman religion, a powerful conservative stance coexisted with signal innovations not just in respect of the admission of new cults and rituals but also in technical readjustments to old observances.¹⁴

An increasingly strident emphasis on tradition often suggests that, in fact, something quite new is being contrived. Augustus furnishes a classic illustration of a politician who professes an adherence to ancestral values and institutions while attempting to effect a very real break with the past. Although the state of our knowledge on Republican history makes it difficult to gauge precisely the extent to which the policies of any government are either novel or customary, what can be observed is the careful selection of traditional features which it is concerned to pronounce. As we saw earlier, certain features in the *ludi Saeculares* were clearly designed to symbolise the rebirth of Rome under Augustus. Long-standing elements of the ceremony were coupled with insertions. However, the subtle adjustments that had been made both to the timing and to the ritual of this celebration would not have been apparent to the audience which it was designed to impress.¹⁵

The fortunate preservation of the *princeps'* own autobiographical statement supplies crucial information on the way in which he wanted his actions to be perceived. In his opening statement, early illegalities were glossed as the successful emancipation of the *libertas* of the Republic from the *dominatio factionis*.¹⁶ Respect for the conventions of magisterial office-holding is repeatedly stressed: *...nullum magistratum contra morem maiorum delatum recepi.*¹⁷ Restoration is a keynote. His extensive reconstruction of religious sanctuaries is trumpeted.¹⁸ Political authority was restored to traditional repositories of power.¹⁹ Ancestral virtues were revived by the laws and personal precepts of the *princeps*:

*legibus novis me auctore latis multa exempla maiorum exolescentia iam ex nostro saeculo reduxi et ipse multarum rerum exempla imitanda posteris tradidi.*⁴³

The autocratic realities of Augustus' regime have been amply demonstrated in recent scholarship. Political, judicial, legislative, military and financial functions were increasingly brought under imperial control. It was political expediency that determined which elements of the past were to be retained, which to be discarded. As Tiberius is made to reflect by Tacitus, in the context of the difficulties experienced in filling priesthods according to ancient fashion:

*ita medendum senatus decreto aut lege, sicut Augustus quaedam ex horrida illa antiquitate ad praesentem usum flexisset.*⁴⁴

It has been argued that Augustus was merely responding to popular calls for the reform of morality and social behaviour. It is unlikely that such a demand would have emanated spontaneously from amongst the Roman people. Modern research has shown that moral 'crises' and 'panics' are often manufactured at those times when a consensus of views is most difficult to achieve.⁴⁵ Indeed the strict enforcement procedures laid down in the *leges Iuliae* suggest that difficulty in winning acceptance for his 'revival' was expected. From the emphasis on the pressing need for the 'restoration' of ancestral ways evident in a range of sources, it is clear that the Augustan party projected moral decline as one of the direst problems facing Roman society. The very process of promulgating laws visibly demonstrated the government's determination to take decisive, remedial action.⁴⁶ By dramatising the situation in this way, by magnifying rather than minimising the scale of the problem, Augustus' vigorous leadership was designed to win mass appeal.⁴⁷ The policies of national rejuvenation were calculated to unite the populace behind the regime. After fifty years marked by civil war, the new imperial administration astutely manipulated the widespread and heartfelt desire for security and stability.

Political discipline in the early Principate

multa praeterea specie gravitatis ac morum corrigendorum, sed et magis naturae optemperans, ita saeve et atrociter factitavit, ut nonnulli versiculis quoque et praesentia exprobrarent et futura denuntiarent mala:

Suetonius *Tib.* 59.

The dangers inherent in a policy which sanctioned deep encroachment into the personal lives of individual citizens were fully exposed in the early Principate. Convenient 'legal' methods of silencing opponents of unscrupulous incumbents of imperial office were exploited by professional denouncers eager for the share in power and money that princely favour entailed. Victims were frequently trapped on a charge of treason (*maiestas*) which was framed so vaguely as to admit of almost any interpretation.⁴¹ Some were indicted for libel. Many were prosecuted for illicit consultations with the *magi*.⁴² Trials for adultery abounded.⁴³ Even the *lex Scantinia* was revived by one first century emperor.⁴⁴

It will be argued that this repeated use of technical infractions to social regulations in order to help sustain a political system represents a significant development. For although it is true that during the middle and late Republic a politician could have occasional recourse to moral or sumptuary codes in order to check an opponent's career or to enhance his own no individual or group employed penal legislation on morals as an instrument of political control.

Concomitant with this continued interest in the correction of morals arose a proliferation of social legislation.⁴⁵ The close scrutiny of religious practice and philosophical belief, the suppression of writings critical of imperial behaviour and the supervision both of *collegia* and of *ganae* and *popinae* exhibit an intensified concern on the part of Roman authorities to control social behaviour and reflect absolutist tendencies in this period.

correctio morum

Augustus, the adopted son of a dictator who had assumed the startling new title of *praefectus moribus*, made extensive use of his censorial, consular and tribunician powers to pursue his policy of moral rejuvenation. On his own authority, it is understood that the first *princeps* declined a perpetual supervision of laws and morals, alone and with supreme power¹³ but the possibility that he occupied the post of *praefectus moribus* for limited periods cannot be ruled out. The grants of supervisory power which Cassius Dio records for 19 and 12 B.C. coincide with a series of important reviews of the senatorial order and the citizen body.¹⁴ There are several indications that he donned the censorial mantle in the traditional fashion. He revived the *transvectio equitum*, visiting punishment on some guilty of scandalous conduct, e.g., for illicit money-lending activities, while treating others more leniently.¹⁵ On one occasion he dismissed an accusation against a young man who had married a woman with whom he had committed adultery during her previous union.¹⁶ His legislative enactments have been discussed in detail elsewhere although it is worth pointing out that early on Augustus himself proposed important laws (such as the *lex Iulia de maritandis ordinibus*, the *lex Iulia de adulteriis coercendis* and, perhaps, the *lex Iulia theatralis*) by virtue of his tribunician *potestas*. Other important acts of social legislation included the *lex Fufia Caninia* (2 B.C.) and the *lex Aelia Sentia* (A.D. 4).

Centralisation was a key process in the consolidation of his regime. Nowhere is this more clearly demonstrated than in the flurry of legal activity. Tacitus' judgement on the significance of these developments is illuminating:

*sexto demum consulatu Caesar Augustus, potentiae securus, quae triumviratu iusserat abolevit deditque iura quis pace et principe uteremur. acriora ex eo vincla, inditi custodes et lege Papia Poppaea praemiis inducti ut, si a privilegiis parentum cessaretur, velut parens omnium populus vacantia teneret.*¹⁷

Changes did not simply affect political institutions. Social customs and institutions of long-standing were disrupted. Important decision-making powers were taken from the *paterfamilias* while the corporate identity of the Roman family, weakened under the impact of social developments in the late Republic, suffered further diminution. Increasingly direct links were established between the state and the individual.

Nor was his successor loathe to intervene should serious malpractice demand action. Despite the celebrated *recusationes* recorded by Tacitus, Tiberius was active in the sphere of sumptuary restraint. As well as curtailing the price of articles of conspicuous consumption such as Corinthian bronzes, mullet, household-furniture, gold vessels Tiberius may have inaugurated a new category for imposition - the sale of food at *popinae* and *ganeae*. Henceforth not even pastry might be placed on sale.

Tiberius, who was personally indifferent if not hostile to public spectacles which were now almost totally dependent on imperial finance, decided to cut down on the outlay for *ludi* and *munera* by trimming the pay of dramatic performers and by restricting the number of pairs of gladiators. Participation in public *ludi* was forbidden to certain orders and, in A.D. 23, actors were expelled from Rome for fomenting unrest and for debauching women. An imperial edict outlawed the everyday exchange of kisses. Marital relationships were further modified. It comes as no surprise that the *mores maiorum* were repeatedly invoked to sanction imperial directives. As in the case of previous lawgivers, so with Tiberius, the assumption of a public *correctio morum* did not preclude personal indulgence in illicit pleasures.

Initially, even Caligula may have taken steps to uphold moral standards although posterity will remember him for his addiction to vice. In line with his personal whims he adopted a more relaxed attitude towards public exhibitions, allowing others to exhibit a greater number of combatants at gladiatorial games than the law allowed. However, he strictly enforced previous restrictions on the sale of food and hot water at *tabernae*, even to the extent

of executing someone on a charge of *maiestas* for an infringement of this regulation.'''

The emperor Claudius had no inhibitions about openly flaunting his responsibility to emend morals. In the spirit of the censors of old, he undertook this task energetically from A.D. 48. In one day alone he proposed twenty censorial edicts.''' He commanded a sumptuously fashioned silver chariot that had been offered for sale in the *Sigillaria* to be bought and then to be broken up in his presence. Many were degraded on trifling or obscure charges. Penury, celibacy and childlessness were frequent pretexts for the application of a *nota*.''' Several were censured for leaving Italy without his knowledge or permission. Furthermore, he stipulated that those who were accused before him had to offer an account of their own lives without the aid or advocacy.''' His moral judgements were often capricious. On occasions he might display remarkable indulgence towards known reprobates and adulterers.''' In addition to his active censorship, Claudius abolished taverns, forbade the sale of boiled meats and hot water and banned anyone from passing through Rome while seated in a vehicle.'''

Few autocrats have rivalled Nero in his passion for sensual indulgence. Yet although he was notoriously profligate in many areas of public entertainment, he too imposed a limit on *sumptus*. He reduced public banquets to *sportulae* and prohibited the sale of cooked food in *popinae* excepting only pulse and vegetables.'''

Waiving previous injunctions Vitellius gorged himself in *popinae*. It was believed that he had invested 900 million H.S. in table luxury during the few months of his reign.'''

With the advent of the Flavians and the termination of a series of bloody internal wars the theme of restoration reappears. The accession of Vespasian was hailed in familiar terms. Two images employed by Suetonius, writing in the second century A.D. but quite possibly utilising contemporary sources, bear witness to the accent on restoration. The empire, depicted as unsteady (*incertum*) and adrift (*quasi vagum*), was taken up and made fast (*firmare*)

by the strong hand of the Flavian house, " or like a tall edifice or tree, the republic was tottering (*nutans*) and almost cast down (*prope afflictam*) until Vespasian's steadying influence stabilised (*stabilire*) the situation. Significantly this stability was linked to his assumption of the censorship. " A contemporary welcomed Vespasian as a rector, coming to the aid of an exhausted world. "

Licentia and *luxuria* required bridling. The libidinosity of women was a special area of concern. " Discipline had to be restored to the troops who had grown unruly and insolent through, in some case success, in others disgrace. A searching review of the senate was initiated. Many unworthy incumbents were expelled while new blood from the Italian and provincial communities infused. The old world austerity of Vespasian was heightened by personal contrast with his predecessor. Regulations on the sale of viands at cookshops, rescinded or ignored by Vitellius, were reimposed. "

So the discourse on moral decline was astutely manipulated to uphold the pretensions of the new dynasty. Indeed there are strong indications that it formed a central plank of the Flavian ideology. The flagrant excesses of the Julio-Claudian house provided a convenient foil for the fabled virtues of the municipal aristocracy who were to play a prominent role in the new governing order. " Thus Vespasian's very lack of aristocratic pedigree was skillfully turned to his advantage.

It is in the context of this activity that Tacitus' favourable portrait of the new emperor, in the course of his famous digression on social change in *Annales* 3.55, " should be evaluated. A gradual diminution in table luxury is posited following the demise of Nero. In part the alteration is attributed to the wise discretion of the old nobility. Credit is also bestowed on the moderating influence of self-made men who had been recruited into the senate from outside the city. Above all, the personal example of Vespasian had prompted a return to better ways.

The reputed frugality of Vespasian prompts consideration of a remarkable feature of these early imperial political portraits. Standards of personal morality fluctuated in

almost pendulum-like fashion with rhythmic swings from rectitude to sin, from virtue to vice. The restraint of Tiberius was supplanted by the immoderation of Caligula. Claudius' serious endeavours were offset by the caprice of Nero while Galba's severity was replaced by Vitellius' ephemereal sensualism. Vespasian marked the return to moral gravity.

Despite a reputation for riotous indulgence, his son and successor Titus was also praised for his judicious restraint. While forbearance was exhibited in private entertainment no expense was spared in public munificence.⁸³

But few rulers employed the *correctio morum* more unscrupulously than the last representative of the Flavian dynasty. Elected censor for life in A.D. 84, Domitian incurred the odium of his contemporaries and the contempt of posterity for his relentless use of morality as a device to secure his personal position. A plethora of measures included the banning of public performances by actors,⁸⁴ a prohibition on castration coupled with a maximum price edict on eunuchs, and the strict separation of knights at the theatre. Allegations of sexual immorality were frequent. A Roman knight was struck off the jury list for remarrying a woman whom he had previously charged with adultery, disreputable women suffered testamentary incapacity and were forbidden use of the *lectica*, capital punishment was inflicted on Vestal Virgins according to gruesome, ancestral usage and several men were indicted under the *lex Scantinia*.⁸⁵ Well might Juvenal revile his loathsome hypocrisy:

*qualis erat nuper tragico pollutus adulter
concupito, qui tunc leges revocabat amaras
omnibus atque ipsis Veneri Martique timendas,
cum tot abortivis fecundam Iulia vulvam
solveret et patruo similes effunderet offas.*⁸⁶

The suppression of criticism

In the early Principate governmental incursions were made into three areas of social life, although in view of the differing nature of the evidence available for this period caution must be exercised in any assessment of exactly what constitutes innovation or continuity in the sphere of legal interference.

With regard to the expression of political dissent, verbal or written, the senatorial aristocracy of the Republic had, by and large, allowed considerable latitude to opinions critical of their authority. As far as is known, no attempt was made to suppress the orations of such critics as the Gracchi, Marius, Aemilius Lepidus or Sallust who, in their different ways, took issue with some of the dominant conceptions of their day."

In the matter of personal invective which perennially borders on libel and slander, the situation was more complicated. The condemnation and incarceration of Naevius was, on one interpretation, based on an ancient legal statute which laid down a serious penalty for defamation. "Whatever the exact legal position may have been, the unlettered vilifications evidenced in the satires of Lucilius and Varro and the scurrilous lampoons of Catullus, Furius Bibaculus and Memmius testify, in practice at least, to a wide degree of tolerance until the consolidation of Caesar Augustus' regime when significant new limitations were imposed."

While it is true that books had been burnt in the Republic, the sporadic incidents had concerned works of a religious nature and even Julius Caesar did not check vituperative personal criticism. His response to Cicero's eulogy of Cato was an *Anti-Cato*. "The incineration of Titus Labienus' books (A.D. 6-8) provided an ominous warning for historiographers." A similar fate befell the writings of Titus Cassius Severus (c. A.D. 8-12). The author suffered exile, twice. "Ideas or sentiments inimical to the dynastic house were further muzzled by the decision to stop the circulation of public proceedings (*acta*) in full, published openly for the first time by Julius Caesar. "Ovid's exile in A.D. 8, although in part due to a court intrigue, was no doubt sealed by a poetic output which was strikingly at

variance with the serious function that Augustus had marked out for literature. "4 The frivolity of the *Amores* and *Ars Amatoria* contrasted with the professed moral convictions of the new order. His fate held grave implications for elegiac love poetry. A few years later, libellous pamphlets were collected up on Augustus' instructions and burnt by the aediles. "5 This clamp down on divergent viewpoints was reflected in developments in legal and judicial practice. Treason (*maiestas*) evolved into a convenient 'cover-all' charge, sometimes constituting the main plank of the accusation or else merely tacked on to a series of other allegations. "6 In his famous review of the history of the *lex maiestatis* Tacitus observed an alteration in the scope of this crime between Republican and later usage:

facta arguebantur, dicta impune erant. primus Augustus cognitionem de famosis libellis specie legis eius tractavit, commotus Cassii Severi libidine, qua viros feminasque inlustris procacibus scriptis diffamaverat; "

Under Tiberius, a flurry of prosecutions occurred under the guise of upholding the dignity of the Roman state. Notable condemnations included that of Aelius Saturninus in A.D. 23 for his recitation of derogatory verses about the emperor. "7 In A.D. 25 Aulus Cremutius Cordus was indicted for his *Annales* of the Augustan period in which he had praised Brutus and termed Cassius "the last of the Romans." After his enforced suicide, the senate ordered his compositions to be collected up and destroyed by the aediles in Rome and by local magistrates elsewhere. "8 In this period too fell the trial and execution of Clutorius Priscus for his premature elegy on the death of Drusus. "9

To the senate was left the invidious task of judging, often under the watchful eye of Tiberius, those cases not covered by the *quaestiones perpetuae*. "10 Too outspoken a show of independence by senatorial members courted personal peril, too ready a cooperation implied compliance, even approval and, for the aristocracy as a whole, further political impotence. Throughout the first century A.D., the

articulation of political criticism was frequently subjected to imperial intimidation.¹⁰⁰

Legal scrutiny of knowledge and belief

Philosophical speculation, astrological prediction, affirmations of religious conviction - in sum, knowledge or belief about a wide range of matters natural and supernatural concerning the past, present and future - were subjected, in varying degrees, to legal inhibitions. Sometimes only the leading practitioners of a creed or divinatory craft were singled out for punishment. They suffered expulsion from Rome or Italy, relegation to an island or worse. On other occasions, the imperial authorities were concerned to repress the faith itself and all those who adhered to its tenets were liable to persecution.

Governmental intervention to supervise the conduct of religious sects or philosophical schools was not an innovation of the imperial administration. In the Republic, although no general compulsion was placed on citizens to participate in the polytheistic rituals of the state religion, the senatorial aristocracy endeavoured to tame religious fervour for new sects either through the admission of oriental worship under its own careful supervision or by the emasculation of undesirable cult organisations. A famous example of the latter practice was the suppression of the Bacchic 'conspiracy' in 186 B.C. Threats to public security were divined in the tightly-knit and autonomous cells by which the cult was structured. A further ground for decisive action was prepared by its characterisation as a newly arrived, alien belief which menaced the sound *mores maiorum*.¹⁰¹ Suggestions of gross indecencies coupled with hints of corrupting influences on Roman women served to strengthen the senatorial case.¹⁰² Intermittent expulsions of astrologers, Sabazi Jews, foreign philosophers and rhetors are also recorded for the second century B.C.¹⁰³

Despite this zeal to exert a gubernatorial control over the mechanisms of worship, by and large the senatorial

aristocracy can be seen as relatively tolerant in comparison with successive imperial administrations. During the first hundred years of the Principate, an extraordinary number of banning orders and capital trials were initiated. Although it is beyond the scope of this concluding chapter to explore the whole range of possible major and secondary motivations, immediate preoccupations or longer term political objectives which lay behind the promulgation of individual legal actions, it will be instructive to examine certain categories of imposition in order to assess significant developments in the history of legal interference.

The attention that the divinatory abilities and oracular pronouncements of astrologers, *mathematici*, *magi*, Chaldaeans, soothsayers and so forth command in the sources for this period is remarkable. Perhaps the rise in popularity of their craft was a consequence of the loss of religious authority on the part of the senate who had had the exclusive right to interpret signs and portents and to initiate practical remedies prior to the Principate. In part, too, the new configuration of power made inquiry into the future well-being of prominent people a delicate subject. Certain types of forecasting had a direct bearing on the personal security of the emperor. In A.D. 11 with the demise of the first *princeps* believed to be imminent, a code of practice was laid down by the Augustan regime, forbidding diviners to prophesy either in the presence of a single individual or on the subject of the death of any person even when three or more people were in attendance. To forestall possibly damaging or destabilising speculation, Augustus subsequently published his own horoscope. Other expulsion orders have been linked by scholars to abortive coups; for example, the two *senatus consulta* of A.D. 16 banishing sorcerers, diviners and astrologers from Rome and Italy has been connected with Libo's plot while in A.D. 52 Claudius' expulsion of astrologers followed upon the alleged conspiracy of Furius Scribonianus. In short certain actions are explicable in terms of immediate political tensions.

Was imperial intervention prompted by concern about more widespread popular unrest? In a stimulating article, R.F. Newbold examined the rise of messianic movements and millenarian prophecies at Rome in Tiberius' reign against a background of what he perceived to be deteriorating economic and social conditions.''' On this hypothesis, the administration was galvanised into action through fears about general threats to its authority. Although the presence of class hostility or egalitarian ideas has been questioned by some scholars, there can be no doubt that successive imperial regimes were acutely conscious of any sudden upsurge in religious fervour. The successful proselytising activities of the Jews may well have sparked an about-turn in a relatively tolerant policy towards their faith prior to A.D. 19.''' The anecdotes recorded on the immediate circumstances surrounding intervention suggest the familiar moral basis for legal action.''' The Christians' record of conversions to their faith and their uncompromising adherence to doctrine was not calculated to endear them to the authorities. Consequently, they offered an obvious scapegoat for Nero in his attempt to deflect personal criticism following the fire of A.D. 64.'''

While the philosophical doctrines of the Stoics and Cynics did not present an ideological threat to the principle of monarchical rule, prominent members of both of these schools were closely linked with serious opposition to the emperors in the first century A.D. It must be remembered that philosophical inquiry had formed an important part of aristocratic education and culture for a considerable time. Admiration for the past glories of the Republic stemmed largely from sentimentalism rather than the search for a political alternative. Autocratic power was easily reconciled with Stoic precepts. However when the flagrant libertinism of an emperor like Nero offended too strongly against acceptable canons of behaviour, the ostentatious rejection of a life of luxury in accordance with Stoic precepts and the adoption of an old world austerity conveyed a powerful, implicit criticism of disreputable conduct. In addition to a policy of non-cooperation by withdrawal from public life, senators like Thrasea Paetus and Borea Soranus

were accused of parading their *virtus* to the disparagement of the novel gifts which the emperor had to offer. Tacitus frames the rebuke of the accuser Capito Cossutianus thus:

et habet sectatores vel potius satellites, qui nondum contumaciam sententiarum, sed habitum vultumque eius sectantur, rigidi et tristes, quo tibi lasciviam exprobrant.'''

Helvidius Priscus was more outspoken in his criticism of Vespasian after the decision to grant amnesty to the Neronian *delatores* and paid the ultimate penalty. The Cynic Demetrius who was suspected of harbouring anti-monarchical sentiments was deported to an island. All philosophers apart from Musonius were expelled from Rome.''' Discipline was further extended by imperial supervision. Public-salaried professors were appointed by Vespasian for the first time. Domitian's execution of Q. Arulenus Iunius Rusticus and banishment of philosophers mirrored his predecessor's preoccupations.'''

Restrictions on assemblage

Restrictions on assemblage date from an early period. A provision in the Twelve Tables guarded against the possibility of a *coetus nocturnus* in the city.''' During the later Republic the authorities repeatedly deprived associations with any potential mass political or religious appeal of an independent existence by recourse to strict licensing or prohibition. The formation of autonomous groups or even unofficially organised meetings were perceived as threats to the authority structure.'''

In the first century B.C. the intensification of legal control was symptomatic of a serious loss of popular confidence in the senatorial aristocracy's governing ability. Bans on *collegia* were imposed by the senate in 64 B.C. and by Julius Caesar'' while a *lex Licinia de sodaliciis* (55 B.C.) was designed to tighten bribery laws which were being flouted by the establishment of semi-independent tribal associations whose job it was to procure

votes for an office-seeker without endangering his candidature.' Political clubs, on which large-scale bribery and intimidation was based, flourished. Augustus abolished all *collegia* with the exception of time-honoured 'legitimate' guilds which were to be licensed by the senate or himself.' In the early Empire the possibility for common gatherings was reduced by the abolition of public consultative bodies - the *comitia* and the *contiones*. Expressions of popular feelings were confined to public exhibitions.'

This hypersensitivity to almost any kind of unsanctioned gathering furnishes, I believe, an important insight into the severe restrictions placed on the operation of *ganerae*, *popinae* and *tabernae* in the early Empire. For the chequered and, for the most part, disreputable history of these establishments can be traced well back into the second century B.C. C. Gracchus denigrated the setting-up of drinking-dens while on provincial service.' Favonius deprecated the *praefecti popinae* in his oration in favour of the *lex Licinia*.' It is perplexing why successive emperors who were preoccupied with enhancing their own popularity, should seek to suppress a widely-enjoyed amenity.'

In the case of taverns, the effects of alcoholic liquor have been a perennial source of governmental anxiety. Rowdyism, brawling and the slackening of moral scruples have excited a major share of the comment. But evidence from Pompeii does suggest that such places did serve as a meeting-place for clubs.' It is quite possible that just as in the coffee-houses of 18th century Europe fashionable refreshment houses became a focus for disaffected groups or political agitators.' This would explain the nature of many of the prohibitions which outlawed the sale of not water and delicacies such as prepared meats and pastries.' Abodes which served only the humblest of fare, beans, pulse or greens, would cease to be attractive to a discriminating clientèle. The obtainability of luxury fare doubtless facilitated traditional pretexts for the closure of these establishments.'

In the introductory quotation Polyarchus deprecated the egalitarian objectives which he judged to have lain behind the activities of the sumptuary lawgivers in the city-states of Magna Graecia. A superficial reading of the anti-luxury debate in Ancient Rome and the professed desire to return to standards of ancient simplicity might lend support to the belief that a recurring objective of the legislators was, if not a levelling, a considerable reduction in the glaring disparities which persisted in the Roman citizen body.

The reality was quite different. The overriding imperatives of aristocratic regulation, hierarchical ordering, the 'protection of the non-tipper', the need to instil a sense of political responsibility and to ensure an adequate replacement rate amongst the privileged groups of Roman society, response to a nexus of social pressures and economic exigencies, the need for legitimation and for disciplinary devices testify to the diversity of self-interested motives and goals which prompted searching intrusions into personal life and relationships.

NOTES

VII

- 1 Plautus *Trin.* 1037-8. Stasimus' concern about the capacity of contemporary *maii mores* to command legal backing - even *ambitio*, he exclaims, is now sanctioned by law - is matched by his predilection for the *veteres hominum mores*: a topical subject.
- 2 It is not suggested that there were three distinct historical phases in the development of this discourse, only that differing aspects were prominent during different periods.
- 3 Plato rightly judged that the inability of an oligarchy to establish a proper code of self-control would lead to their demise. He was not correct in assuming that oligarchs were averse to sumptuary laws. Nor was he correct in holding that their rapacious greed for lucre and property-accumulation would pave the way for democracy; *Rep.* 555c.
- 4 Notice, e.g., the retention of standing armies or the strategic foundation of colonies of veterans in Italy.
- 5 Plut. *Sulla* 35.1; cp. 5.2 for an opponent's jibe that he had virtually bought his praetorship.
- 6 Suet. *J.C.* 38-9. For his irrequent largesse see *J.C.* 9-10 for his early career as an aedile; id 13 for his election to the office of Pontifex Maximus; id 26.2 for the funeral feast in honour of his daughter. Cicero (*Phil.* 2.116) criticised Julius Caesar's use of *munera* to enslave the Roman populace. Augustus' control of public largesse was a key to his enduring political success.
- 7 Contrast his praise of the exceptional personal integrity of Julius Caesar and the Younger Cato; Sallust *B.C.* 54.
- 8 See P. Jai (1963).
- 9 *Selections from the Prison Notebooks of Antonio Gramsci* ed. and trans. by Q. Hoare & G. Nowell-Smith (London,

1971), esp. p.12 (The Intellectuals) and pp. 258f (The State).

The dominant class, he held, exercised hegemony not only by monopolising the coercive powers of the 'state' but by welding together a system of alliances in diverse fields of 'civil society' - i.e. by forming a bloc. Consent was secured through the ideological grip which the ruling party exercised over a whole range of intellectual, cultural and recreational pursuits, so determining people's values and their common-sense assumptions about life. For reservations on his analysis see P. Anderson 'The Antinomies of Antonio Gramsci' in *The New Left Review* 100 Nov.1976/Jan'77. For valuable contributions on different aspects of Gramsci's thought see the April 1987 issue of *Marxism Today*.

- 10 A stimulating article by JoAnne Brown 'Professional Language: Words that Succeed' in *Rad. Hist. Rev.* 34 (Jan. 1986), 33-51 drew my attention to the importance of linguistic forms in the social construction of reality and supplied valuable references to modern bibliography on this subject.
- 11 See *Political Language: Words that Succeed and Policies that Fail* (New York, 1977), esp. ch.1. One of his primary concerns was to explain the prevalence of quietism - what were the factors which induced people to acquiesce in patently unfair social circumstances. In his *Symbolic Uses of Politics* (Urbana, 1964), p.6 he distinguished between two types of symbols; (1), referential symbols which refer directly to that which they symbolise, e.g., a flag or anthem and (2), condensation symbols which condense a cluster of associations into one act.
- 12 'Once accepted, a metaphorical view becomes the organizing conception into which the public thereafter arranges items of news that fit and in the light of which it interprets the news. In this way a particular view is reinforced and repeatedly seems to be validated for those whose attitude it expresses.' M. Edelman *Politics as Symbolic Action: Mass Arousal and Quiescence* (New York, 1971), p.72. On the significance of the way in which an issue is categorised, see (1964), p.117.

13 A careful distinction ought to be made between (1), legitimation - the process by which a regime seeks to establish acceptance of its authority in the view of its subjects, ie, its quest for a moral justification for its supremacy and (2), legitimacy - an evaluation of the right of any governing body to represent the interests and claims of a wider group of people - a set-up which would necessitate the unrestricted participation of fully economically and politically autonomous agents.

For an overview of M. Weber's tripartite categorisation of the legitimation of authority: traditional, rational-legal, charismatic see *A New Dictionary of Sociology* ed. G. Duncan Mitchell s.v. authority & Gertn and Mills (1948) 78-9. Note also *IESS* s.v. legitimacy for the broad categories of numinous and civil legitimacy and the valuable collection of essays in *Legitimacy and the State* ed. W. Connolly (Oxford, 1984).

14 See, e.g., E. Badian's article 'Lucius Sulla: the Deadly Reformer' in *Essays on Roman Culture* ed. A.J. Dunston pp.35-74.

15 It is instructive to contrast his behaviour with the frankly autocratic demeanour and blatant disregard for constitutional forms adopted by Julius Caesar - behaviour which hastened his assassination at the hands of offended nobles. F. Millar in 'Triumvirate and Principate' *JRS* 63 1973, 50-67 has questioned whether Augustus seriously claimed to have brought back the old 'Republic', emphasising the ambiguities contained in the phrase *res publica*. But these doubts are surely dispelled by Augustus' own statement in *R.G.* 34.

16 There is a sizeable literature on these aspects. See, e.g., *Poetry and Politics in the Age of Augustus* ed. A.J. Woodman & D. West (Cambridge, 1984). On his physical representation see S. Walker & A. Burnett's succinct account in *The Image of Augustus* (London, 1971). P. Zanker in *Forum Romanum: die Neugestaltung durch Augustus* (Tubingen, 1972) has drawn attention to how Augustus' image was conveyed in the monumental architecture; see also J.M.C. Toynbee in 'The Ara Pacis Augustae' *JRS* 51 1961, 153-6; E. Buchner 'Horologium

- Augusti*' in *Gymnasium* 90 1983, 494-508 and N. Horsfall 'Augustus Sundial: Architecture, Astronomy and Propaganda' *Omnibus* 9 1985, 5-7 on the striking, interlocking symbolism of the gnomon that Augustus erected in the Campus Martius. On coinage see the recent article by A.F. Wallace-Hadrill 'Image and Authority in the Coinage of Augustus' *JRS* 76 1986, 66-87. On the subject as a whole R. Syme (1939), ch.30 'The Organisation of Opinion' and M.P. Charlesworth 'The Virtues of a Roman Emperor: Propaganda and the Creation of Belief' in *PBA* 23 1937, 105-34.
- 17 The literary patronage of M. Valerius Messalla Corvinus was not of the same order as Augustus'.
- 18 See F.H. Cramer (1945), p.158.
- 19 G. Williams 'Phases in Political Patronage of Literature in Rome' in B.K. Gold ed. *Literary and Artistic Patronage in Ancient Rome*, (Texas, 1982), p.13. He points out that, in contrast to the lack of political commitment evident in the *Eclogues* of Virgil and the early compositions of Horace (e.g. *Epodes* 7 & 16), later works display a conviction that it was Augustus alone who could offer a solution to Rome's problems.
- 20 Passages such as Virgil *Georg.* 1.24; 1.40; 1.503; 3.15 emphasised his dynastic links with Julius Caesar and the Iulian gens from whom divine status was derived. For the adulation of Augustus by Horace, see *C.* 1.2.42; 3.3.12; 3.5.2; 4.5.1; and cp. 1.12.46 for Augustus' dynastic ambitions for Marcellus.
- 21 Virgil *Aen.* 6.791-95; cp. *Georg.* 2.170f.
On the significance of the golden age theme see A.F. Wallace-Hadrill (1982); on moral regeneration, R.I. Frank (1975), esp. p. 48. and the discussion in ch.6.
Patriotism was promoted by suggestions of stunning military successes - the sins of civil war, it was held, might be expiated by foreign conquests, e.g., *Hor. C.* 1.2.30; - and by the emphasis on *tota Italia*. For the importance of the last theme see R. Syme (1939), 456-7.
- 22 The theme of restoration was given tangible expression in the extensive building programme inaugurated by the first princeps; *Vitr. Arch.* 1 *praef.* 2; *Suet. Aug.* 28-30. It was

not only the majesty of the empire itself that was bolstered by these projects. The s.c. of A.D. 44 & 56, no doubt repeating previous regulations, prohibited the demolition of houses *...nefquej inimicissimam pace faciem inducere / ruinis domum villarumque, placere. FlkA I.289*. Dilapidation was out of keeping with the spirit of the times.

On the religious side of Augustus' revivalism see A. Wardman *Religion and Statecraft among the Romans* (London, 1982).

23 Hor. C. 3.24.35-6; H. Dessau (1963). G. Williams (1962), p.29f explores the ambiguities of this poem which he connects with the failure of the moral reforms of 28 B.C. Cp. Livy 1 praef. 9; Prop. *El.* 2.7; Suet. *Aug.*34.

24 Hor. C. 3.6.17-36. Note also the *...vitio parentum* of C. 1.2.23.

25 *Carmen Saeculare* 17-24.

Cp. Hor. C. 4.15.9-16.

*... et ordinem
rectum evaganti frena licentiae
iniecit emovitque culpas
et veteres revocavit artes.*

*per quas Latinum nomen et Italiae
crevere vires famaue et imperi
porrecta maiestas ad ortus
solis ab Hesperio cubili.*

The inability of Horace to match these precepts with his own actions and, indeed, the contrast of the Augustan ideal of matrimony with the frivolous sentiments contained in the rest of his lyric output has often occasioned comment. In 'Augustan Poetry and the Life of Luxury' *JRS* 66 1976, 87-105 J. Griffin has criticised those scholars who have posited an artificial distinction between 'unreal' Greek and 'native' Roman elements in Augustan poetry. Hellenistic refinements in Latin literature, he argues, reflects the actual mode of life enjoyed by certain sections of Roman society rather than conventional artistic canons.

26 *ILS* 5050; for a convenient collection of passages on the

- saecular games see Braund (1985), 292-9. The people of Narbo linked Augustus' birth with the *felicitas saeculi*; *EJ* 100.15.
- 27 *C.* 4.5.17-24; cp. *Epist.* 2.1.2-3.
- 28 See my discussion in ch. 3.
- 29 E.S. Gruen (1974); 258; 356; 505.
- 30 Id. Introduction & p.3 for his observation that the criminal courts had long been a terrain where aristocratic rivalry had been fought out.
- 31 M.H. Crawford *The Roman Republic* (London, 1978), Historical Introduction, remarks on the sanctioning '...in traditional terms of actions which were in fact revolutionary.'
- 32 See the remarks of Liebeschuetz (1979), p.59.
- 33 *Cic. Fam.* 4.3.1.
- 34 As John North observes this openness was also evident in other policies such as the readiness to admit new citizens 'Conservatism and Change in Roman Religion' *PBSR* 44 (1976), 1-12.
- 35 On this and the crucial role of the Sibylline pronouncements see J.A. North 'Religion and Politics, From Republic to Principate' *JRS* 76 1986, 251-8, p.253 where he points out that in the Republic the games had been exclusively devoted to the underworld deities.
- 36 *R.G.* 1.1; an old political formula which perhaps dates to C. Gracchus, see Botteri & Raskolnikoff in *Demokratia et Aristokratia* ed. C. Nicolet (1983).
- 37 *R.G.* 6.1; 5.3.
- 38 For the claim to have restored 82 temples, see *R.G.* 20.4; cp. 13.1; 19.1-2.
- 39 *in consulatu sexto et septimo, postquam bella ciuilia exstinxeram, per consensum uniuersorum potitus rerum omnium, rem publicam ex mea potestate in senatus populique Romani arbitrium transtuli. R.G.* 34.1.
Even in a private inscription the restoration of the republic is commemorated, see *Laudatio Turiae* 2.35.
- 40 *R.G.* 8.5.
- 41 *Tac. Ann.* 4.16; cp. *Cic. Fam.* 4.3.1: *nam quod exemplo fit, id etiam iure fieriputant; sed aliquid atque adeo multa, addunt et afferunt de suo.*

- 42 J.R. Gusfield *Symbolic Crusade: Status Politics and the American Temperance Movement* (Urbana, 1963); see MSES s.v. moral panic.
- 43 A strong element of symbolism was present.
- 44 See esp. M. Edelman (1964), ch. 4 for crisis management.
- 45 See Ygr. Pliny *Fan.* 42.
- 46 E.g. Tac. *Ann.* 2.27; 3.22; 6.29; 12.22; 12.52; 12.59.
- 47 E.g. Tac. *Ann.* 2.50; 2.85; 3.22; 3.38; 4.42; 4.52; 6.29; 6.40; 6.47; 11.1; 12.8; 13.45; 14.62.
- 48 Suet. *Dom.* 3.3.
- 49 Far-reaching changes in the legislative and judicial machinery occurred during these years. With the suspension of the *comitia* novel forms of law-making were introduced. *Edicta*, and senatorial *consulta* had a different standing in the early Principate. See A.H.M. Jones (1972), chap. 3 for details on criminal jurisdiction and the account of J.A. Crook (1967), 18ff on the sources of law. Note also Cass. Dio 53.21.3 on the different ways that Augustus employed to bring forward laws.
- 50 *R.G.* 6.1. Contrast the account of Suet. *Aug.* 27.5 and the grants recorded by Cass. Dio 54.10.5; 54.30.1. On the complex question of Augustus' censorial powers see the succinct account of P.A. Brunt and J.M. Moore eds. (1967), 45-6 and A.H.M. Jones *Augustus* (1970) p.62.
- 51 *R.G.* 3.2-4 emphasises his use of consular power in connection with his reviews although the possibility cannot be discounted that he employed censorial power in the traditional fashion; see *EJ* p.35 for the *Fasti* or 28 B.C. Note the advice that Cassius Dio (52.21.3-7) makes Maecenas articulate.
- 52 Suet. *Aug.* 39.
- 53 Cass. Dio 54.16.5; cf. Suet. *Aug.* 67.2. Augustus compelled his freedman Polis to commit suicide for adultery with a *matrona*. The prodigal Cestius Gallus received a well-merited *nota*, Suet. *Tib.* 42.2.
- 54 Tac. *Ann.* 3.28; cp. *id.* 1.9 ...*legiones, provincias, classis, cuncta inter se conexa*;
- 55 ...*posito triumviri nomine, consulem se ferens et ad tuendam plebem tribunicio iure contentum, ubi militem donis, populum annona, cunctos dulcedine otii pellexit.*

insurgere paulatim, munia senatus, magistratuum, legum in se trahere, nullo adversante,... Tac. *Ann.* 1.2.

It would be salutary to compare the techniques employed by the absolutist regimes of 17th & 18th Europe with certain developments under Augustus, e.g., the exploitation of political and economic rivalry between proximate social groups by Louis XIV, his *conseil étroit*, the creation of standing armies, bureaucratic structures, artistic patronage, building programmes and so forth.

- 56 On this aspect see R.A. Nisbet (1964), esp. pp.262-6.
- 57 Tac. *Ann.* 2.33; 3.55; Cass. Dio 57.13.3.
- 58 In A.D. 16. Suet. *Tib.* 34.1; Cass. Dio 57.15.1; Tac. *Ann.* 2.33. the wearing of silk by men was as much a moral as an economic issue.
- 59 Suet. *Tib.* 34.1; Pliny *N.H.* 33.32. The evidence for sumptuary laws is so incomplete that it is unwise to state categorically that this move was an innovation. Note for instance the Elder Pliny's remarks in *N.H.* 8.209.
- 60 Suet. *Tib.* 34.1.
- 61 Cass. Dio 57.21.3; 58.1; Tac. *Ann.* 4.14. In A.D. 27 the staging of *venationes* at Rome was forbidden.
- 62 Suet. *Tib.* 34.2.
- 63 Suet. *Tib.* 35.1.
- 64 For example Tac. *Ann.* 6.29; cp. Nero's actions *Ann.* 12.23; 13.17.
- 65 Suet. *Tib.* 42.2; cp. *Tib.* 43-4.
- 66 See Suet. *Cal.* 16.2 for the *recognitio equitum* and the expulsion of *spintriae*.
- 67 Cass. Dio 59.14.1-5.
- 68 Cass. Dio 59.11.6; for not observing the mourning period on Drusilla's death.
- 69 Suet. *Claud.* 16.4. See Tac. *Ann.* 11.13 for his severe edicts repressing licence at the theatre.
- 70 His colleague Vitellius unscrupulously removed Silianus from the senatorial order by a censor's edict on an unfounded allegation of incest, Tac. *Ann.* 12.4.1.
- 71 Suet. *Claud.* 16.2. On the judicial significance of this information see ch.5.

- 72 Suet. *Claud.* 16.1; cp. Tac. *Ann.* 11.25 for his mild *lectio* of the senate and for his adlection of new patricians.
- 73 However, Claudius shows inconsistency on this point. Cass. Dio 60.29.7; 60.6.7 records his restriction on taverns but *contra* Suet. *Claud.* 40.1 during a senatorial debate *de lanis ac vinariis* & id.38.2 for his vexation at the excessive punitive measures employed by an aedile against inhabitants of his own estate.
- Usury too was bridled by law; see Tac. *Ann.* 11.13 for restrictions on the practice of making loans to minors which were to be recalled in the event of their father's death.
- 74 Suet. *Nero* 16.2; Cass. Dio epit.62.14.2.
- 75 Tac. *Hist.* 2.95; Suet. *Vit.* 13; cp. Cass. Dio epit.64.2.1; epit.65.10.3; Tac. *Hist.* 2.73 for the *externi mores* of Vitellius' troops; Joseph. *B.J.* 4.587-92; 4.651.
- 76 Like a ship, perhaps, which had broken loose from its moorings? Suet. *Vesp.* 1.1.
- 77 Suet. *Vesp.* 8.1; cp. Plut. *Cat. Mai.* 19.3. For a discussion of the moral categories employed by Suetonius see A.F. Wallace-Hadrill *Suetonius: The Scholar and his Caesars* (London, 1983) ch. 7.
- 78 ...*fessis rebus subveniens*. Pliny *N.H.* 2.18.
- 79 Suet. *Vesp.* 11. A freeborn woman who liaised with another person's slave was to be graded an *ancilla*.
- 80 Suet. *Vesp.* 8.2.
- See Cass. Dio epit.65.10.3; Tac. *Hist.* 2.76 for the discipline of Vespasian and his troops. His private *parsimonia* was balanced by his public munificence, a laudable combination in the eyes of generations of Roman commentators; Cass. Dio epit.65.10.3; (56.40.4 for Augustus); Joseph. *B.J.* 7.132f for the incredible sumptuousness of Vespasian's triumph; *locus classicus* Cic. *Mur.* 76.
- 81 On this feature of the Flavian dynasty see B. Francesco Grelle 'La 'correctio morum' nella legislazione flavia' in *Aufstieg und Niedergang*, part 2, vol. 13, 340-365, esp. part IV *Gli homines novi e la polemica sui costumi* &

p.364 on the appointments to the position of *praefectus urbis*.

- 82 In Josephus' account *B.J.* 4.596f Vespasian's officers and soldiers contrast Vitellius' *λαγνεία* with their leader's *σωφροσύνη*. Cp. Tac. *Hist.* 2.5.1.
- 83 Suet. *Tit.* 7.1-3.
- 84 On his election to a perpetual censorship see Cass. Dio epit.67.4.3. As censor he expelled Caecilius Rufinus from the senate for acting and dancing in pantomines; Suet. *Dom.* 8.3; Cass. Dio epit.67.13.1.
- 85 Suet. *Dom.* 8.3; cp. Cass. Dio epit.67.12.1 for the punishment of many well-to-do people on a charge of adultery; epit.67.3.1 for his intention to use this charge to dispose of his wife Domitia. For his revival of the *lex Iulia de adulteriis* notice Mart. *Ep.* 2.60; 5.75; 6.2 and the discussion of Francesco Grelle (1980), 340-65, esp. the section *L'ideologia del princeps pudicus*.

Hadrian also attempted to turn the clock back too by reviving the ancient *modus* on banquets; SHA *Hadrian* 22.

- 86 Juv. *Sat.* 2.29-33.
- 87 It is possible that Sulla's *lex de maiestate* was intended to curtail some forms of public criticism although the corrupt state of Cicero's text at *Fam.* 3.11.2 makes it difficult to determine. See also Rotondi (1912), p.360.
- 88 The dispute centres on the accuracy of St. Augustine's claim to be citing Cicero when he states *...sive carmen condidisset, quod infamiam faceret flagitiumve alteri*. In the opinion of some, this was merely a rationalisation of the Twelve Tables' prohibition *si quis occentavisset* which was intended to outlaw incantation, i.e., magic. T. Frank in 'Naevius and Free Speech' *AJP* 48 (1927), 105-10 believed that the Scipionic party had extended the meaning of *carmina* to secure the conviction of the poet. Others, such as A.D. Momigliano, have held, on the strength of passages in Plautus and Cicero, that *occentare* signified slander; 'Review of L. Robinson *Freedom of Speech in the Roman Republic* (Baltimore, 1940)' in *Quinto Contributo* (Rome, 1968), 949-58; so, too, R.E. Smith 'The Law of Libel at Rome' *CQ* 44 1951, 169-179. I find it difficult to believe that such

- an advanced provision would have been made at such an early stage in Rome's legal development.
- 89 For two exceptions, both involving a *mimus*, see Auctor ad *Her.* 1.24; 2.19. See A.D. Momigliano (1968), p.954f for remarks on the *actio iniuriarum* and on the differing conceptions of freedom of speech in Rome and fifth century Athens see his article in *DHI* s.v. 'Freedom of Speech in Antiquity'.
- 90 F.H. Cramer 'Bookburning and Censorship in Ancient Rome' in *JHI* 6 (1945), 157-96. For a list of incidents involving the burning of religious publications in the Republic see C.A. Forbes 'Books for Burning' *TAPA* 67 (1936), 114-25.
- 91 Elder Seneca *Contr.* 10 *praef.* 4-8 on his Pompeian leanings; Suet. *Cal.* 16.1.
- 92 For the defamation of illustrious women; Tac. *Ann.* 1.72.
- 93 Suet. *Aug.* 36.1. Augustus did decline, however, to endorse a proposal to inhibit testamentary pronouncements; Suet. *Aug.* 56; cp. Cass. Dio 58.25.3.
- 94 See Ovid *Trist.* 2.207 for his *carmen et error*.
- 95 A.D. 12, Cass. Dio 56.27.1. Contrast the picture given by Suetonius *Aug.* 54-6.
- 96 For a thoroughly documented history of this crime see R.A. Bauman *The Crimen Maiestatis in the Roman Republic and Augustan Principate* (Johannesburg, 1967).
- 97 Tac. *Ann.* 1.72.
- 98 Cass. Dio 57.23.1. In A.D. 34 Mamercus Aemilius Scaurus was prosecuted, ostensibly on a charge of committing adultery with Livilla and on a *sacra* charge but in reality for the Republican sentiments contained in his play *Atreus*. An enforced suicide and the burning of seven orations *ex s.c.* ensued; Tac. *Ann.* 6.29; Cass. Dio 58.24.4.
- 99 Tac. *Ann.* 4.34 for a moving plea for toleration which Tacitus attributed to Cremutius; Cass. Dio 57.24.3; Suet. *Tib.* 61.3; *Cal.* 16.
- 100 Tac. *Ann.* 3.49-50 for the salutary comments put into the mouth of Manius Lepidus; Cass. Dio 57.20.3; Tac. *Ann.* 2.50 for the charge of *maiestas* unsuccessfully levelled at Appuleia Varilla for insulting deified Augustus.

- Tiberius and Livia.
- 101 See A.H.M. Jones (1972). ch.3.
- 102 Suet. *Dom.* 8.3 for Domitian's prevention of the publication of scurrilous lampoons against distinguished men; id. 10.1 Hermagenes' execution for some allusions in his history; id. 10.2 on the deaths of Aelius Lamia, Iunius Rusticus and Helvidius Priscus.
- 103 Its introduction was credited to a *Graecus ignobilis*, Livy 39.8.3.
- Beard and Crawford (1985), 25-39 take issue with the oversimplified characterisation of Roman religion as a mere tool of social control by the senatorial aristocracy.
- 104 On this whole episode see the perceptive comments of J.A. North 'Religious Toleration in Republican Rome' *PCPhS* 25 (1979), 85-103 who carefully reconstructs the nature of the cult from the terms of the legal prohibition. Initiates into the mysteries would have included people of both sexes, drawn from a variety of social orders.
- 105 See Table 2. In addition Pliny *N.H.* 29.16 records an expulsion of unknown date of Greeks and physicians from Italy.
- 106 For a systematic review of these terms which were employed rather loosely by some classical authors see R. MacMullen *Enemies of the Roman Order* (Cambridge Mass., 1967) chapter 4.
- 107 See M.I. Finley (1983), p. 92.
- 108 Cass. Dio 56.25.5.
- 109 See, e.g. Tac. *Ann.* 12.52; Cramer (1954) p.261f.
- 110 R.F. Newbold (1974).
- 111 E.M. Smallwood 'Some Notes on the Jews under Tiberius' *Latomus* 15 (1956), 314-29.
- 112 W.A. Heidel 'Why were the Jews banished from Italy in 19 A.D.' *AJP* 41 (1920), 38-47; but temple prostitution was not practised at this time by the Jews.
- 113 Tac. *Ann.* 15.44.
- 114 Tac. *Ann.* 16.22. On this topic see J.M.C Toynbee 'Dictators and Philosophers in the First Century A.D.' in *G & R* 13 (1944), 43-58.
- 115 Cass. Dio epit.65.13; Suet. *Vesp.* 13.

- 116 Cass. Dio 67.13; in A.D. 89, Pliny *Ep.* 7.19; Tac. *Agr.* 2 on Arulenus Rusticus and Herennius Senecio; Suet. *Dom.* 10.
- 117 Twelve Tables 8.26.
- 118 See for instance the *s.c. de Bacchanalibus* (186 B.C.) CIL 1².581 1.13. For detailed discussion of such restrictions during the late Republic see W. Nippel (1984), esp. pp.24-8.
- 119 Cic. *Mur.* 71; Suet. *Iul.* 42.2. Clodius had one ban lifted; Cass. Dio 38.13.2. On the composition of Clodius' gangs see P.A. Brunt 'The Roman Mob' *P&P* 35 1966, 22-5.
- 120 Cic. *Planc.* 36; 44; Rotondi (1912), 407. The *sodalicii* were organised in such a way as minimise the risk of the candidate himself facing a charge of malpractice.
- 121 Suet. *Aug.* 32.1. See also Braund 704 for a funeral epitaph of Augustan date commemorating a member of a guild which assembled in accordance with a *lex Iulia*. Note Trajan's extreme reluctance to sanction any form of association because of his apprehensions that it would assume political importance; Ygr. Pliny *Ep.* 10.34; 10.93; 10.96 with the commentary of A.N. Sherwin-White *Fifty Letters of Pliny* (Oxford, 1969). Note the injunction against *coetus* in the *lex Irnitana* ch. 74 with the commentary pp.223-4 in J. González (1986).
- 122 See Joseph. *B.J.* 19.25 for Caligula's savage repression of dissent at the chariot races.
- 123 C. Gracchus fr. 25 *Malc.*
- 124 Gell. *N.A.* 15.8.2. In Greece too wine-shops were held in low repute and the Areopagites disqualified anyone who had dined in such an establishment from serving in the court of the Areopagites; Athen. *Deipn.* 566-567.
- 125 As T. Kleberg *Hôtels, restaurants et cabarets dans l'antiquité Romaine.* (Uppsala, 1957), p.105 points out many poorer people did not have cooking facilities in their living quarters.
- 126 Id. p. 103. T. Kleberg believes that the emperors were moved to operate these restrictions from considerations of popular well-being, e.g., hygiene, improved victualling. Such claims of imperial benevolence are hard to substantiate.

Dig. 1.12.11 records that the sale of meat, at a just price, came under the oversight of the *praefectus urbis*.
127 Note how Cassius Dio's account (60.6.6-7) of Claudius' constraints on the worship of the Jews is immediately followed by his prohibitions on clubs and his reform of the *tabernae*.

128 Macrobian *Sat.* 7.14.1; Cass. Dio *epit.* 64.2.1; for the availability of similar delicacies in the Greek East note Athen. *Deipn.* 7a; 647; 657c for the Spartan authority's prohibition on pâtisseries.

129 Notice the Elder Pliny's description:

neque alio ex animali [sc. sows] numerosior materia ganeae: quinquaginta prope sapes, cum ceteris singuli. hinc censoriarum legum paginae, interdictaque cenis abdomina, glandia, testiculi, vulvae, sincipita verrina, ut tamen Publi mimorum poetae cena postquam servitutem exuerat nulla memoretur sine abdomine, etiam vocabulo suminis ab eo inposito. N.H. 8.209.

APPENDIX 1

Theories of Decline

A useful typology of theories concerning the rise and fall of empires has been proposed by Frank Walbank (*The Decline of the Roman Empire in the West* (London, 1946) 4-6). He employs four categories: (1), the 'naturalistic' explanation which depends on changes in man's political or ethical standards; (2), 'prophetic' or 'apocalyptic' approaches which posit a number of world epochs as part of a wider religious or mystical system of belief; (3), the 'organic' or 'biological' viewpoint according to which successive civilisations are each said to grow, mature or wither; (4), 'cyclical' conceptions of history.

Representatives of every type of explanation can be found in classical literature. However, Roman historians were preoccupied with the effects of adverse alterations in moral and social standards. In the main, the lot of the Roman state was characterised as a single, unilinear descent from a period of virtuous simplicity located in a nebulously defined era around the late fourth and early third centuries B.C. (see ch.2). Occasionally the influence of supernatural forces such as *fortuna* was incorporated (e.g. Sallust *Cat.* 10.1) but only as an adjunct to the dominating belief in moral decline. (For an account of the differing conceptions of $\tau\acute{\upsilon}\chi\eta$ see F.W. Walbank *Polybius* (Calif. Press, 1972), p.58f).

In contrast Greek thinkers showed a preference for cyclical ideas and imagery. (For a succinct discussion of this topic see F.R.D. Goodyear 'Cyclic Development in History: a Note on Tac. *Ann.* 3.55.5' in *BICS* 17 1976, 101-6 and note also the caution of A.D. Momigliano 'Time in Ancient Historiography' in *Quarto Contributo* (Rome, 1969), 13-41. against the common assumption that *all* Greek philosophers and historians conceived of change in cyclical terms). In two famous expositions, Plato (*Rep.* bk.8) and Polybius (6.7f) by whose accounts Cicero was strongly

influenced (*Rep.* 1.45; 2.45; 2.69), decline was mechanically integrated into a pre-conceived notion of political evolution. The life of the state was held to obey a set pattern of constitutional development. Accordingly, a declivity was posited at regular stages as part of an inevitable process (cp. also Aristotle *Pol.* 1279a-b).

Plutarch's observation on the retirement of L. Licinius Lucullus from public affairs combined two different strains of thought: '... for a political cycle, too, has a sort of natural termination, and political no less than athletic contests are absurd, after the full vigour of life has departed.' Loeb trans. of Plut. *Luc.* 38.4.

Other theories were more far-reaching in scope. Hesiod's myth on the succession of metallic ages postulated wholesale alterations in the condition of the human race. (see e.g. *Works and Days* 109ff. For a thorough discussion of Hesiod's myth and later developments on his theme see B. Gatz *Weltalter, goldene Zeit und sinnverwandte Vorstellungen* (Hildesheim, 1967). The Stoic doctrine posited periodic conflagrations of the universe from which a new order arose. (On this see the interesting note of R. Coleman *Vergil: Eclogues* p.130f). Millenarian ideas became current in the traumatic period of the late Republic and early Principate. Both Diodorus Siculus (38/9.5.1) and Plutarch (*Sulla* 7.3) record the terrifying prodigy of 88 B.C. when a shrill, protracted trumpet blast from out of a cloudless sky was interpreted by Etruscan soothsayers as portending the end of an era - one of the eight (or 10 in some accounts) great circuits in the history of mankind - following which new habits and customs would be engendered. R.F. Newbold ('Social Tension at Rome in the Early Years of Tiberius' Reign' *Ath.* 52 1974, 110-43) held that the worsening plight of the poor at Rome contributed to the spread of these messianic and apocalyptic prophecies embodied in various Eastern cults - developments which caused the authorities no little concern. The circulation of false Sibylline oracles such as the one preserved by Cassius Dio 57.18.4 (A.D. 19) which predicted that 'when thrice three hundred circling years had elapsed civil strife would prostrate Rome and the folly of Sybaris,' was interpreted as domestic challenges to

political authority. (Notice the direction that fierce anti-Roman criticisms took in the Sibylline oracles current at the time of Mithridates VI of Pontus' campaigns; (Lewis & Reinhold *Roman Civilization* 1. 377-8). The prevalent belief in four successive world kingdoms also figured in the philosophical resistance to Roman rule. (Cp. J.W. Swain 'The Theory of Four Monarchies: Opposition History under the Empire' *CP* 35 1940, 1-21). A belief in the succession of world kingdoms had a long history. Even when the Macedonian kingdom was at its acme, Demetrius of Phalerum, mindful of the fate of Persia and Alexander the Great, was predicting its downfall. (Diod. Sic. 31.10.1; Polyb. 29.21). Contemporary with the fall of Persia, the composition of Aemilius Sura chronicled the successive empires of the Assyrians, the Medes, the Persians, the Macedonians and finally the Romans. (Vell. Pat. 1.6.1-6 and F.W. Walbank 'The Idea of Decline in Polybius' in Koselleck & Widmer (eds.) (1980), p.41f). Polybius relates that Scipio Aemilianus wept on the fall of Carthage presaging, from the examples of Ilium, the Assyrian, Median, Persian and Macedonian empires, that the Roman republic too would meet its doom. The lives of cities, like men's, were finite. (Polyb. 38.21.1). Diod. Sic. 32.24.1 records his apt quotation from Homer's *Iliad* 6.448/9 for the occasion.

However, several Imperial administrations were quick to capitalise on the range of opportunities offered by the idea of decline both linear and cyclical: in the case of the former the theme of restoration formed the basis of Augustus' legitimating ideology (see ch.7); as regards the latter, notice, above all, the contrived celebrations of the *ludi Saeculares* by Augustus and Claudius (See R. Coleman (1977), p.131 for the convergence of the Etruscan tradition of *saecula* and the Sibylline tradition. As Lovejoy and Boas point out (1935), pp.5/6 the philosophical attractions to the theory of world-cycles is that the constant succession of time periods avoids the necessity to posit a cosmogony or a consummation). Nero's accession was heralded as the return of the golden age by Calpurnius Siculus *Ecl.* 1.33-64.

Velleius Paterculus (2.11.3) imposed the analogy of organic growth - youth, senescence and death - on the

fortunes of families, cities and empires alike. Florus ambitiously attempted to combine this biological conception of history (1 *praef.* 4-8) with a cyclical pattern of metallic ages (1.34.19). It was an essentially contradictory undertaking. As R. Starn (1975), p.17f observed there is an important conceptual difference between the 'mixed-time' patterns of cyclical chronologies and the 'finitist' position (i.e. that the historic/cosmic process started at a definite point in the past). Lovejoy and Boas (1935), pp.1-7 furnish an exhaustive, if somewhat overschematic, classification of 'finitist' and 'infinitist' theories of history in connection with their thorough documentation of chronological and cultural primitivism in antiquity. A further distinction is drawn between bilateral and unilateral finitist theories; the former having a beginning and end; the latter, a beginning but no postulated termination.

Thus classical historians drew freely from this amalgam of ideas to express their apprehensions about the course of human affairs. It is unwise to search for strict consistency in their thought. Their eclectism, however, should not disguise the powerful economic and political imperatives which helped shape their outlook.

Appendix 2

The Terminology of Inequality

That inequalities have existed in every known society is beyond dispute. How they arose, how best to describe and to analyse the structures, institutions and relationships which uphold these distinctions, whether their very existence is propitious, are questions that have formed the cornerstone of scholarly controversy and political conflict through the ages.

Inequality is by no means universally regarded as deleterious. Confucius taught that inequality was in the nature of things and that egalitarianism was irrational. Similar sentiments were expressed by classical philosophers such as Aristotle *Pol.* 1260a and Cicero *Rep.* 1.43 while the desirability of social distinctions is commended today by conservative commentators. Functionalist approaches, too, stress the necessity of 'stratification' for an efficient ordering of society's resources and activities (See W. Lloyd Warner 'The Study of Social Stratification' in M.M. Tumin's excellent collection of essays *Readings on Social Stratification* (New Jersey, 1970), 247). For K. Marx, mindful of the colossal forces unleashed by the emergence of capitalism and the industrial revolution, the reasons for the glaring disparities in wealth and power were to be found primarily in an examination of economic criteria. Society was objectively definable in terms of classes: (for a definition of the two main uses of the word class in a Marxist context, see G.E.M. De Ste. Croix (1981), 43f & *A Dictionary of Marxist Thought* ed. T. Bottomore et alii s.v. class; exploitation); class in a specialised sense denoting groups whose members owed their identity to a shared relationship in the productive system of society. For instance, in industrial societies capitalist, landlords and labourers constitute three major categories. Marx was not merely concerned with description. He employed this classification dynamically to explain social change on the

widest possible scale. For class constituted, for Marx, Engels and their followers, the very processes of exploitation in human society while the contradictions inherent in these social relations engendered frictions and tensions which determined the pace and direction of historical development. Class divisions were held to have first emerged when surpluses were created which allowed non-producers to exist from the productive labour of others. G.E.M. de Ste Croix has applied the concept of class struggle to extensive periods of the classical world. What is debatable is his insistence that neither political consciousness nor collective action are prerequisites of a process (i.e. the class struggle) which many Marxist scholars would assert was characteristic of the ascendancy of capitalism itself when society was progressively polarised into two antagonistic camps - the bourgeoisie who comprise the owners of the means of social production and the proletariat who rely solely on their labour power to survive. (See G.E.M. de Ste Croix *The Class Struggle in the Ancient Greek World* (London, 1981), pp. 57-69 for a defence and consideration of objections to his thesis). It seems to me that Marx drew a fundamental distinction between *klasse an sich* and *klasse für sich* and that the class struggle proper occurred with the formation of the latter (*The Poverty of Philosophy* ch.2 sect.5). In sum, the mere existence of class divisions, which were undoubtedly present and of crucial importance in Roman society, does not entail the class struggle.

Another major theorist, Max Weber, while agreeing with much of Marx's analysis with regard to nineteenth century capitalism conceived of pre-industrial societies in quite different terms. He asserted that there were bases for the formation of social groups other than a common position in the productive process. In particular, the social structure of the city-state of antiquity was better described in terms of *stände*, estates or status-groups which were defined by the specific style of life shared by its members and by the positive and negative social estimation of honour accorded to them. (For a full discussion of M. Weber's conception of class, economically defined but significantly different from

Marx, and status and their interaction. see A. Giddens and D. Held *Classes, Power and Conflict: Classical and Contemporary Debates* (Basingstoke, 1982), esp. p. 60f).

A shift in emphasis is detectable from relationships determined by the mode of production to those established by the forces of consumption, a tendency that has been shared and pronounced by a large majority of liberal English and American sociologists. Different social groups, it is held, are characterised and separated by their differing standards of consumption as manifested in, e.g., dress, housing, transport, leisure activities and so forth. However, what is interesting about this approach is that it helps to shed light on various types of social action, tensions and conflicts which are not readily explicable in the Marxist scheme of class divisions. However, the two approaches need not be mutually exclusive. For the differences in social status on which Weber and his followers have focused are ultimately related to economic divisions. But while the ownership and control of the means of production are factors of seminal importance, it is the superficial distinctions in social practice which are most highly visible and most immediately impinge on the popular consciousness.

Considerations of inequality are highly pertinent to the subject of this enquiry. Disparities do not emerge spontaneously. They are often the product of considered political projects. Sumptuary laws were the direct expression of a civil policy that sanctioned major divisions amongst citizens. In the main, consumption habits were the target of the legislators. But intervention was often sparked by immediate tensions resulting from the grave economic imbalances present in Roman society as chapter 3 seeks to demonstrate.

Furthermore, problems were aggravated by invidious perceptions of social worth which were largely shaped by linguistic constructs. It was not only the vocabulary of a moral hierarchy that was established (see ch.3). Other cognitive forms were employed to perpetuate divisions. The concepts of some modern sociologists have clouded important issues. Favourite images of social structure in antiquity, such as the metaphor of the body-politic or ship of state

have been replaced by the almost universally adopted figure of 'stratification', an image plucked from the geological sciences (on this, see S. Ossowski *Class Structure in the Social Consciousness* (London, 1963)p.7 and on Weber's preference for stratification by status over that of political and economic factors especially in connection with the ancient world, see G.E.M. de Ste Croix (1981), pp. 85-91). In my opinion stratification is a particularly clumsy and unhappy choice of metaphor for a number of reasons. Firstly, it entails a comprehensive categorisation of all persons on different levels along a vertical axis which necessarily involves the construction of a hierarchy of social worth. This is largely based on self-referential value-judgements as to what constitutes superiority and countenances derogatory distinctions between people. Invariably, at the apex, appear the 'élite', or upper classes, with their 'high' culture. Inferiority is conferred on those most traditionally disadvantaged; the poor, labourers or otherwise handicapped comprising the 'lower' classes or strata sharing working class 'sub-cultures' etc. Secondly, the location of individuals or groups on each stratum is determined by a mélange of objective criteria and subjective evaluation, e.g., wealth, income levels, birth, occupation, social honour - factors which are fundamentally incommensurable. Indeed the use of this image, like its complementary metaphors - spectrum, continuum, ladder, pyramid - is vitiated by its attempt to express on a unidimensional model social aspects or attributes which are essentially multidimensional. An attempt to salvage this image involves the postulation of cross-cutting whereby an individual is ranked along a plurality of dimensions, e.g., with respect to power, occupation, religious, family affiliations in the ultimate aim of somehow correlating these several facets. Greater confusion results for the original image of a stratum is rendered virtually meaningless. In short, the resulting picture is one of a vast conceptual and terminological muddle (see further, J.E.Lasswell, 'The Variable Meanings of Social Class' in M.M.Tumin ed (1970)).

As far as possible I shall avoid the use of the term *strata*. Instead I shall adhere to the formal framework provided by the varying legal capacities of individuals or families - the juridical hierarchy. Distinctions between free and unfree, citizen and non-citizen were basic to most ancient city-states (see e.g. Ephorus *apud* Strabo 10.4.16). In Rome of the Republic, the timocratic constitution produced a structure that was basically graded according to the economic criterion of property-ownership. Each citizen was routinely ranked according to his *ratio* (census return) in one of several classes which proportioned his voting strength in the centuriate assembly and his legal privileges according to his economic capacity. (M. Beard and M. Crawford (1985), p.42 on the 5 census classes together with the equestrian and *capite censi*) & for a full account of distinctions see J.A. Crook *Law and Life of Rome* (London, 1967), ch.2). The censors who undertook the task of registration also took into consideration factors such as age, *quaestus* and perhaps *ordo*. (see L.Grieve's discussion on a problematic passage 'Livy 40.51.9 and the Centuriate Assembly' in C.Q. 35 (ii)(1985), 417-29). By the late Republic, classical authors were regularly employing the word *ordo* to describe the various social categories in Rome, e.g., the senate, the *equites*, the *tribuni aerarii*, *libertini*, *decuriones* (in Italy) although the origin of this distinction is unclear (notice its use by the Elder Cato fr.89 *Malc.* and C. Gracchus fr.41 *Malc.* & Iunius Gracchanus Pliny *N.H.* 33.36 and see J. Béranger 'Ordres et classes d'après Cicéron' in *Recherches* (1970) p.227f). The word 'order' which corresponds loosely to our notion of estate is, in my opinion, the least misleading term to describe the major social groupings in Rome during the late Republic and early Empire (See M.I. Finley's important discussion (1985), ch.2 'Orders and Status'). Of course, as M. Beard and M.H. Crawford point out, (1985, p.47) there were status divisions which did not exactly correspond to these legal distinctions but on the whole this classification affords the best framework for a description of Roman society. The word 'class' will only be employed in a Marxist sense, i.e., to signify economic groups who hold definite positions in

the productive system while the vague use of the phrase 'social classes' is eschewed. Status is used in the Weberian sense. This discussion may appear inordinately long but I feel it is vital to clarify terminological issues from the outset and move in the direction of a common system of symbolic notation.

APPENDIX 3

SOCIAL CHANGE

Social change is a term with such broad implications that it almost defies definition. Indeed many social scientists have advocated the abandonment of the concept altogether. Only the briefest of historical surveys of the salient approaches to this question can be supplied here.

Commentators in classical antiquity were inhibited by their preoccupation with the impact of moral factors (i.e. the values and conduct of prominent figures or groups) on social and historical development. Explanations for significant political modulations advanced by Greek thinkers bestowed an extensive role on *vitia*, which were held responsible for the downfall of narrowly-constituted and broadly-based governments alike, and even for the demise of entire city-states. Plato's characterisation of the transition from oligarchy to democracy in his *Republic* 555b is typical in the causal influence he attached to its rulers' lack of self-restraint. In turn, the fate of popular rule was sealed by hedonistic indulgence. Polybius, in his cyclical conception of historical change, proposed that true monarchy was subverted into tyranny when kings gave way to their desires - extravagance engendering envy and hatred (6.8.5). Roman annalists perpetuated this limited perspective on social change, seeking to elucidate the tumultuous instabilities of the late Republic with respect to alterations - adverse alterations - in the behavioural patterns of its leading citizens and its populace. Exogenous factors, the introduction of luxury goods and practices consequent upon imperial expansion, had serious internal ramifications. Above all, the release of pernicious tendencies - *avaritia* and *ambitio* - undermined respect for traditional customs and values (*mores maiorum*). The stability and quiescence of the past was juxtaposed with the

transcience and turbulence of the present (see further ch.2).

19th century evolutionary thinkers concentrated on alterations that occurred in the organisation of society and were heavily influenced by the discoveries of contemporary scientific, particularly biological, research. Durkheim and Spencer employed models which highlighted the growing structural and functional complexity within society, positing a tendency to differentiation with the formation of compound out of simple institutions and bodies. (For the kernel of the main theories see the convenient compilation of excerpts in A. Etzioni & E. Etzioni-Halevy eds. *Social Change: Sources, Patterns and Consequences* New York, 1973). Modern day functionalists assume that social change happens only when there is a functional demand for it, likening the workings of society to that of the self-adjusting mechanisms of a natural organism - thus marginalising the importance of social tensions and disorders (on the drawbacks to this approach see R. Cotterrell (1984), 98-9). Several of these assumptions are shared by developmental or modernisation theorists who emphasise the role of ideas and technology in their observations on the subject (on this and on the main sociological perspectives see M. O'Donnell's (1987), pp. 186-8; 7-19 succinct and valuable overview).

Marx and Engels rejected a linear in favour of a dialectical theory of progress. It was class conflict - the result of exploitative relationships subsisting within a given mode of production - that provided the dynamic for historical development. Successive stages - termed Asiatic, ancient, feudal and bourgeois modes of production - in the movement towards a classless society were proposed (the articles on historical materialism, exploitation and stages of development in *A Dictionary of Marxist Thought* ed. T. Bottomore et alii offer a useful introduction to their analysis).

Max Weber was sceptical about finding general laws of development that held good for all societies. Instead he employed the concept of ideal-types to explain particular trends that arose within any social group. Ideal types were constructs which embodied the universal characteristics of a

social phenomenon - be it an institution, value-system etc. - as they would appear in their purity - abstracted, as it were, from any specific historical context. This concept could then be employed to explain variations in, for example, the nature of bureaucracy or the legitimation of authority, from one society to another. The presence or absence of a feature could cast some light on how like or divergent traits developed amongst other societies under different conditions (see the *MacMillan Student Encyclopaedia of Sociology* s.v. ideal type, cross-cultural comparison & *A New Dictionary of Sociology* ed. G.D. Mitchell s.v. comparative method; IESS s.v. comparative studies). His approach was essentially multi-factoral. Rejecting economism, he stressed the contribution of diverse influences - charismatic leaders, ideas and institutional norms - in the historical process (see again M. O'Donnell 1987, 187-8).

Other contributions to the debate which either overlap or cannot easily be classified in a single school of thought include: (1), the exogenous theories of social change. These emphasise the role of external factors in generating major alterations in the behavioural and institutional patterns of a society. It is the impact of significant extraneous agents - migratory movements, borrowed technological advances, literary currents - that provide the jolt to the existing set-up. Concepts such as 'diffusion', 'transculturation' and 'effective intrusion' are employed to describe this process (on this and below see A. Boskoff's survey 'Recent Theories of Social Change' & R.A. Nisbet 'Kinship and Political Power in 1st Century Rome' in Cahnmann (1964), 140-57). (2), endogenous theories explain social change in terms of the outcome of internal factors and tensions. Maine, Toynbee and Sorokin have been identified with this approach. Concepts such as 'socialisation' or 'internalisation of norms' are advanced.

Appendix 4

Manifestations of luxury at Rome

The permanence of this phenomenon, so universally deprecated by generations of leading figures in the political, intellectual and spiritual world is, *prima facie*, puzzling.¹ But the frequently bizarre and irrational outward forms that luxury could assume and upon which the moralising strictures of ancient authors so fondly dwell, should not disguise its distinctive functions; socially, as a means of exhibiting and thus fixing divisions within society;² on a public level, as a sure means of securing popular favour and thus political power.

The urge to distinguish oneself and so to outdo one's fellow men was advanced by Thorstein Veblen as the major motive force behind the individual desire for luxury goods.³ He believed that when predatory prowess could no longer display itself in acts of naked aggression or sheer brute strength, accumulated wealth became the customary basis for success and esteem. An individual's superior standing was manifested in two ways; firstly, in the conspicuous use of leisure time which emphasised both his occupational preeminence, i.e., his abstention from degrading productive work and his superior pecuniary ability to afford a life of idleness;⁴ secondly, in conspicuous consumption, for when the possession of wealth in itself had become honorific, it was necessary not just to acquire wealth but to furnish tangible proof of its acquisition.

On a social level, fear of a distinctly unfavourable comparison with one's peers stimulates most people to strive to meet the standard of consumption of their order or group.⁵ Therefore, in any society where an individual's worth is measured primarily in a pecuniary system of invidious distinction, the desire for emulation becomes a most potent economic and social factor, and one highly conducive to political conservatism.⁶ Regulation of such

expenditure was potentially a most powerful means of social control in the hands of governing bodies.

In the Graeco-Roman world, maintenance of high status was especially influential in determining levels of competitive expenditure.⁷ The need to project and to enhance one's social position was bound up with deep-rooted features of Roman society and with the political structure of the Republic. The enduring importance of the *patronus - cliens* relationship, a reciprocal but unequal alliance by which paternal protection was bestowed in return for political and social compliments - in short, prestige - made emulative consumption a must amongst the aristocracy at Rome.⁸

*pubertatis ac primae adolescentiae tempus tanta inopia
tantaque infamia gessisse fertur, ut nullum argenteum vas
in usu haberet.*⁹

Casual remarks like this value judgement preserved by Suetonius on the upbringing of the emperor Domitian reveal just how important spending on the right articles was as a basis for esteem. The importance of consumption as an indication of personal standing had fatal consequences in the case of two individuals during the turbulent era of the late Republic. M. Antonius was betrayed by his discerning taste for high quality wine during the Marian massacres,¹⁰ while in another bout of civil strife Aponius opted for death rather than endure the sordid privation of his life in hiding.¹¹

As in many societies, so at Rome, each achieved level of expenditure failed to set a boundary to luxury. It merely served as a plateau for yet more extravagance, whether quantitatively or qualitatively, as competitors vied to outshine each other by devising new methods of conspicuity and ostentation.¹² Those who wished to leave their mark on history were encouraged by the fact that significant details of public munificence were recorded in the public annals, while biographers of leading men could be counted upon to commemorate personal splendour.¹³ This in-built pressure for innovation helps to explain why spending on the provision of public and private luxury had the tendency to spiral with

serious consequences for the political stability of the Republic.

During the Roman republic the question of luxury became inseparably linked to the growing impact of Hellenistic culture on the lives of the Roman and Italian well-to-do. This identification explains the consistently bad press that attended skilled or artistically accomplished Greeks; physicians, cooks, astrologers etc. In ancient and modern accounts, this phenomenon is often presented as an unstoppable intrusion of ideas and artefacts which the native purity of the Roman character was powerless to resist. But, as Arnaldo Momigliano has emphasized,¹⁴ the process of cultural adoption was in large part due to the strenuous efforts of the Roman aristocrats themselves in acquiring and mastering the sophistication that the richly diverse Greek literary and artistic heritage had to offer. It was not simply a matter of *kunstraub* - the despoliation of Greek and Asiatic cities by greedy Roman generals to adorn public and private buildings. Refinements were introduced into almost every area of the social and political life of the aristocracy.

Greek paedagogues were employed to verse Roman youth in the classics of Greek literature. Prominent Greek intellectuals befriended the most influential politicians of their day.¹⁵ The skills of dramatists such as Plautus and Terence who drew heavily on Greek originals were utilised by Roman politicians to provide popular entertainment at public religious festivals. Not surprisingly art was deployed to project the abilities and eminence of Roman statesmen.¹⁶ In the lawcourts, at senatorial debates and at informal assemblies the full range of Greek rhetorical and analytical techniques were displayed. Strong prejudices were aroused by the introduction of these pursuits and questioning attitudes which were held responsible for the multifarious instabilities of the period. Only in part can this hostility be explained in terms of a chauvinistic reaction to foreign practices. The oligarchy must have been seriously concerned at the effect that the powerful combination of material enrichment and cultural innovation would exert on the stability of political competition.¹⁷ Despite these publicly

aired anxieties, criticism of foreign learning and artefacts was largely humbug. The fact was that members of the ruling class benefited disproportionately from their introduction. Economic and social advantages accrued from the heightening of levels of luxury expenditure. Elaboration in etiquette and in sophisticated tastes in, e.g., poetry, sculpture, banqueting served to distinguish the privileged from less favoured groups. Luxury creates distance. Few documents reveal the ambivalence of the attitudes of the Roman aristocracy towards the acquisition of Greek culture more clearly than the censors' edict of 92 B.C.¹⁰ It sought to maintain advantages in education and literacy for politically conservative ends.

To give an illustration of the cost-of-living which a member of the Roman aristocracy would be obliged to maintain, I have attempted a summary itemisation of the main categories of expenditure involved. As argued in chapter 3 above, overall patterns of expenditure are of greater significance than individual items. In conformity with social expectations a Roman gentleman was required to score highly on the whole spectrum of luxury spending.

luxus mensae

The impact of Hellenistic and Oriental refinement manifested itself in all major categories of luxury consumption.¹¹ Pliny the Elder complained that *luxus mensae* had established distinctions even in the most ordinary fare:

*...alio pane procerum, alio volgi, tot generibus usque ad infimam plebem descendente annona: etiamne in herbis discrimen inventum est, opesque differentiam fecere in cibo etiam uno asse venali?*¹²

From an early date, convivial entertainment of one's friends, peers or clients at private and public functions became an established feature of the social life of the Roman aristocracy.

Choice fish dishes are amongst a wide number of delicacies known to be available to the gourmet from early in the

second century B.C. ²¹ The Elder Cato, in his inimitable aphoristic style, inveighed against the enormous sums lavished on Pontic caviar. ²² By the first century A.D. three mullets could fetch 30,000 HS. ²³

Foreign birds, imported from distant corners of the Mediterranean supplemented native varieties on the tables of the rich. ²⁴ Two practices aroused the indignation of moralists and the intervention of legislators: firstly, the fattening or stuffing of poultry, secondly, the fastidious habit of eating only part of the birds. ²⁵

No expense was spared in the procurement of exotic meat dishes and other dainties. Dormice were a favoured and controversial delicacy. ²⁶

The development of large-scale wine production in Italy affected the drinking habits of much of the population. By the end of the first century B.C. a scarcity of wine could provoke, to Augustus' intense displeasure, a public outcry. ²⁷ If the extravagant whims of spendthrifts could not be satisfied by select vintages from Cos, Chios or Campania their thirst could be slaked by ice-cooled snow. ²⁸

Delicacies were enhanced by costly condiments from the East and by exquisite sauces. ²⁹ Expenditure on ingredients was matched by lavish preparation and presentation. Catering was developed into an art. ³⁰ Even in the second century B.C. a skilled cook could fetch 96,000 HS. ³¹

To the dismay of moralists, *fictilia* gave way to expensive silver table-ware; chased goblets, myrrhine cups and dippers. ³²

domestic service

Domestic service constituted a second category of conspicuous expenditure. Slaves, many of whom were highly educated Greeks, were sought for their skills in, e.g., teaching, cooking, medicine, astrology or given special training. The services of freed and freeborn specialists were hired at tremendous cost, too.

Although they performed the all-important task of exempting their owners from any type of menial work, many of

their duties were purely ceremonial. Their existence simply indicated their master's ability and readiness to pay.

This element of self-display was intensified by the added ingredient of vicarious waste which occurred when a person employed a large retinue far above his immediate requirements, eg, on the staffing of several residences or on the upkeep of gardens which he seldom used. In this way, his retainers assumed the role of deputies by being seen to consume and enjoy these facilities in his stead.³³

Even in the early second century B.C., the Elder Cato could make it a matter of a boast that he never paid more than 6000 HS for a slave and that he took to his province only 5 personal slaves.³⁴ Later in the same century 700,000 HS was bid for a slave by M. Aemilius Scaurus, promulgator of the sumptuary law of 115 B.C.³⁵

Plutarch lists amongst Licinius Crassus' huge retinue: readers, amanuenses, silversmiths, stewards and table-servants.³⁶

attire

Since distinctions in dress could afford immediate evidence of one's social standing, conventions of *habitus et cultus* were carefully laid down by Roman authorities.

Women were a frequent target of criticism³⁷ although Roman nobles who adopted foreign fashions, e.g., the wearing of Greek sandals, *chlamys* or *pallium* were stongly censured also.³⁸

Regulations to check ostentation in female attire proved ineffectual but the details of the prohibitive measures provide the clearest insight into such luxury at the end of the third and the beginning of the second century B.C. Soon after the repeal of the *lex Oppia* (215 B.C.) which legislated upon the possession of gold, parti-coloured garments and the use of vehicular transport by women, the Elder Cato heavily taxed extravagance on identical articles of consumption in his capacity as censor. His plea for a degree of standardisation, if not uniformity, amongst Roman matrons was probably representative of many Roman nobles'

apprehensions about competitive spending.³⁹ In an informative passage, Polybius, describing the attendance of women at their special religious rites, attests to the strength of invidious distinction in second century B.C. Rome and to the heights that female ostentation could scale. Fear of social stigma through a distinctly adverse comparison with the magnificence displayed by Aemilia (Scipio Aemilianus' adoptive grand-mother) in her splendid apparel, gold and silver sacrificial utensils, decorated carriage and huge retinue kept Papiria (Scipio Aemilianus' real mother) at home on these occasions until she inherited the same appurtenances on Aemilia's death.⁴⁰

Fabrics like silk, muslin, soft-wool and maltese cloth⁴¹ were decorated with rare and striking dyes or embroidery.⁴² Costly attire was enhanced by exotic perfumes, unguents and hugely expensive personal ornamentation.⁴³ By the first century A.D. female vanity had led to the establishment of training schools for hairdressers and a sophisticated cosmetic industry.⁴⁴

objets d'arts

The collection, whether by purchase or by expropriation, of *objets d'arts* served to widen the opportunities for ostentation amongst the Roman aristocracy and to mark successive stages in the degeneration of morals for classical historians and writers. The introduction of specific articles was attributed to particular people or events.

Triclinia aerata, *vestes stragulae*, *plagulae*, *abaci* and *monopodia* were associated with the return of Cn. Manlius Vulso from his Asian conquests.⁴⁵ L. Scipio's successes foreshadowed the appearance of *caelatum argenteum* at Rome⁴⁶ while courtesans, musical entertainments and extravagant banquets stemmed from the defeat of Perseus in 168 B.C.⁴⁷ The victories of L. Mummius in 146 B.C. brought in their wake Corinthian bronzes, *signa* and *tabulae pictae*.⁴⁸ *Aulaea*, *plagae*, *aurea vasa* and *aureae vestes* were the products of Attalus' bequest to the *populus Romanus* of the province of Asia in 133/2 B.C.⁴⁹

Sallust blamed Sulla for bringing back *vasa caelata*, *tabulae pictae*, and *signa* in 83 B.C.⁵⁰ Finally the victory of Pompey over Mithridates led *mores* to incline towards pearls, gemstones and myrrhine ware.⁵¹

Extravagant sums were lavished on paintings, statuary, sculpture, tapestry, chandeliers, fancy glasswork and delicate metal-work in silver, bronze or gold. Either through sheer greed or lack of means the plunder of towns and cities in Sicily, Greece and Asia Minor became established features of provincial government despite the protestations of influential people like C. Sempronius Gracchus, the Elder Cato and Polybius.⁵²

aedificatio

Lavishness in *aedificatio* could afford the consummate expression of a person's pecuniary strength. It was exhibited not only architecturally, in the design and size of a person's house but in the splendour of the décor and furniture. Varro complained that the villa now re-echoed with Greek-sounding names; *gymnasia*, *procoetona*, *palaestra*, *apodyterion*, *peristylon*, *ornithona*, *peripteron*, *oporothecon*.⁵³

Vitruvius' treatise on architecture preserves valuable comment on the scale of construction appropriate to one's position in society. Accommodation was carefully graded according to status. Men of common station were advised to forego capacious vestibules (*atria*), since their social obligations comprised visiting others rather than accepting guests. Money-lenders and *publicani* required more comfortable and ostentatious abodes while a still greater degree of spaciousness and style befitted the rhetor or advocate who entertained assemblages of people. The nobility, however, who sought high office, should command lofty halls, palatial peristyles, arbours, ambulatories, libraries and porticoes.⁵⁴

Within the house, whole rooms were gorgeously adorned: *triclinia* and women's boudoirs were tiled with silver;

party-walls covered with gold or paintings; ceilings were decorated with wooden panelling.⁵⁴³

Furniture was veneered with costly woods, ivory, horn and tortoiseshell. Citrus-wood tables fetched enormous prices. Goose-feather bedding and mole-skin counter-panes pandered to the tastes of spendthrifts.⁵⁴⁴

Outside, fishponds, aviaries, *leporaria*, *viridaria* complemented the scale of luxury inside.⁵⁴⁷

It was not uncommon for a Roman aristocrat to possess a number of houses. J. H. D'Arms has investigated the social and cultural implications of the seasonal *peregrinatio* to seaside resorts like Baia or to country seats.⁵⁴⁸

There were many other incidental expenditures, of course. The rearing of children might be particularly onerous. In the late Republic it became the fashion amongst the aristocracy to send their sons to one of the Greek centres of education to complete their studies.⁵⁴⁹ Nowhere were the demands of status more clearly illustrated than by Cicero's anxiety to be seen to be providing generously for his son Marcus during his stay in Athens. Indeed it became something of an obsession.⁵⁵⁰ On several occasions he stressed that his own dignity was at stake.⁵⁵¹ He begged Atticus to ensure that Marcus was not just sufficiently, but commodiously endowed⁵⁵² but there are indications that his generous allowance (80,000 H.S. p.a.), derived from the rent of two city properties, was not fully appreciated.⁵⁵³ Daughters could be an additional sacrifice. The Younger Pliny's contribution of 50,000 H.S. towards the dowry of Quintilianus' daughter was expressly intended to help towards the provision of her clothes and an entourage which would befit the spouse of Nonius Celer, an *honestissimus vir*.⁵⁵⁴

Only rough indications of an overall figure for annual expenditure needed to maintain a Roman aristocrat survive. Cicero suggests that an ostentatious life style required 800,000 H.S. p.a., a more economical but still refined mode 100,000 H.S. p.a. and as he acutely observes: *sed non aestimatione census verum victu atque cultu terminatur pecuniae modus*.⁵⁵⁵

Aspects of public munificence

In an electoral system where success was usually awarded on the basis of personal reputation and connections rather than on the nature of one's political beliefs, ostentation and liberality were obvious means of enlarging one's political support and *clientela*. Moreover, the rapid territorial expansion of the Republic especially from the third century onwards which occurred without a proportionate increase in the number of higher magistracies fuelled competition for office and considerably raised the stakes of political success or failure.⁶⁶ Despite the proliferation of laws designed to regulate candidature for, and tenure of, magistracies the provision of public entertainment mushroomed from the early second century B.C. and emerged as a major factor in the instability of the late Republic.⁶⁷

The aedileship formed an early but crucial step in the *cursus honorum*. The presentation of several important *feriae publicae* offered an immediate opportunity to gain popular favour for those who could command large enough sums to supplement the state-allocated amount. The plebeian aediles supervised the *ludi Plebeii*, *ludi Ceriales* and the *ludi Florae* while the curule aediles took charge of the major festival of the *ludi Romani* and the *ludi Megalenses*. Other civic duties like the repair of public buildings and the cleaning of streets allowed further scope for liberality. The major *ludi* involved the staging of a whole range of events from circus games, chariot-racing to wild beast hunts, lavish *epulae* and theatrical performances.⁶⁸

Cicero conceded that even in the good old days (*iam bonis temporibus*), the *optimi* in the year of their aedileship were expected to present magnificent *ludi* and that the omission of this office by notables such as Mamercus or Sulla was the primary cause of defeats in electoral contests at a more advanced level.⁶⁹

Higher up the political ladder, the *praetor urbanus* staged the *ludi Apollinares*.

The *mutationes*, the exchanging of convivial hospitality by patricians on the eve of the *ludi Megalenses* and by

plebeians on the occasion of the *ludi Ceriales*, were important events in the social calendar.

The funerals of distinguished men offered an opportunity both for a celebration of the accumulated prestige of one's line and for a display of personal and family generosity in the provision of *munera*, e.g., gladiatorial combats, banqueting and *ludi scaenici*.⁷⁰ Q. Aelius Tubero's display of *parsimonia*, in accordance with ancient ideals, at the funeral feast in honour of Q. Fabius Maximus Allobrogicus when he ordered the dining couches to be covered with goat-hides and set Samian ware in place of the customary silver led to the prompt rejection of his candidature for the praetorship by an unappreciative populace.⁷¹ M. Aemilius Scaurus' challenge for the consulship in 117 B.C. foundered for the same reason.⁷²

Successful generals could capitalise politically on their military victories by presenting magnificent triumphal processions, gladiatorial combats and banquets. Games vowed before or during battle provided another pretext for the staging of gladiatorial contests and feasts in the event of victory.

Bribery, through *dispensatores*, was an established part of the Roman Republican electoral process.

In conclusion, the ambiguities of the whole debate can be summed up in one of the perennial fictions of Roman literature: the call for private parsimony and public luxury.⁷³ But as the Elder Pliny observed: *aut qua magis via inrepunt vitia quam publica?*⁷⁴ The moralising anecdotes attributed to people like Scipio Aemilianus and the Elder Cato suggest a desperate rear-guard action on the part of the Roman aristocracy to uphold traditional values in the face of an influx of Greek cultural influences. The reality was different. The wealthy oligarchy was eager to adopt and to assimilate Greek intellectual and material goods to enhance their position in society and strengthen their political control.⁷⁵

In the Principate, the emperors were obliged to give *sportulae*, *congaria* or some other form of donative to the

Roman populace and above all to their power base, the
army.⁷⁶

NOTES

APPENDIX 4

- 1 For the paradoxical practice of censuring luxury while at the same time enjoying its fruits whether by members of the highest royalty or of the established church, see ch.3.
- 2 The expensive and exclusive nature of luxury goods serves to retard the rate of social imitation. Removal of such distinctions would narrow or even close the gap between the various social orders. In times of national crisis, measures like the *lex Oppia* were designed specifically to reduce the divisiveness that results from social envy and to enjoin uniformity in order to promote solidarity in the community. A passage in Seneca *Clem.* 1.24 demonstrates the awareness of the Roman authorities to the significance of dress.
- 3 *The Theory of the Leisure Class* (London, 1923) developed earlier work by scholars such as H. Baudrillard *Histoire du luxe privé et public depuis l'antiquité jusqu'à nos jours.* 4 vols (Paris, 1878) and, especially, John Rae in *New Principles : of Political Economy* (Boston, 1834) who emphasised the psychological motives behind such expenditure, e.g., vanity, sensuality and the instinct for adornment.
- 4 *Op. cit.* p.28 & 40 - pursuits deemed worthy of the aristocracy included government, officership in the army, religious positions, hunting etc.
- 5 As Veblen pointed out (1923) p.30f, those who fail to meet this standard fall in the esteem of their fellow men and, consequently in their own esteem too, '...since the usual basis for self-respect is the respect accorded to

one's neighbours.' Only strongly-willed persons can resist such social pressures.

The incentive for luxury stems not so much from a desire for the goods or services per se but from the desire to attain the social distinction that ensued from such ostentatious displays of wealth (id. p.25).

- 6 As E.K.Hunt & H.J.Sherman (1981), p.129 state, together with nationalism and militarism, emulative consumption (in modern parlance, consumerism) has emerged as the principal means of '...cultural discipline and social control' in the hands of the capitalist class.
- 7 See K.Hopkins ed *Trade in the Ancient Economy* (London, 1984) introduction xiif where emphasis is laid on the importance of cultural values in dictating patterns of conspicuous expenditure.
- 8 The relationship was partly enshrined in Roman law, partly sanctified by the powerful moral bond of *fides*. Virgil *Aen.* 6.609.
- 9 Suet. *Dom.* 1.
- 10 In 87 B.C., Appian *B.C.* 1.72.
- 11 Appian *B.C.* 4.26. Notice Seneca *Ira* 3.40 on how Vedius underlined his social standing by devising a conspicuously cruel punishment for his slave. Only the last-minute intercession of Augustus prevented the unfortunate fellow from being thrown to the lampreys.
- 12 Pliny *N.H.* 33.4; 9.139-140 on the prodigality of invention with respect to luxury goods.
- 13 See Pliny *N.H.* 210 for an entry in the *annales* recording P.Servilius Rullus' serving of a whole boar, & id. 37.3 for the public *acta* on details of Pompey's triumph.
- 14 *Alien Wisdom: the Limits of Hellenization* (London, 1975), p.13ff.
- 15 H.D. Jocelyn 'The Ruling Class of the Roman Republic and Greek Philosophers' in *Bulletin of the John Rylands Library* 59 1976, 323-66.
- 16 See R. Brilliant *Gesture and Rank in Roman Art* (Conneticut, 1963) on the various techniques developed to celebrate the status of patrons.
- 17 M. Beard & M. Crawford (1985), 12-24 have stressed how cultural developments were influenced by the needs of the

- Roman governing class in diverse fields especially in the initial stages of the cultural transformation.
- 18 Suet. *Rhet.* 1.2. On the effects of the absence of widespread literacy see Finley *Politics* p.31
- 19 For Greek cultural influence, see G. Colin *Rome et la Grèce* (Paris, 1905) and for Roman luxury in general see H. Schneider 'Der Luxus in der späten Republik' in *Wirtschaft und Politik. Erlangen Studien* (1974); M. Baudrillart *op.cit.* (1878); N. Baudeau *op.cit.* (1767); J. Griffin 'Augustan Poetry and the Life of Luxury' *JRS* 66 (1976). L. Friedlander (1908-13).
- 20 Pliny *N.H.* 19.53-54; 18.107-8 where Ateius Capito made a similar complaint.
- 21 The evidence to be found in the Roman authors, Ennius, Lucilius and Varro, and in the playwrights Plautus and Terence has to be evaluated with considerable care. The existence of Latin substantives for many luxury items is significant. For luxury seafood see Lucilius *Sat.* 49 Marx (*tunni*); 318 M (*murenæ*); 1176 M (*catillo*); 72, 328 M (*ostrea*); Varro *Men.Sat.* fr. 403; Ennius' *Hedyphagetica* was largely based on a poem by Archestratus of Sicily.
- 22 1200 HS per cask. Polyb. 31.25.1f: cp. Diod. Sic. 31.24; 37.3.5; Athen. *Deipn.* 6.274-5; To illustrate a price out of all proportion to its value Cato resorted to his witty aphorisms, eg, Plut. *Cat.Mai.* 8.1 'It is a hard matter to save a city in which a fish sells for more than an ox.' Loeb trans.; Carmen de *Moribus* 2 on cooks and horses, Pliny *N.H.* 9.67; Cato himself paid no more than 30 asses for fish and meat for his dinner at public stalls.
- 23 Suet. *Tib.* 34.1.
- 24 Lucilius *Sat.* 168 M (*grus*); 309 M (*gig(z)eria*); 878 M (*ficedulae & turdi*); Varro *Men.Sat.* fr.403 (Samian *pavus*, Phrygian *attagena*, Melican *grues*); Petron. *Sat.* 93 for birds from Cochis and Phasis.
- 25 See Pliny *N.H.* 10.139 for the Delian practice of fattening hens and the *lex Fannia*, forbidding the serving of any bird except a single fowl and that not fattened. But it became standard practice, Petron. *Cena* 36; 65; Pliny *N.H.* 8.209. See Gell. *N.A.* 15.8.2 for the colourful invective of Favonius.

26 Pliny *N.H.* 8.223. The Elder Cato denounced the elaboration of *aprum callum*, Pliny *N.H.* 8.210 cp. Petron. *Sat.* 40; Pliny *N.H.* 8.209 on the fattening of sows; 8.217 for hares; 22.99 for mushrooms; 19.152 & 19.55 for thistles; 17.220 for wood-maggots. Petron. *Sat.* 31.

In the Republic tidbits (*cuppedia*) were available from an early period see, e.g., Plautus *Stich.* 713. For *ganae* see ch.7 above.

27 Suet. *Aug.* 42; Italian viticulture was slower to develop than many modern accounts suggest. Even in 121 B.C. the vintages were not differentiated but named after the consul of the year (see Pliny *N.H.* 14.55; 14.87; 14.94). For the regions of Italy which were particularly suited to viticulture see Strabo 5.3.5f and Pliny *N.H.* 14.52; 14.66 where Julius Caesar bestowed *auctoritas* on Mamertine vintage by serving it at his public banquets. The Elder Cato drank the same wine as his rowers fr. 53 *Malc.* and his slaves Plut. *Cat. Mai.* 4.3; cp. C. Gracchus' comments on the subject fr. 28 *Malc.*; Diod. *Sic.* 37.3.5; Varro *R.R.* 2. *praef.* 3; Macrobian *Sat.* 3.16.16; Pliny *N.H.* 14.96; 19.55; Petron. *Sat.* 31.

29 Pliny *N.H.* 31.93; 9.66 for the *garum* of Apicius.

30 Colum. *R.R.* 1 *Praef.* 5 complains that training-schools were established to encourage gluttony.

31 Diod. *Sic.* 37.3.5; Livy 39.6.8 on the appearance of cooks.

32 Vitruvius *Arch.* 8.6.11; Tibullus 2.3.43; Pliny *N.H.* 33.139; W.D. Lowrance 'Roman Dinners and Diners' *C.J.* 35 (1939), 36-91; Plut. *Luc.* 40: 'The daily repasts of Lucullus were such as the newly rich affect. Not only with his dyed coverlets and beakers set with precious stones, and choruses and dramatic recitations, but also with his arrays of all sorts of meats and daintily prepared dishes did he make himself the envy of the vulgar.' Loeb trans.

33 For discussion of vicarious waste, see E.J. Urwick *Luxury and the Waste of Life* (London, 1908), p.122f and T. Veblen (1923) p.59 & 75f.

34 Plut. *Cat. Mai.* 4.5; cf. Livy 39.44.3 for Cato's imposition of a tax on slaves worth more than 2,500 HS as censor. Cato fr. 51 *Malc.*

- 35 Pliny *N.H.* 7.128-9; Suet. *Gram.* 3. Clutorius Priscus paid 50 million HS for the eunuch Paezon.
- 36 Plut. *Cras.* 2.6 Loeb trans.
- 37 Livy 34.2f.
- 38 On Lucius Scipio, see Val. Max. 3.6.2; on Sulla in Neapolis id.3.6.3; on the Elder Scipio Livy 29.19.11; on Lucullus Hor. *Epist.* 1.6.40. The Elder Cato never wore clothing worth more than 400 H.S. and he sold a Babylonian robe which he had inherited Plut. *Cat. Mai.* 4.3; for the effeminate practice of wearing see-through silk garments see Pliny *N.H.* 11.76 (forbidden for men by Tiberius' edict); and for the use of depilatories see id. 14.123; 26.164; 32.136; 30.41.
- 39 Livy 34.4.12.
- 40 Polyb. 31.26.1f.
- 41 For silk see Pliny *N.H.* 11.76; 5.14; 6.54; soft-wool, Pliny *N.H.* 8.197; 8.190; fine flax id. 19.19; Tarentine wool Colum. *R.R.* 7.2.3. On other fine fabrics, e.g., Maltese cloth see Cic. *Verr.* II.2.72.176.
- 42 Especially Tyrian dyes, see Strabo 16.2.23; Pliny *N.H.* 5.76; 9.136; 21.45; Plut. *Cat. Mai.* 8.4. *vestes Attalicae* see Pliny *N.H.* 33.63; id. 9.124 for scarlet and purple robes; *stragulae vestes* Livy 39.6.7.
- 43 Exotic perfumes - Pliny *N.H.* 13.1; 13.20. Id. 11.136; 9.106; 9.123; 13.91 for pearl ear-rings; 37.11; 37.49 for gemstones.
- 44 Colum. *R.R.* 1 *Praef.*5; J.P.V.D. Balsdon *Roman Women: Their History and Habits* (London, 1962) and L.M. Wilson *The Clothing of the Ancient Romans* (Baltimore, 1938) are good compilations of material.
- 45 L. Calpurnius Piso fr.34 Peter; Livy 39.6.7 also lists other foreign practices such as *convivalia ludorum oblectamenta, psaltriae, sambucistriae.*
- 46 Pliny *N.H.* 37.12; 33.148.
- 47 Polyb. 31.25.2; Val. Max. 9.1.3.
- 48 Pliny *N.H.* 37.12;
- 49 Varro *VPR* frs. 112-3; Pliny *N.H.* 8.196; 33.148; 33.63.
- 50 *B.C.* 11.6.
- 51 Pliny *N.H.* 37.13; 37.18.
- 52 See Polyb. 9.10.1 for his stern deprecation of Roman

treatment of Syracuse; cp. Livy 25.40.1; 34.4.4; Cicero's indictment of Verres' tax-free exports from Sicily read like an exhibition catalogue - huge quantities of gold, silver, ivory, purple fabrics, Maltese cloth, tapestries, fifty dining couches, Corinthian bronzes, four hundred casks of honey, chandeliers and Delian *supellectiles* Verr. II.2.72.176f.

53 Varro *R.R.* 2. *praef.*2; 1.2.10 *pinacothicon*;

On the curious lack of evidence for sumptuary laws on buildings, it is worth remembering the censorial control of the public water supply and the later *lex Quinctia* on aqueducts (9 B.C.) and various senatorial decrees on the subject. Note also Rutilius Rufus' speech *De Modo Aedificiorum* read out by Augustus although this may have concerned safety considerations rather than luxurious tastes. Cp. Strabo 5.3.7; Suet. Aug. 89.2; Cass. Dio 55.26.4.

54 Vitruvius *Arch.* 6.5.1; cp. Pliny *Ep.* 2.17.

55 Pliny *N.H.* 33.57; mosaics 36.189.

56 Pliny *N.H.* 10.54; 8.226; 33.146; 13.91; 16.231.

57 Pliny asserts that the first house in Rome in 78 B.C. would not have featured in the top 100 thirty-five years later on. (*N.H.* 36.109). Tacitus too believed that the period from the battle of Actium to Vespasian's day had witnessed the zenith of luxury expenditure.

58 See J.H.D'Arms *Romans on the Bay of Naples* (Cambridge, 1970), esp. p.159f.

59 As L.W. Daly observed in 'Roman Study Abroad' *AJPH* 71 1950, 40-58 this practice occurred only for a relatively short period. In the late 2nd century and early 1st B.C. study abroad was very much a by-product of tours of duty by public magistrates while by the end of the 1st century B.C. the practice virtually ceased.

60 *Att.* 14.7; 14.11; 14.16; 14.17; 14.20; 15.15; 15.17; 15.20.

61 *Att.* 14.7; 14.16.

62 *Att.* 14.11; 15.15.

63 *Att.* 15.15 .

64 Pliny *Ep.* 6.32.

65 *Paradoxa Stoicorum* 50-1.

66 See M.H.Crawford *The Roman Republic* (London , 1978) ch.7

for a penetrating account of the effects of intensified competition on the aristocracy.

67 Major public festivals were also religious occasions to which the public were admitted free.

An in-built chain of corruption was set in motion when indebtedness incurred for electoral purposes had to be recouped at the expense of the provincials whose appeals for justice were thwarted by yet more malpractice. The *locus classicus* is Cicero's *Verrine Orations*. See also **M. Gelzer** *The Roman Nobility* (Oxford, 1969).

68 H.H. Scullard *Festivals and Ceremonies of the Roman Republic* (1981) presents a useful documentation of the origins and growth of the major public and private festivals. Apart from the *Iudi Romani* (c. 366 B.C.) and the *Iudi Plebei* (220 B.C.) many of the other festivals were instituted during or just after the Hannibalic war. They were simple affairs at first. Note the *Iudi Apollinares* (212 B.C.), *Iudi Megalenses* (204 B.C.), *Iudi Cerialis* (202 B.C.).

69 Cicero *Off.* 2.57 where he also emphasises the need to keep spending within one's means on such occasions.

70 Polyb. 6.53.1f.

71 Val. Max. 7.5.1; Cic. *Mur.* 75.

72 Victor *Vir.* Ill. 22.4.

73 Cic. *Flac.* 28; *Mur.* 76; Sallust *Cat.* 52.22; cp. Plut. *Pericles* 9.1.

74 Pliny *N.H.* 36.5.

75 By 92 B.C. a censorial edict on the Latin rhetors could invoke Greek education as a basis for the *mos maiorum*.

76 See further P. Veyne (1976) ch.4.

On the necessity for the emperors to give *praemia* to the military, see the discussion of J.B. Campbell *The Emperor and the Roman Army 31 B.C. - A.D. 235* (Oxford, 1984), ch.3.

TABLE 1

'Sumptuary Regulation in Rome of the Republic and Early Principate'

Date.		Restricted Category.	Specific Scope.
218 B.C.	<i>Lex Claudia</i>	<i>maritima navis</i> over 300 amphorae.	Senators and their sons.
217 B.C. (?)	<i>Lex Metilia</i>	fullers' activities	<i>fullones</i> .
215 B.C.	<i>Lex Oppia</i>	<i>iunctum vehiculum</i> , multi coloured garments	women
209 B.C.	<i>Lex Publicia</i>	possession of gold gifts (only cerei at Saturnalia).	poorer clients.
204 B.C. (?)	<i>Lex alearia</i>	anti - dicing	
204 B.C.	<i>Lex Cincia</i>	gift acceptance	advocates, mags. etc.
195 B.C.	<i>Lex Valeria-Fundania</i>	repeal of <i>Lex Oppia</i>	
195 B.C. (?)	<i>Lex Porcia</i>	provincial <i>sumptus</i>	mags.
189 B.C.	Censorial edict	<i>unguenta exotica</i>	
184 B.C.	Censorial edict	tax imposed on jewellery, women's apparel, <i>vehiculum</i> , slaves, plate, furniture.	
182 B.C. (?)	Senatorial decree	wild-beasts	
181 B.C.	<i>Lex Orchia</i>	no. of guests	
170 B.C. (?)	<i>Lex Aufidia</i>	repeal of s.c. 182 B.C.	
161 B.C.	Senatorial decree	<i>luxus mensae</i>	<i>principes civitatis</i>
161 B.C.	<i>Lex Fannia</i>	<i>luxus mensae</i>	
159 B.C.	Senatorial decree	Macedonian gold mines.	
158 B.C.	Censorial edict	Setting up of statues	
143 B.C.	<i>Lex Didia</i>	extended <i>Lex Fannia</i>	
115 B.C.	<i>Lex Aemilia</i>	<i>luxus mensae</i>	
115 B.C.	Censorial edict	<i>ars ludicra</i>	
107 B.C. (?)	<i>Lex Licinia</i>	<i>luxus mensae</i>	
97 B.C.	<i>Lex Dronia</i>	repeal of <i>Lex Licinia</i>	
89 B.C.	Censorial edict	Greek & Aminnium wine (max. price)	
81 B.C.	<i>Leges Corneliae</i>	<i>luxus mensae</i> funerary expenditure anti-dicing	
71 B.C.	<i>Lex Antia</i>	dining-out	mags. & mag. elect. candidates
63 B.C.	<i>Lex Tullia</i>	glad. shows	
60 B.C.	<i>Lex Caecilia</i>	removal of <i>portoria</i>	
55 B.C.	<i>Rogatio Licinia-</i> <i>Pompeia</i>		
50 B.C.	<i>Rogatio Scribonia</i>		
49-6 B.C.	<i>Leges Iuliae</i>	<i>luxus mensae</i> <i>portoria</i>	
		scarlet robes, pearls, use of litters	women
44 B.C.	Triumviral edict of M. Antonius.		
18 B.C.	<i>Lex Iulia</i>	<i>luxus mensae</i>	

Imperial edicts:

Tiberius	silk garments	men
	articles of consp. cons. public shows food for sale at <i>popinae</i> & <i>ganeae</i>	
Caligula	hot water at <i>popinae</i>	
Claudius	abolished taverns sale of hot water & boiled meat forbidden.	
Nero	forbade cooked viands in <i>popinae</i> except for <i>legumina</i> & <i>holera</i> . <i>amethystine</i> & <i>Tyrian dye</i> .	

LUXUS MENSAE.

Date.	Measure.	Occasion.				Misc.
		Major Festival.	Kalendae,	Other days.	Weddings.	Misc.
		<i>Ludi Magni,</i>	<i>Nones</i>			<i>info.</i>
		<i>Ludi Plebeii</i>	<i>Nundinae</i>			
		<i>Saturnalia</i>	<i>Ides</i>			
161 B.C. s.c.		120 aeris at <i>Megalasia</i> excl. of <i>olus, far,</i> <i>vinum.</i>				
161 B.C.	<i>Lex Fannia</i>	100 aeris per day	30 aeris per day	10 aeris per day		2½ <i>δρ.</i> max per day
			5 guests	3 guests max.		15 talent max dried meat p.a.
107 B.C.	<i>Lex Licinia</i>	(100 aeris ?)	30 aeris	(10 aeris?)	200 aeris	3lbs dried meat 1lb of <i>salsamenti</i> max p.day
81 B.C.	<i>Lex Cornelia</i>	(300 H.S.)	300 H.S.	30 H.S.		max. price on range of delic.
18 B.C.	<i>Lex Iulia</i>	(300 H.S.)?	300 H.S.	200 H.S.	1000 H.S.	
	Tiberius' edict (?)	(2000 H.S.)?				

Table 2

**Banishments during the Republic and Early
Empire***

Date	Sponsor	Target	Circumstances, Background	Scope
E. C.				
c. 428	aediles	foreign rites	plague	Rome
213	senate & praetor	foreign rites prophecies etc.	war & profit	Rome
187	senate & praetor	Latin allied residents	Allies' complaints	Rome Rome
186	senate etc.	Bacchanals	religious fervour	Rome & Italy
177	cos. law C. Claudius praetor?	Latin allied residents		Rome
173	praetor?	2 Epicurean philosophers		Rome
168	cos. edict L. Postumius	repeat of 177	restriction	Rome
161	s.c.	Latin phil. & rhetors		Rome
155		Athenian embassy		Rome
154	s.c.	<i>theatrum</i>	various	Rome
139	praetor's edict	astrologers, Sabazi Jews		Rome & Italy
126	Pennus' law	<i>peregrini</i>	franchise issue	Rome
122	C. Fannius' edict	<i>peregrini</i>	franchise issue	Rome
95	<i>lex Licinia Mucia</i>	<i>peregrini</i>	franchise issue	Rome
92	censors' edict	Latin phil. & rhetors		Rome
52	senate	temples of Isis & Serapis		Rome
33	aedile, Agrippa	astrologers, sorcerers	civil unrest	Rome

Date	Sponsor	Target	Circumstances, Background	Scope
A. D.				
6-8	Augustus	slaves for sale, most foreigners	famine	Rome
11	Augustus	restr. on diviner's activities		Rome
16	2 s.c.	astrol., sorc., diviners	Libo's plot	Rome & Italy
19	Tiberius	Jewish & Egypt. rites	various	Rome
23	Tiberius	actors	immorality	Rome
52	s.c. & Claudius	astrologers	plot	Rome & Italy
c.60	Nero	Cynic Isid- orus, Datus		Rome
64	Nero	pogram vs. Christians		
66?	Nero	public teach. of phil.	Piso's plot	Rome (Italy)
68?	Nero	astrologers, sorcerers	rebellion of Vindex-Galba	Rome & Italy
69	Vitellius	astrologers	unrest	Rome & Italy
69	Vitellius	sorcerers	unrest	Rome & Italy
70	Vespasian	astrologers		Rome (Italy)
71	Vespasian	philosophers	political opposition	Rome
89	Domitian	astrolgers & philosophers	unrest	Rome & Italy
93	Domitian	phil. Epictetus		Rome & Italy

* This table incorporates details on the expulsion of astrologers etc. carefully collected and discussed by F.H. Cramer (1954), see his tables 4-6.

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