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Éditorial

Jean-François GERKENS

Jacques-Henri Michel a été une cheville ouvrière essentielle de la *RIDA* pendant de nombreuses années. Il y était entré en tant que secrétaire en 1963 et en était devenu directeur en 1986. Ce n'était donc que justice que sa revue lui rende hommage en dédiant son 62^e volume à sa mémoire. Pour rendre hommage à ce grand latiniste, il a semblé adéquat au comité de rédaction, de publier ici une traduction inédite de l'abrégé d'art militaire de Végèce. Cette excellente traduction de Jacques-Henri Michel est restée inédite, mais il en avait confié une des rares copies à Dominique Gaurier. Notre collègue Nantais a ensuite eu la gentillesse de nous confier ce manuscrit afin de le publier et c'est donc avec joie que nous l'offrons aujourd'hui à nos lecteurs. Afin de rendre justice à cette traduction, il nous a semblé essentiel de fournir une édition latine soignée, ce qui s'est avéré constituer un travail considérable, pour lequel nous sommes redevables à Étienne Famerie.

Le reste de ce volume répond en revanche au format habituel de la revue, avec ses articles et ses chroniques bien connues, dont le compte-rendu de la 69^e SIHDA d'Istanbul. Au moment où je rédige ces lignes, la 70^e session de la SIHDA s'est également déjà déroulée et a été un grand succès, mais il en sera rendu compte dans le volume 63 de la *RIDA*. La parution de ce prochain volume devrait intervenir dans un futur nettement plus proche que d'habitude, puisque pour l'essentiel, celui-ci est quasiment prêt.

En publiant deux volumes de la *RIDA* en l'espace de quelques mois, nous espérons nous faire pardonner du relatif retard de ce volume-ci.

Chaufontaine, le 6 novembre 2016
Jean-François Gerrens

Marginalia on Morals, Rhetoric, and Law Apropos *Sen. contr. 2.7**

Evelyn HÖBENREICH

Université de Graz

Nulla satis pudica est de qua quaeritur
Sen. contr. 1.2.10

1. Presentation

Violence against women in open places is a current subject of discussion. When it comes to investigate the causes, first of all female behavior is inspected, in order to determine if the male aggression (statistically prevalent) was provoked by the victim herself and therefore if part, if not all of the responsibility must be laid on her.

In this paper, I will not question the traditions of covering hair and/or body of women in oriental or Islamic societies, but I will focus on the experience during the Roman republic and principate in order to illustrate how women were expected to appear in outdoor contexts. Precisely, I concentrate on female representation based on ethical standards and legal discourses, analyzing rhetorical techniques of argumentation together with legal dispositions and their commentaries with a glimpse on their social impact.

The discussion opens with an almost complete extant declamation by Porcius Latro (died in 4 BCE) in Seneca's collection. Unlike the others presented as a florilegium of *sententiae* from different declaimers, it seems to be the transcription of a real *declamatio* pronounced by Seneca's close friend. The key theme of female unchastity is of principal and visible importance among the higher ranks of Roman

* This is the written and strongly elaborated version of a paper given at the Özyegin University in Istanbul on 6th May 2014. I wish to express my gratitude to the Dean of the Law Faculty Yener Ünver and to my friend and colleague Havva Karagöz for the generous invitation and accurate organization of this interdisciplinary Symposium on Women and the History of Law in a comparative prospective ("Kadin Haklari, Sorunlar, Çözüm Önerileri"). Marlene Peinhopf supported me with documentation and — together with Giunio Rizzelli — with valid suggestions on the concept and development of the present article. I also wish to thank Aglaia McClintock for her kind help with the English handout and for the final linguistic tuning of the following pages.

society. In the same period, the Augustan laws on control of sexual behavior and family organization would be issued. Some scholars consider Ovid's famous *Ars amatoria*, published in that very period, as the ironic counterpart of the *leges Iuliae*. But some of the controversy's arguments seem to be related to evidence further in the past, for example to the introduction of the cult for the goddess *Pudicitia* or to the enactment of prosecution for special *iniuria*-offences by the Praetor around 200 BCE, clearly echoed in non-technical literature such as Plautus' comedies.

2. Rhetoric and law

Latin declamation in rhetoric schools, where courses of action on a topic were elaborated investigating their different outcomes, appears basically — according to recent studies — as a training for the courts. The narrative mechanism constructs its entanglements primarily on social and family conflicts¹. The future lawyers and politicians exercise their skills mainly on four crimes: adultery, incest, rape, and murder². Still, one must distinguish between rhetoric school and forensic oratory, in which the lawyer instead of a fictitious element of crime had to discuss a real case, studying, controlling, and managing concrete characters, facts, figures, testimonies, and documentation³.

Recently, scholars have emphasized how the world of the declamations appears as a parallel reality, like a virtual city⁴. Even if the circumstances in which the controversies are embedded are mostly pure fiction, the *thema* nevertheless must maintain a cultural verisimilitude and therefore it should be possible to treat it in the Forum. Titus Castritius, a famous orator and teacher of Aulus Gellius, asserts that rhetoricians may of course stress false, tendentious, captious, and insidious

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1. Probably for this reason, the figure of a mother is rare in school production, unless when implicated in solidarity with sons in opposition to the father, as Y. THOMAS, "Paura dei padri e violenza dei figli: immagini retoriche e norme di diritto", in E. PELLIZER – N. ZORZETTI (éd.), *La paura dei padri nel mondo antico e medievale*, Roma/Bari, 1983, p. 115–140, especially p. 124, has pointed out. See also M. LENTANO, "Non è un paese per donne. Notizie sulla condizione femminile a Sofistopoli", in G. BRESCIA, *La donna violata. Casi di stuprum e raptus nella declamazione latina*, Lecce, 2012, p. 18–19; ID., "Declamazione e antropologia", in M. LENTANO (éd.), *La declamazione latina. Prospettive a confronto sulla retorica di scuola a Roma antica*, Napoli, 2015, p. 156–159.
 2. W. KROLL, s.v. "Rhetorik", *RE* S 7, Stuttgart, 1940, p. 1041, *passim*; Ch. WALDE, s.v. "Rhetorik", *DNP* 10, Stuttgart/Weimar, 2001, p. 958–978.
 3. Cic. *De orat.* 2.100 (circa 55 BCE) calls the declamatory exercises *causae faciles* and compares them with games for children, while, on the other hand, the *causam cognoscere* needed more attention and preparation, otherwise one would risk to be defeated in court. E. BERTI, *Scholasticorum Studia. Seneca il Vecchio e la cultura retorica e letteraria della prima età imperiale*, Pisa, 2007, p. 44 ff., particularly p. 49–51.
 4. Cf. D.A. RUSSELL, *Greek Declamation*, Cambridge, 1983, p. 22; see also LENTANO, *l.c.* (n. 1 [2012]), p. 5.

things, but only if they are verisimilar⁵. The ‘natural’ context of a declamation has to be a public court, because every controversy needs an independent ‘higher’ instance; the court seems the only legitimate framework for solving the conflict. Furthermore, moral values presented in the declamations seem to undergo a process of ‘juridification’, as they receive a juridical imprint to become the content of the ‘leges’. Doubtlessly, these values, elaborated in the declamatory exercises, must be accessible to the culture of the imagined group of judges whom the orator is addressing⁶.

Seneca the Elder leaves Cordoba for Rome around 40 BCE. In the capital, he attends the rhetoric schools and has the opportunity, during his long life that lasts from Augustus’ to Tiberius’ reign, to become acquainted with the most important orators and declaimers⁷. His *Oratorum et rhetorum sententiae divisiones colores* (composed circa 37 CE), commonly referred to as *Controversiae*, contain excerpts from declamations from the end of the republic and the beginning of the principate, offering precious documentation for a considerable period of about 60 years. Most of them can be dated quite precisely⁸, but this is not the point of our primary curiosity. More interesting is the fact that until to the middle of the 2nd century CE, we lack juridical commentaries on criminal law. Ateius Capito’s *Liber de iudiciis publicis* from the second or third decade of the principate seems to have dealt only with *iudicia populi* from the republic; Volusius Maecianus, under Antoninus Pius and Marcus Aurelius, and Venuleius Saturninus are the first jurists who wrote *Libri de iudiciis publicis*⁹. This means that the extant rhetorical materials dealing with juridical settings or focusing on laws and proceedings are indispensable evidence for a period that has been left by law experts as a blank sheet. If handled

5. Gell. 1.6.4–6.

6. For these and the following reflections, cf. BERTI, *o.c.* (n. 3), p. 79–81; ID., “Declamazione e poesia”, in M. LENTANO (éd.), *o.c.* (n. 1), p. 25–35; M. LENTANO, *Signa culturae. Saggi di antropologia e letteratura latina*, Bologna, 2009, p. 52–67, p. 194–210; ID., *Retorica e diritto. Per una lettura giuridica della declamazione latina*, Lecce, 2014; G. RIZZELLI, “Sen. «contr.» 2.4 e la legislazione matrimoniale augustea. Qualche considerazione”, *Index* 40 (2012), p. 290–292; ID., “Declamazione e diritto”, in M. LENTANO (éd.), *o.c.* (n. 1), p. 211–270, where the author concentrates on the case of the *actio dementiae*, comparing it with juridical documentation.

7. St. F. BONNER, *Roman Declamation in the Late Republic and Early Empire*, Liverpool, 1969 (Berkeley/Los Angeles, 1949), p. 31–50; J. FAIRWEATHER, *Seneca the Elder*, Cambridge, 1981, p. 1–73; EAD., “The Elder Seneca and Declamation”, in W. HAASE (éd.), *ANRW* II.32.1, Berlin/New York, 1984, p. 514–556; BERTI, *o.c.* (n. 3), p. 17–39; RIZZELLI, *l.c.* (n. 6 [2012]), p. 271, n. 1.

8. F. LANFRANCHI, *Il diritto nei retori romani. Contributo alla storia dello sviluppo del diritto romano*, Milano, 1938, p. 16.

9. Before Maecianus, only three jurists have commented criminal laws: Capito, Labeo, and Julian. See R.A. BAUMAN, “I libri «de iudiciis publicis»”, *Index* 5 (1979), p. 39, p. 43–44; L. FANIZZA, *Giuristi crimini leggi nell’età degli Antonini*, Napoli, 1982, p. 12, p. 14–15. In general, cf. A. GUARINO, *L’esegesi delle fonti del diritto romano* 1, Napoli, 1982, p. 215–216; W. KUNKEL, *Die römischen Juristen. Herkunft und soziale Stellung*, Köln/Weimar/Wien, 2001 (=1967² [1952]), mit einem Vorwort von D. Liebs, p. 174–176.

with necessary cautiousness, rhetorical exercises can therefore open an interesting insight into otherwise hidden social frameworks and legal realities, allowing maybe even to find some of the missing pieces of this big puzzle. In any case, declamatory exercises are chronologically much closer than the copious commentaries of Severan jurists to the late republican and to the early principate's legal culture. Finally, it should not be forgotten that argumentative training on (both fictitious and real) cases, aiming at the core of the conflict and debating *in abstracto* all possible outcomes, is in the first place technical-juridical work.

3. Part I. The Controversy

3.1. Introduction

A controversy can be based upon a real case (*controversia vera*) or a fictitious one (*controversia ficta* or *scholastica*). The author of a speech (*declamatio*) for a fictional lawsuit performs an exercise of abstraction, putting himself in the position of the accuser or the defendant. This kind of exercise promotes creativity and fosters the ability of cross-linked thinking in communication situations hardly predictable as trials¹⁰.

Normally, a declamation consists of four parts:

- 1) *principium* (*exordium*) — beginning, presentation
- 2) *narratio* — narration, account, story
- 3) *argumentatio* — argumentation *pro* and *contra*, giving of evidence, positive and negative proof
- 4) *epilogus* (*peroratio*, *conclusio*) — final speech, summing up, pleading

The one to be examined “is generally agreed to consist of continuous prose rather than a collection of excerpts” and “gives a fair idea of the style of a lover of *sententiae*”, or “quasi-proverbial utterances”¹¹. It is, as abovementioned, an almost complete extant declamation of the famous rhetorician Porcius Latro¹², highly esteemed by Seneca and Quintilian¹³. His brilliance and authority depend more from his declamatory skills than from an efficient argumentation in forensic oratory. For a declamatory exercise, the speaker slips into the part of the accuser or defendant in first person, whereas in the case of an oratory the advocate assists the party in a real trial. Declamation arguments worked out for the accuser or the defendant could be adapted for future court cases. The theme of our controversy belongs to the category of the *status coniecturalis*¹⁴, where one does not argue the

10. WALDE, *l.c.* (n. 2), p. 970.

11. FAIRWEATHER, *o.c.* (n. 7), p. 202.

12. On Latro, see some scholarship in RIZZELLI, *l.c.* (n. 6 [2012]), p. 273, n. 10.

13. Sen. *contr.* 10 praef. 13, cites him first among the four best (*primum tetradeum*): Latro, Fuscus, Albucius, Gallio.

14. Cic. *inv.* 10–19; *Rhet. Her.* 1.18–25; Quint. *inst.* 3.6. See BRESCIA, *o.c.* (n. 1), p. 38–39 with further bibliography.

legality of an act or the application of a law, but if a fact has occurred or not. Latro, following Seneca's records, develops exclusively arguments for the accuser, in the illustrated case the husband, who is wondering if his wife is an adulteress or chaste (*utrum adultera sit an pudica*).

The *thema* in Sen. *contr.* 2.7 runs as follows:

Quidam, cum haberet formosam uxorem, peregre profectus est. In viciniam mulieris peregrinus mercator commigravit; ter illam appellavit de stupro adiectis pretiis; negavit illa. Decessit mercator, testamento heredem omnibus bonis reliquit formosam et adiecit elogium: "pudicam repperi." Adit hereditatem. Redit maritus, accusat adulteri ex suspicione.

Translation [WINTERBOTTOM, *o.c.* (n. 82), p. 363]:

A man with a beautiful wife went off abroad. A foreign trader moved into the woman's neighbourhood. He three times made her propositions of a sexual nature, offering sums of money. She said no. The trader died, leaving her all his wealth in his will, to which he added the clause: "I found her chaste." She took the bequest. The husband returned and accuses her of adultery on suspicion.

The extant part of the declamation consists of the *exordium* or *prooemium* (§ 1), a brief *narratio* leading to the *propositio* (§ 2), and an extended *argumentatio* (§§ 3–9); a *conclusio* or *epilogus* is lacking, but a few excerpts and the *pars altera* of the defendant are preserved¹⁵.

3.2. The accuser's part

In the *exordium* (§ 1) a declaimer tries to win the sympathy, benevolence, and pity of his audience, while instigating opposite feelings of hostility for the adversary. We cannot go through all the circumstances of the argumentation and will focus only on a few remarkable points. The *argumenta* of the husband are the following: "I am accusing her of adultery only now that she has become rich": the wife, during the absence of her husband, has become wealthier than he. Nothing in his house — so he complains — belongs any longer to him. Although he has struggled abroad, by land and by sea, to gain income, she got "profit rewarded for her shamelessness" only by staying at home, acquiring more in a single neighborhood than he did on all the seas there are. Therefore, even if the judges would condemn her for adultery, even if she would lose not only a percentage of her dowry, but a multiple of it¹⁶, she still would get off wealthier with this inheritance: which means, adultery would still have been profitable. In the short *narratio* (§ 2) the motive is furthered. The narration is necessarily short, because without a *deprehensio* of the adulterers, caught 'red-handed', there could not be any story or fact the husband

15. FAIRWEATHER, *o.c.* (n. 7), p. 251, 254; BERTI, *o.c.* (n. 3), p. 53.

16. This proposed reading for "*ut multiplicatam dotem perdat*" makes more sense than the one suggested by WINTERBOTTOM, *o.c.* (n. 82), p. 365 ("even if she loses her dowry and the interest on it").

could tell. As he was absent, all is left to suspicion. “You must apply to rumour for the rest,” so the husband appeals to the judges, leaving large room for phantasies — called *colores* in declamation — “of how a handsome, rich, and unknown young man moved into the neighbourhood of a beautiful woman, one who was all too free in the absence of her husband and how by continually satisfying his lusts night and day he exhausted his strength and died.” The husband even insinuates a paradox: the judges — who unlike him had not been abroad — could know more about the events than he actually does.

The *argumentatio* is the heart of the declamation, a detailed and well argued discussion of the prospected case. According to the text books of rhetoric — Cicero’s *De inventione* gives a clear and complete example — the declaimer with the *confirmatio* exposes his point of view on two arguments (*argumenta* or *loci*), concerning persons (*ex personis*), on their motivations and intentions, and facts (*ex negotiis, ex facto*); in the *reprehensio* he replies to or combats the arguments of the antagonist. Latro seems to follow this scheme, in §§ 3–6 concentrating on the *mores* and behaviors of the woman, in §§ 6–9 on the facts, mainly the will, which is the pillar of his accusation.

Let us consider § 3. “It is time, judges, that credence is given to the husband on the topic of his wife, when he says that it was possible for so beautiful a woman to be loved chastely — and certainly without being pestered. There is no reason for her to say: ‘I couldn’t help it’.”

In this passage, Latro is asking if a beautiful woman must necessarily be unchaste, as to anticipate the objection: “I’m beautiful, that’s a natural fact, I can’t help it if I’m molested.” This equation *formosa – impudica* is well known especially in elegiac poetry¹⁷. Therefore, Latro tries to make the wife responsible not for how she is, or for what she said — because she said: “No!” —, but for how she appears or appeared to be:

“A married woman who wants to be safe from the lust of the seducer must go out dressed up only so far as to avoid unkemptness. Let her have companions old enough, at the very least, to make the shameless respect their years. Let her go about with her eyes on the ground. In the face of the overattentive greeting, let her be impolite rather than immodest. Even where she has to return a greeting, let her show confusion, with many a blush. Let her guarantee her modesty by denying her unchastity with her look well in advance on her words. No lust will be able to force its way past these guardians and preservers of her honour.”

Latro evokes the picture of the traditional Roman matron (*matrona*), inspired by the moral standards of the ancestors (*mos maiorum*) and respecting a strict code of conduct matching the spirit of the legal reforms (*correctio morum*) imposed by Augustus on Roman society during that period. We will return on this point later on.

17. Ov. *am.* 1.8.43: *ludunt formosae: casta est quam nemo rogavit*, or Sen. *contr.* 2.1.24: *sic quae malam faciem habent saepius pudicae sunt: non animus illis deest, sed corruptor.*

What follows next in § 4 is the exact *antithesis* or *hypotyposis* of a chaste woman: the seducer, out on the street, with striking make-up and flashy hair style, “naked hardly less obviously than if you had taken off your clothes”, joking and attracting everyone, catching the eyes of strangers. A woman nobody is afraid to approach. Shamelessness is notified by so many signs¹⁸ — dress, walk, talk, and appearance —, that no one would get out of the way of such an adulteress looming up on him.

We find a clear allusion to the transparent clothes produced in the famous manufactories on the island of Kos (*vestes Coae*), with golden threads woven in the fabric. Prostitutes who received fancy and expensive gifts from their rich lover-clients wore these luxury goods. Some excerpts of the controversy hint to the same image (“wretched flocks of maids labor so that the adulteress may be visible through her thin dress, so that her husband has no more acquaintance than any outsider or foreigner with his wife’s body”). Seneca, the second son of the rhetorician, argues against the fashion of wearing this garment and praises, on the other hand, his mother, because she never used make-up or dressed as if she were undressed¹⁹.

In accordance with the argumentation presented in §§ 3–4, in § 5 the husband reproaches his wife for not having shown sufficient opposition to the advances of the foreign merchant, insinuating that her behavior was the one of a prostitute. “You think you’ll prove your chastity quite sufficiently if you merely say no to sex — a refusal that often even the most shameless woman purposely feigns in the hope of a fatter price?”

In § 6 follows the question of why she did not veil herself to hide her beauty: “If you were so often pestered, did you not veil the beauty which could give the beholder such pleasure? Did you not loathe every ornament as the motive for such an outrage?”

The next §§ 7–8 reveal the husband’s jealousy because the merchant has established as sole heiress his wife as if she were married to the latter, leaving her all his property and praising her “because she could not be seduced” and “because she guarded her chastity so faithfully” (*pudica, incorrupta*). However, the husband’s argumentation maintains that to the *mercator*, she is just a foreign woman, she is not from his family (*aliena, ignota*), because this adulterer-censor has no chaste woman (mother, sister, relative) around him. For this reason, he wanders about foreign cities (*peregrinae urbes*) to pay tribute to unknown chastity (*pudicitia ignota*). Where he was born there were no chaste women, and where he did his

18. *Argumentis impudicitiam praescripseritis* means that shamelessness is practically written or impressed on her face and body. See on that aspect also BRESCIA, *o.c.* (n. 1), p. 40–42.

19. Seneca the Younger calls the transparent silken dresses (*sericae vestes*) unable to protect neither body nor shame; it would be difficult for who wore them to swear not to be naked (*Ben.* 7.9.5). In *Helv.* 16.3–4, he writes about his mother: *non faciem coloribus ac lenociniis polluisti: numquam tibi placuit vestis, quae nihil amplius nudaret, cum poneretur*. Cf. *Sen. epist.* 90.20. C. FAYER, *Meretrix. La prostituzione femminile nell’antica Roma*, Roma, 2013, p. 431–434; M. LENTANO, *L’eroe va a scuola. La figura del vir fortis nella declamazione latina*, Napoli, 1998, p. 120–121.

business everyone was a prostitute. *Latro* portrays the foreigner as an element of instability, without a firm character, restlessly travelling, not linked with or attached to a social group, like a teenager, without any responsibility, just thinking of himself.

§ 9. The speaker asks the judges to deliberate on two hypothetical wills, one written by the foreigner, one by the husband. Which will they enforce? The testament where the lover ‘acquits’ her, or the one where the husband ‘convicts’ her? Again, the accent falls on the opposite pair citizen – stranger (*civis – peregrinus*). The only gain descending from chastity is to be believed chaste, continues the passage, so women have to pay utmost attention not to cause any kind of gossip on this most precious value (*in nullam incidisse fabulam*). For a woman, the only glory is chastity; so she must take care to stay chaste — and also to be perceived as chaste.

3.3. The other side (*Pars altera*)

The argumentation for the defendant, the married woman, is not developed but we have a few short and rhythmical, staccato-like sentences, consisting of six parallel *kola* or *membra*²⁰.

“She is beautiful: that was nature’s fault. She was alone: that was her husband’s fault. She was tempted: that was the fault of another. She said no: that was done chastely. She was left money: that was a stroke of fortune. She took the bequest: that was only prudent.”

What strikes a modern observer in the first place — but it is nevertheless correct behavior for a matron with sound morals — is that she is represented as passive. Only in two of the six prospected *kola*, she is active: when she says no to the merchant’s advances and when she accepts the inheritance. For the rest, she denies any responsibility, other actions or things happen without the possibility for her to change them: nature, her husband, the merchant, good luck.

We will stop here with the exposition of the controversy, in order to pass on to its interpretation, with special regard to social reality, morals and legal rules. Again, only a few remarks can be made on the question.

4. Part II. Interpretation

4.1. Narrative style

The narrative style of this controversy could be compared to a miniature novel, accurately structured in three concentric circles: 1) the husband (merchant) leaves and returns; 2) the foreign merchant arrives and leaves (= dies); 3) in the center stands the wife immobile with the male characters acting around her. The dynamics

20. J. MARTIN, *Antike Rhetorik. Technik und Methode. Handbuch der Altertumswissenschaft* II.3, München, 1974, p. 317–320; H. LAUSBERG, *Handbuch der literarischen Rhetorik. Eine Grundlegung der Literaturwissenschaft*, Stuttgart, 1990³ [1960], p. 461–465.

of travelling (*peregre*) is counterweighed by the statics of contemplative life (*domi*). A typical feature in controversies is the reduction of real or imagined contexts to polar couples (inside – outside, familiar – foreign, poor – rich, chaste – unchaste), the elaboration of a dual and antithetic typology²¹.

One evident reason for this can be seen in the necessity to find a precise verdict at the end of a proceeding. Besides this, another peculiar aspect of the operating modalities of the criminal courts at the time of Seneca and Latro is of relevance. The *quaestiones perpetuae* leave no room for adapting the penalty prescribed by law to the particular circumstances of a case or to the individual amount of responsibility of the perpetrator. The judges can only vote for condemnation or absolution of the accused²².

4.2. The lust of lonely women²³

The main theme of the controversy is one of the most significant questions in antique cultures, at least since the *Odyssey* and of course from a male point of view: What do married women do when left alone at home by their husbands? Penelope and Helen offer two antithetic answers. Lucretia, the „Queen of Roman chastity“²⁴, committed suicide after she was raped; she was not suspected by her husband, but others did, as time went by²⁵. This torment is present in all male dominated, patrilineal and agnatic organized societies, where adultery appears as the female crime par excellence. In Roman (as well as in Greek) culture this is aggravated because women are (expected to be) *domisedae*, they must stay inside the house and if their men go abroad for long periods, which happens quite often for military service, provincial administration or business affairs, they have to wait at home. Away from home, these men phantasize of *furiosa libido*, *levitas animi* or *infirmis sexus*, they imagine the ‘weak sex’ exposed to furious erotic passions. It was because Menelaus left Helen alone, that Paris could seduce her, we read in Ovid (*Ars* 2.357–372). The poet absolves her from any guilt and crime. The husband had practically forced her into a love affair by his absence from home, thus there is no moral fault neither on the wife’s side, nor on the side of her accomplice²⁶. Husbands who leave their wives alone were considered to be almost inviting others to commit adultery with them. This motive is also suggested in the *Pars altera* of *Contr.* 2.7, among the listed

21. See LENTANO, *o.c.* (n. 19), p. 110–112.

22. G. PUGLIESE, “Linee generali dell’evoluzione del diritto penale pubblico durante il principato”, in H. TEMPORINI (éd.), *ANRW* II.14, Berlin/New York, 1982, p. 724 ff., p. 762; B. SANTALUCIA, *Diritto e processo penale nell’antica Roma*, Milano, 1998² [1989], p. 176–177.

23. The current and the following paragraph owe much to the accurate reflections of LENTANO, *o.c.* (n. 19), p. 105–126.

24. *Dux Romanae pudicitiae*: Val. Max. 6.1.1.

25. Like Augustin. *civ.* 1.19.

26. Cf. T. SPAGNUOLO VIGORITA, *Casta domus. Un seminario sulla legislazione matrimoniale augustea*, Napoli, 2010³ [1998], p. 40–41.

arguments that could be used to defend married women. Except Lucretia, what did all other noble women do when their men were absent? They had a party.

What happens, if women gather without men, for example to worship the cult of *Bona Dea*, or if they celebrate (until 186 BCE) the Bacchanals? All types of excesses and criminal trials were the consequence, so we learn from historiography — of course written by men. The husband must control the sexual life of his wife for the sake of the legitimacy of his descendants. He affirms to be the “assiduous guardian of her chastity” (*diligens custos pudicitiae uxoris*), of course “naturally anxious and sedulous”, in another declamation on the case of a beautiful woman married to a poor man, tempted three times with money by a rich foreign neighbor and businessman²⁷.

The consequences of female weakness are felt and feared by men as a great danger. According to this view, the incapacity of women to control passions, first of all the lust, can lead to breach patriarchal family structures and society as a whole. Adultery can compromise the correct lineage of a house or clan²⁸.

4.3. Foreign passions²⁹

“It’s the man’s fault if the woman trespasses the line” (*nam viri in eo culpam, si femina modum excedat*). This point is listed by Tac. *ann.* 3.34.4, amongst other arguments for a decision passed in the Senate under Tiberius. It was debated whether or not wives should follow their husbands when the latter were sent to be governors of the provinces. According to Tacitus, the approval of the decision was also based on the consideration that men *sexum natura invalidum deseri et exponi suo luxu, cupidinibus alienis* (*Ann.* 3.34.5), “deserted the sex invalidate by nature (i.e. women) and exposed it to its own lust and the passions of others”. Introducing the episode of the matron from Ephesus, Petron. 110.7 relates in these terms the weakness of women (*levitas muliebris*): *quam facile adamarent, quam cito etiam filiorum obliviscerentur, nullamque esse feminam tam pudicam, quae non peregrina libidine usque ad furorem averteretur* (“How easily they fell in love, how quickly they forgot even their children, how no woman was so chaste that she could not be led away into utter madness by a passion for a stranger”).

Peregre is the opposite of *domi*. It means abroad or from abroad. The foreigner arrives to tempt and seduce a wife whose husband has left her alone at home. As the culturally close figures of predators or pirates, also merchants wander through land and sea without a stable residence. Travelling about, his image is the one of

27. [Quint.] *decl.* 363. Cf. L. BELTRAMI, *Il sangue degli antenati. Stirpe, adulterio e figli senza padre nella cultura romana*, Bari, 1998, p. 66, n. 216.

28. G. RIZZELLI, “*In has servandae integritatis custodias nulla libido inrumpet* (Sen. *contr.* 2.7.3). Donne, passioni, violenza”, in F. LUCREZI – F. BOTTA – G. RIZZELLI (éd.), *Violenza sessuale e società antiche. Profili storico-giuridici*, Lecce, 2011² [2003], p. 151–152, p. 156–157.

29. See LENTANO, *o.c.* (n. 19), p. 108–111, p. 115.

a man who is concentrated not on a particular society, his character is not bound to the values of a single culture. No doubt, his attitudes are supposed to be strange and unpredictable; he lives and works for his own profit and not for the interest of a set community. The structure of his personality is imagined like the one of a young lad who has not settled down yet, instable. Besides, a *mercator* is a man often in contact with prostitutes in harbors or urban centers of commerce by the sea. Both, trader and courtesan are frequently of foreign origin and appear as eloquent and sexually tempting figures; however, they are forbidden options for young men as well as for matrons destined to marriage. Selling door to door, a merchant enters the house and praises his luxury goods, jewels, cloth, and spices, to the women who are expected to stay at home. He talks *blanda oratione*, he is able to seduce with words³⁰.

4.4. *Tacita Muta* and body language

On the other hand, silence was imposed to Roman women, at least to the honorable ones³¹. This silence is two ways — she must not talk and others should not talk about her³² — as well as ambivalent. The matron is pictured as a stable figure, a heroine with a set location, she is not supposed to leave the house without her husband (Plut. *con. praec.* 9). However, if she does, she must not be noticed. She is admonished to refrain from ostentatious presentation, to show simple and sober elegance, *munditia* instead of conspicuous *ornatus* and *cultus*. In public places, if she encounters people, the matron has to blush, keep her eyes on the ground, and remain silent. Outdoors, she needs a *comes* or companion to escort her as a visible proof of her chastity³³ and the respectful social standing of her family. She must cover her hair and body without the possibility for others than family members to detect what is under the dark and opaque clothes falling down to her feet³⁴.

30. LENTANO, *o.c.* (n. 19), p. 112–114.

31. Cf. E. CANTARELLA, *Passato prossimo. Donne romane da Tacita a Sulpicia*, Milano, 1996, p. 13–15, *passim*, p. 47–48; LENTANO, *o.c.* (n. 19), p. 115–117; BRESCIA, *o.c.* (n. 1), p. 43–46. ; EAD., “Ambiguous Silence: *stuprum* and *pudicitia* in Latin Declamation”, in E. AMATO – F. CITTI – B. HUELSENBECK (éd.), *Law and Ethics in Greek and Roman Declamation*, Berlin/Munich/Boston, 2015, p. 75–93, especially p. 77–79, *passim*.

32. A respectable Roman woman should not have a bad reputation, she should be blameless, therefore *infamis*: for the unusual meaning of the term, cf. *ThLL* 7.1, Leipzig, 1991, p. 1339–1342, *s.v. infamis: sine mala fama, invituperatus* (p. 1342). Cf. M. PEINHOPF, “Mujeres entre derecho y retórica en Roma antigua”, in E. HÖBENREICH – V. KÜHNE – F. LAMBERTI (éd.), *El Cisne II. Violencia, proceso y discurso sobre género*, Lecce, 2012, p. 280–281.

33. Plaut. *Merc.* 403–415, ironizes on the appearance of an excessively good-looking attendant who would make everyone turn around in the street, eye and ogle her, wink and whistle, pinch and approach her; therefore, an honorable *mater familias* should better rely on an old man-like maiden (*ancilla virago*) instead, the opposite of a beauty, to be her *comes*.

34. On the dress code of matrons, who normally tied up their hair with ribbons and wore a *stola*, see *Ov. fast.* 4.133–134 (*vittae longaue vestis*). Prostitutes by contrast wore a short dress (*succincta*

When choosing a wife, men are advised to search for a woman of *forma modica et modesta*, of modest and restrained appearance, a beauty that is called “*uxoria*”, convenient, suitable for a wife³⁵. These are the prescriptions operating in Augustan times³⁶.

A matron is not a woman who seduces, she is not expected to be sexually active. However, this does not mean that she cannot be seduced. In fact, the husband in *Contr.* 2.7 does not blame his wife to be provocative; he accuses her to be an adulteress, that’s something different. The female space is not supposed to open, but it is nonetheless permeable for dangers from outside, as Lentano sharply pointed out. Phantasies of these dangers are obsessively concentrated on sexual transgressions. *Luxuria* and *libido* are fancied like a sleeping lion inside every woman. Female nature is intrinsically held incapable of self-control; it only waits to be aroused by foreign lusts³⁷.

As women were denied to talk, they learnt to let their body speak. The female body becomes a text that tries to capture the reader. For this reason, it is necessary to deconstruct and neutralize its communicative potential. Latro describes this code of conduct for a respectable Roman woman in § 3: she must show denial even before it becomes necessary to express it by words. At the same time, the woman must break the imposed silence if there is a risk of compromising the honor of her family, of the men who exercise control and protection over her, father and/or husband. Just like in the case of our controversy, where a simple “no” is not enough to appease the absent *maritus*³⁸.

4.5. Seduction, shame, and legal rules

Appellare de stupro — what the foreign merchant was accused of doing to the married woman in *Contr.* 2.7 — is a technical expression referring to a lawsuit (*actio*) against an offence introduced by the Praetor in his Edict among other *iniuria*-delicts. *Appellare est blanda oratione alterius pudicitiam adtemptare: hoc*

vestis) and/or *toga*. Luxury clothes of the richer courtesans were the already mentioned *vestes Coae* or *sericae vestes*, the transparent ones were also called *ventus textilis* or *nebula linea*. Cf. Th.A.J. MCGINN, *Prostitution, Sexuality, and the Law in Ancient Rome*, New York/Oxford, 1998, p. 332, n. 43; FAYER, *o.c.* (n. 19), p. 428–434.

35. See Gell. 5.11. LENTANO, *o.c.* (n. 19), p. 121, n. 36.

36. Cf. Cass. Dio 54.16.5. G. RIZZELLI, “La violenza sessuale su donne nell’esperienza di Roma antica. Note per una storia degli stereotipi”, in HÖBENREICH – KÜHNE – LAMBERTI (éd.), *o.c.* (n. 32), p. 297.

37. LENTANO, *o.c.* (n. 19), p. 125–126.

38. See BRESCIA, *o.c.* (n. 1), p. 39–58, on examples of women who have to break the silence and utter in a loud and sensible way that their bashfulness and honor are being attacked. Illuminating the case of [Quint.] *decl.* 301, where the victim of a rape claims that raising her voice proves that she is a *puella ingenua*, because only a freeborn girl calls for help when suffering *iniuria*, in contrast and clearly distinct from the *ancilla* or female slave who lacks any *pudicitia* or sense of shame.

enim non est convicium, sed adversus bonos mores adtemptare, as Ulpian will explain later (77 *ed. D.* 47.10.15.20): “To address with soft words is to make an attempt upon another’s virtue; this is not shouting but an attempt contrary to sound morals.” For the Severan jurist, it is not a vulgar speech or an insult, but a tempting, insinuating, allusive, soft, convincing speech. Words directed to make a woman lose control and to accept an erotic proposal.

The provisions of the so-called *Edictum de adtemptata pudicitia* were issued probably around 200 BCE³⁹. We ignore the sanction as well as the exact wording of the disposition against special acts of moral *iniuriae*. However, we find allusions in contemporary literary sources, such as Plautus’ comedies, on the content of the provisions: *nemo ire quemquam publica prohibet via | dum ne per fundum saeptum facias semitam | dum te abstineas nupta vidua virgine | iuventute et pueris liberis ama quid lubet* (*Curc.* 35–38)⁴⁰. To molest married women, ex-married women (widows) and not yet married women (virgins) with erotic intentions in public is prohibited; the same conduct is forbidden if directed towards young freeborn persons of both sexes. These persons belong to a category of people whose sense of shame must be protected⁴¹. Again, another passage of a comedy by Plautus suggests that such a person when moving in the streets must be accompanied by a chaperon (*comes*)⁴². In Rome, it is sometimes difficult to distinguish a matron from a slave or a courtesan, thus it is easy to mislead someone on roles by switching robes. Suffice to think of the *Miles gloriosus*, where a *meretrix* dresses as an honorable *mulier-uxor*⁴³.

39. After the *lex Scatinia*, issued around 220 BCE, according to D. DE LAPUERTA MONTOYA, *Estudio sobre el “Edictum de adtemptata pudicitia”*, Madrid, 1992, but before 193 BCE, as held by E. CANTARELLA, *Secondo natura. La bisessualità nel mondo antico*, Milano, 2008³ [1988], p. 141–147 (with bibliography), p. 152–156 (on the different aims of the *lex Scatinia* and the Praetor’s Edict).

40. Translation (EH): “Nobody stops anyone from walking along the public road, as long as he doesn’t make a path through the field that’s fenced around; as long as you keep yourself away from the wife, the widow, the maiden, youthful age, and free-born children, love what you please”.

41. Cf. Gai. 3.220; Paul. *lb. sing. et tit. iniur.* Coll. 2.5.4.

42. In Plaut. *Amph.* 925–934, the goddess *Pudicitia* is called to be the guardian for matron’s chastity, the companion (*comes*) for a wife who goes out alone on the street, when her attendants cannot be with her. The cult of the (plebeian) *Pudicitia* is introduced, according to Liv. 10.23.3–10, around 296 BCE, the priestesses have to be matrons of *spectata pudicitia*, of proved and evident chastity. *Pudicitia* or chastity is not limited to the female sphere (also youths of both sexes fall under the protection of the goddess) and individual sexual morality or sound morals can be of public interest. Cf. St. FUSCO, “Edictum de adtemptata pudicitia”, *Diritto@Storia* 9 (2010), p. 2 (= <http://www.dirittoestoria.it/9/Tradizione-Romana/Fusco-Edictum-adtemptata-pudicitia.htm> [consulté le 3 septembre 2016]).

43. Plaut. *Mil.* 789–793: *Per.: Habeo eccliam meam clientam, meretricem adulescentulam. | Sed quid ea usus est? Pal.: Vt ad te eam iam deducas domum | itaque eam huc ornatam adducas, ex matronarum modo, | capite compto, crinis vittasque habeat, adsimuletque se | tuam esse uxorem: ita praecipundum est.*

A reconstruction proposed by Otto Lenel (*EP*, p. 400, § 192), primarily conducted on the elaboration by later jurists in commentaries, individuates the three forbidden behaviors by the Edict as follows: *Si quis matrifamilias aut praetextato praetextataeve*⁴⁴ *comitem abduxisse sive quis eum eamve adversus bonos mores appellasse adsectatusve esse dicitur*⁴⁵. If someone acts in the specified manner, injuring the sense of shame (*pudicitia*) or dignity (*dignitas*) of the persons under protection, a civil lawsuit can be brought against him⁴⁶. The offended woman may act as plaintiff, as well as her father and/or her husband. The jurist Neratius stresses that all three of them can sue the offender; one action does not consume the others⁴⁷. Let us have a closer look to the incriminated behavior.

Comitem abducere (Ulp. 77 *ed.* D. 47.10.15.19; cf. 56 *ed.* D. 47.10.1.2; Paul. *lb. sing. et tit. iniur.* Coll. 2.5.4)⁴⁸ means to lead or lure away the person who has to accompany a respectable lady (*materfamilias*) or proper youth of both sexes (*praetextatus, praetextata*). The chaperon is evident proof of the chastity of the person he or she is accompanying⁴⁹. Without the chaperon, the image of the person in question is in danger.

Appellare contra bonos mores (Ulp. 77 *ed.* D. 47.10.15.23) means to address such a person “against sound morals”. This means against the ethical standards of a community or society, not of a single individual, as explained by Ulp. 77 *ed.* D. 47.10.5.6 on the authority of the Augustan jurist Labeo. As we learnt already from Ulpian (77 *ed.* D. 47.10.15.20), this sort of approaching a respectful person

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44. *Praetextati* are young freeborn Romans who still wear the *toga praetexta*, a white tunica with purple red border; such persons aged under puberty (12–14 years) are considered still to be *pueri* or *puellae* because of their *puritas* or ‘purity’.
45. LENEL, *EP*, p. 400, § 192 (Translation [EH]): “If someone is said to have lured away the escort of a matron or a young lad or young girl, or to have addressed him or her against sound morals, or followed them ostentatiously, [...]”
46. Cf. M. HAGEMANN, *Iniuria. Von den XII-Tafeln bis zur Justinianischen Kodifikation*, Köln/Weimar/Wien, 1998, p. 71–75.
47. On the possibility to cumulate the lawsuit against the offender by the three injured persons, see Ulp. 56 *ed.* D. 47.10.1.9: *Idem ait Neratius ex una iniuria interdum tribus oriri iniuriarum actionem neque ullius actionem per alium consumi. ut puta uxori meae filiae familiae iniuria facta est: et mihi et patri eius et ipsi iniuriarum actio incipiet competere* (translation in A. WATSON, *The Digest of Justinian IV*, Philadelphia, 2009, p. 772: “Neratius again says that sometimes the action for insult will lie to three people in respect of the one affront, and the right of action of none will be consumed by reason of proceedings by one. Suppose that my wife who is a daughter-in-power be affronted; the action for insult forthwith becomes available to me, to her, and to her father.”). The extension of the right to sue the offender for the fiancé is explained by Ulp. 77 *ed.* D. 47.10.15.24: *Sponsum quoque ad iniuriarum actionem admittendum puto: etenim spectat ad contumeliam eius iniuria, quaecumque sponsae eius fiat* (WATSON, *o.c.*, p. 778: “I think that a fiancé also should be able to bring the action for insult; for there is an outrage to him in any affront that his betrothed may suffer.”).
48. On *dignitas matronalis* cf. L. PEPPE, “Note sulla *dignitas*”, *BIDR* 106 (2012), p. 232–233.
49. A *comes* can be a free person or a slave, a man or a woman who accompanies a person in public or in private, for example a teacher (*paedagogus*) (Labeo in Ulp. 77 *ed.* D. 47.10.15.16).

in the street has to occur *blanda oratione*, trying to lure her (or him) with mellow words in a sexual or immoral behavior.

Adsectari (Ulp. 77 ed. D. 47.10.15.22–23) against sound morals means to follow a person in the street, silently and relentlessly (*tacite et frequenter*), insinuating an (inexistent) intimacy between the follower and the victim and thus compromising the reputation of the latter.

If we recall the elements of recrimination against the married woman in *Contr.* 2.7, we find allusions to almost every rule she violated in the terms related by the sources: she is alone and does not send for her husband (the protector of her chastity, her first *comes* in public and private) when pestered by a stranger. As if it were not enough, she does not reject in an unmistakable way the sexual proposals of the foreigner (did she bring an *actio iniuriarum* against him, or flog at least the slave who brought her his immoral messages?). Even more, the rich stranger offered money for her sexual services, as if she were a prostitute. Like a prostitute, she was clever enough to refuse, in order to raise the prize. At last, she received all the seducer's property by bequest. *Adire hereditatem*, again, is the technical expression with which a non-relative accepts the final provisions of a testator. Can such a woman be considered anything else than an adulteress?

4.6. *Correctio morum*

We know from Seneca the Elder that Ovid was destined to a career as lawyer⁵⁰. Ovid is considered to be the first Latin poet who shows clearly the influence of declamatory recitation. When he was still alive, he was admired as a writer and young students imitated his rhetorical technique⁵¹. In the *Ars amatoria*, he advises Roman youth against using the good arts of eloquence and declamation only to plead for eager defendants; just like the people (in assembly for a trial), the strict judge and the distinguished senate, also a girl, conquered by soft and coaxing words (*blanda verba*), will give in⁵². Ovid remarks several times that the target readers of his book are not honorable matrons or girls⁵³, since he provides precise instructions on how to seduce a woman. Of course, all the three behaviors prohibited by the

50. Sen. *contr.* 2.2.8 and 12. BONNER, *o.c.* (n. 7), p. 134, p. 143–144, p. 149–156.

51. St.F. BONNER, *Education in Ancient Rome. From the elder Cato to the younger Pliny*, London, 1977, p. 217, p. 287.

52. *Ars* 1.459–468: *disce bonas artes, moneo, Romana iuventus, | non tantum trepidos ut tueare reos: | quam populus iudexque gravis lectusque senatus, | tam dabit eloquio victa puella manus. | Sed lateant vires, nec sis in fronte disertus; | effugiant voces verba molesta tuae. | Quis, nisi mentis inops, tenerae declamat amicae? | [...] sit tibi credibilis sermo consuetaque verba, | blanda tamen, praesens ut videre loqui.*

53. *Ars* 1.31–34: *este procul, vittae tenues, insigne pudoris, | quaeque tegis medios instita longa pedes: | nos Venerem tutam concessaque furta canemus | inque meo nullum carmine crimen erit;* 2.599–600: *en iterum testor: nihil hic nisi lege remissum | luditur; in nostris instita nulla iocis;* 3.483–484: *sed quoniam, quamvis vittae careatis honore, | est vobis vestros fallere cura viros.*

Praetor's Edict can be found among the recommended strategies, explained in detail by the poet⁵⁴. This book seems to be written ironizing the *correctio morum* enacted by Augustus with the three laws on family organization and adultery.

The controversy was composed in the cultural climate of the time when Roman society faced the promulgation of the *lex Iulia de adulteriis* (18–16 BCE), a law that prosecuted adultery (maybe for the first time⁵⁵) as a public crime in front of a stable court. The *lex Iulia de adulteriis* is also called *lex de pudicitia* in two constitutions by Alexander Severus (C. 9.9.8 and 9, both issued in 224 CE), where the Emperor stresses that the respect for moral values like chastity has to be intended always according to present times (*castitas temporum meorum*)⁵⁶. The use of the term *pudicitia* in the sources is not homogenous; every author emphasizes a different nuance, with changes due to time and different ethical values.

'*Pudicitia*' can refer to material or objective aspects such as virginity or sexual intactness, indicating a body not corrupted or contaminated by sordid acts, physically not compromised or altered by sexual intercourse, rape or violence. Besides this, the expression can also refer to the image or appearance of a person, someone who shares the same sense of shame with the community she or he belongs to. Elements for this ethical or subjective aspect based upon character or intention can be detected from visible facts like acting bashfully, being accompanied or dressed properly; such an image can be damaged by acts of 'sexual harassment' as persecuted by the *Edictum de adtemptata pudicitia*.

On the other hand, if an honorable woman does not respect the cultural code of conduct — because she looks or acts like a prostitute or a slave — she cannot claim the full protection of the Edict⁵⁷. Generally, scholars maintain that prostitutes and adulteresses could be immediately identifiable from their clothing — both types

54. Fusco, *l.c.* (n. 42), p. 14–17.

55. Plut. *comp. Lys. et Sull.* 3.3–4 mentions a law ("on sobriety") issued under Sulla that could have installed already a permanent court on adultery or illicit sexual acts.

56. Cornelius Nepos (praef. 1–7), when comparing customs and morals of Romans with other peoples (Greeks in the first place), stresses the different meanings that *honestum* and *turpis*, *virtus* and *nefas* can assume in parallel experiences. Cf. in general on anthropological approaches to Roman society and culture M. BETTINI, *Con i Romani. Un'antropologia della cultura antica*, in M. BETTINI – W.M. SHORT (éd.), Bologna, 2014, p. 23–44.

57. On the discussed interpretation of Ulp. 77 *ed. D.* 47.10.15.15 (*si quis virgines appellasset, si tamen ancillari veste vestitas, minus peccare videtur: multo minus, si meretricia veste feminae, non matrum familiarum vestitae fuissent. Si igitur non matronali habitu femina fuerit et quis eam appellavit vel ei comitem abduxit, iniuriarum tenetur*) see F. RABER, "Frauentracht und 'iniuria' durch 'appellare': D. 47.10.15.15", in *Studi E. Volterra III*, Milano, 1971, p. 633–646; A. GUARINO, "Le matrone e i pappagalli", in *Inezie di giureconsulti*, Napoli, 1978, p. 165–188; HAGEMANN, *o.c.* (n. 46), p. 72–74 (actually opting for a *non liquet*); E. HÖBENREICH – G. RIZZELLI, *Scylla. Fragmente einer juristischen Geschichte der Frauen im antiken Rom*, Wien/Köln/Weimar, 2003, p. 32–34; Fusco, *l.c.* (n. 42), p. 3–8.

of women supposedly wore a *toga*⁵⁸. Instead, it seems that whores, depending on their station, appeared in everything from luxurious clothing down to nothing; so the toga does not really identify them. Besides, we do not find any evidence that the adulteress or the prostitute was ‘compelled’ to wear the toga, as is often asserted by modern scholars. Like the use of the word *stola* or *stolata* to designate the woman of impeccable virtue, it seems more plausible that the word *togata* is employed not to indicate a social practice, but is a shorthand or metonymy for the sexually licentious woman: then it would not refer to clothing, but to moral values⁵⁹. And values change as time goes by.

The husband in *Contr.* 2.7 brings an *accusatio adulterii ex suspicione* against his wife, in other words, he accuses her of adultery on mere suspicion, lacking any secure proofs, first of all a *deprehensio* or action *in flagranti*⁶⁰. If the case had been a real one, the proceedings would have been held in front of a *quaestio perpetua*. This can be argued from the fact that the *peroratio* is directed to *iudices*⁶¹. Investigation on the former life and conduct of the defendant or accomplice is typical for such a lawsuit. The only difference between the *accusatio adulterii ex suspicione* and the one *in flagranti* lies in the more complex and difficult demonstration and the less secure outcome of the first. Therefore, the capacity of an orator to influence the jury of judges is of fundamental interest⁶².

Conviction on suspicion, as someone presumes⁶³, must have been the far most frequent case. In this case, the husband is not obliged to divorce his wife before accusing her. Besides, he refers to her as *uxor mea*, “my wife”, when he argues to be inclined to disinherit her in a hypothetical testament (*arg. ex* § 9)⁶⁴.

In a real *quaestio de adulteriis*, after the *nominis receptio* of the defendant, the trial would be registered *in publicis tabulis* and the contradictory procedure starts.

58. According to costumes, the *materfamilias* divorced for adultery had to wear a plain *toga*, but probably only if she had been convicted in a public trial. For references in Hor. *sat.* 1.62–63; [Ac. and Porph.] *in Hor. sat.* 1.62–63; Mart. 10.52; Iuv. 2.65–70, see FAYER, *o.c.* (n. 19), p. 423–426.

59. K. OLSON, “Matrona and Whore: Clothing and Definition in Roman Antiquity”, in Ch.A. FARAONE – L.K. McCLURE (éd.), *Prostitutes and Courtesans in the Ancient World*, Madison University of Wisconsin Press, 2006, p. 186–204; in general, EAD., *Dress and the Roman Woman: Self-Presentation and Society*, London/New York, 2008.

60. It is the eldest mention of an accusation based on suspicion. On other examples cf. LANFRANCHI, *o.c.* (n. 8), p. 442–444.

61. C. VENTURINI, “«Accusatio adulterii» e politica costantiniana (per un riesame di CTH 9,7,2)”, *SDHI* 54 (1988), p. 93, n. 80 (*Vos interrogo, iudices, quid officii mei fuerit: Contr.* 2.7.2).

62. VENTURINI, *l.c.* (n. 61), p. 94.

63. MCGINN, *o.c.* (n. 34), p. 117.

64. G. RIZZELLI, *Lex Iulia de adulteriis. Studi sulla disciplina di adulterium, lenocinium, stuprum*, Lecce, 1997, p. 113–114.

Then behavior and life-style of the accused come under investigation, and these assumptions can be based just on evidence⁶⁵.

In our context, the *'actio adulterii'* also occurs, but this does not necessarily indicate a private lawsuit. The rhetoricians are aware of the difference between public and private proceedings. Nevertheless, they often use *'agere'* and *'accusare'* in a fungible or promiscuous way in criminal argumentation⁶⁶.

4.7. *Uxor dotata*

In the controversy, another conflict between spouses is prominently underlined: the poor honest husband and the rich unchaste wife. Although the husband has struggled honestly to become wealthier, the wife has succeeded, due to immoral behavior, to achieve more wealth than him (*maritus cum omni censu meo inter munera adulteri lateo*). Therefore, he reproaches his wife to be greedy (*Contr.* 2.7 Exc.): avarice or greed for money suggests another analogy with the character of a courtesan or a merchant⁶⁷. The woman's wealth serves as argument to prove her infidelity (adultery as motive for the institution as heiress in the will)⁶⁸, while, on the contrary, the wife claims exactly her chastity as the reason for the generosity of the merchant who did not succeed in seducing her (§ 9). It should be remembered that the husband profits from a conviction of his wife insofar as he can retain a percentage of her dowry (*retentio propter mores*)⁶⁹.

Roman society considers disproportion of economic means among the sexes, especially in the case of spouses, a problem. Gellius (17.6.1; 8–10) relates of a wife, apparently *sine manu* and *sui iuris*, who was very affluent, probably thanks to inheritance, bequests or donations, and who brought a considerable dowry to the marriage. The criticisms to her behavior are interesting for our purpose. She is said to have not transferred her property to the *maritus* or shared with him her wealth. The husband appears to have been poor. After she had lent him money that he did not pay back in time, she sent a slave to ask back the debt. This episode was related by Cato Maior in his *suasio* of the *lex Voconia*⁷⁰, a plebiscite passed in 169 BCE to prohibit that persons belonging to the first *census*-class could establish women as heirs⁷¹. In short, the picture evoked of a rich independent woman managing

65. VENTURINI, *l.c.* (n. 61), p. 93–94.

66. LANFRANCHI, *o.c.* (n. 8), p. 510–515, notes the contemporary use of *actio depositi* and *actio adulterii*, *parricidii*, *veneficii* and assumes an equilibrated position on the suspicions of text-alterations. See also RIZZELLI, *l.c.* ([2015] n. 6), p. 212, n. 3.

67. LENTANO, *o.c.* (n. 19), p. 115.

68. VENTURINI, *l.c.* (n. 61), p. 92.

69. *Id.*, *l.c.* (n. 61), p. 89–91.

70. Cf. Cic. *Cato Mai.* 4.14. On the episode, M.G. SCACCHETTI, *La presunzione muciana*, Milano, 2002, p. 109–112.

71. On the law, forbidding women to be instituted as heiresses in a testament by a citizen belonging to the first *census*-class, suggesting with some convincing arguments Aemilia, the mother of

herself, her slaves, and other property is alarming. She acts in complete freedom and does not ask anybody what she is supposed to do, she does not respect the customs of handing over her property to be administered by her husband, she sends him disrespectfully a slave to urge him to repay her the sum she had lent him. The worst thing in the eyes of Roman readers is that a rich wife has control over a poor husband. The fears of men of losing control over their women date back to earlier times than the *lex Voconia*⁷². As for the *Controversia* 2.7 we are discussing suffice it to note that the provisions of the *lex Voconia* did not apply to foreigners who could establish Roman women as heirs.

In a comedy by Plautus, the *Casina* (circa 185 BCE)⁷³, Cleostrata defends the provenience of a property belonging to her, a slave girl she has raised (*quae mea est, quae meo educata sumptu siet*). Her friend Mirrina observes that a honest (*proba*) woman should not have a *peculium clam virum*, wealth hidden from her husband, otherwise she would be suspected of having it stolen from him or gained it with illicit sexual acts (*quin viro aut subtrahat aut stupro invenerit*). Cleostrata who is *in manu mariti*, depends on the (explicit or implicit) consensus of the husband when managing her assets, for the slave is *de facto* hers, *de iure* her husband's property, which is exactly what Mirrina is saying (*hoc viri censeo esse omne quicquid tuum est*)⁷⁴. Female income appears suspicious and could mean that the husband has been defrauded or betrayed.

A rule attributed to Quintus Mucius Scaevola the *pontifex* cut short on this empasse⁷⁵. Whenever a legal dispute arose on how a married woman had incremented her patrimony, it would be presumed that she had received it from her husband (or a person in his *potestas*). In this way, an investigation on an eventually indecent profit of the woman could be avoided⁷⁶. The so-called *praesumptio Muciana* comes into play primarily in the case of claims against the widow, when

Cornelia, as the 'model' for the provision, cf. A. McCLINTOCK, "Polyb. 31.26–28: la successione di Emilia", *Index* 33 (2005), p. 317–336; EAD., "The *lex Voconia* and Cornelia's Jewels", *RIDA* 60 (2013 [= 2014]), p. 183–200; see also LENTANO, *o.c.* (n. 6 [2009]), p. 104–107, p. 138.

72. Suffice to think of the abrogation of the *lex Oppia* 195 BCE, cf. Liv. 34.1–8; Val. Max. 9.1.3; Zon. 9.17.1–4. L. PEPPE, *Posizione giuridica e ruolo sociale della donna romana in eta repubblicana*, Milano, 1984, p. 43–50; F. GORIA, "Il dibattito sull'abrogazione della *lex Oppia* e la condizione giuridica della donna romana", in R. UGLIONE (éd.), *Atti del Convegno su "La donna nel mondo antico"*, Torino, 1986, p. 265–303; G. PERL – I. EL-QALQILI, "Zur Problematik der *Lex Oppia* (215/195 v. Chr.)", *Klio* 84/2 (2002), p. 414–439; V. KÜHNE, *De la mejor manera de ejercitar el poder sobre las mujeres. La ley Opia: un antiguo debate*, Buenos Aires, 2008, or of the *SC de Bacchanalibus* 186 BCE, cf. *FIRA* I², p. 240–241: on both SCACCHETTI, *o.c.* (n. 70), p. 24–42.

73. SCACCHETTI, *o.c.* (n. 70), p. 43.

74. Plaut. *Cas.* 195–202.

75. Among scholars, the redaction of Mucius' books on civil law is set between 96 and 85 BCE. See F. LAMBERTI, "Suggerzioni in tema di *praesumptio Muciana* (2005)", now in F. LAMBERTI, *La famiglia romana e i suoi volti. Pagine scelte su diritto e persone in Roma antica*, Torino, 2014, p. 136, n. 12 (which is used for the present article).

76. Pomp. 5 Q. *Muc.* D. 24.1.51; C. 5.16.6.1 (Alexander [a. 229]).

she must defend her wealth against the heirs of her husband. Therefore, the *maxima* protects her against the difficulty of such a proof⁷⁷.

Donations among spouses were forbidden. The practice of gift-giving falls into the domain of sexual relationships outside marriage. Whatever a wife accepted from a stranger, could be a compensation for adultery, closely related to a *quaestus* coming from prostitution. This mistrust is echoed from Plautus to Mucius, from Latro to the Severan emperors and jurists. *Donatio* is linked with *coitus*, *affectio* with *matrimonium*; a present indicates sex for money, while pure affection connotes matrimony, because *amor honestus* has no *pretium*. In this line we learn from Ulp. 33 *Sab. D.* 24.1.32.13: [...] *non enim coitus matrimonium facit, sed maritalis affectio* (not sexual intercourse constitutes a matrimony, but the marital attitude)⁷⁸. The antagonistic figures of *meretrix* and *matrona* are the implicit protagonists in the statement of the jurist. Porcius Latro stresses exactly on the same bipolar scheme because in the collective perception ('popular mind') adultery, prostitution, and financial enrichment are intrinsically tied one to another⁷⁹.

5. Résumé

Recent investigations consider the world of the declamations as a sort of parallel reality. Nevertheless, even if the ideation of the plot is fictitious, the declamation is obliged to cultural verisimilitude — suffice to think of the controversy in question and the discussion in the Senate under Tiberius on women left alone at home. Furthermore, the correct behavior of a respectable matron, as laid down by Porcius Latro, seems to be not only of general reach, but reflects quite precisely what can be attributed to the content of the so-called *Edictum de adtemptata pudicitia*: whoever commits an act of 'sexual harassment' (*adtemptare, adsectari, comitem abducere*) against a respectable matron (or youth of both sexes), is liable in a civil lawsuit. In later commentaries on the Edict, the jurists advise to adapt the penalty according to the circumstance if the defendant was able to recognize that he was insulting a respectable woman, with elements based on her attire, make-up, behavior, and presence of a chaperon in public. Again, references in comedies, poetry, and historiography from the later republic to the reign of Augustus and Tiberius, help to integrate the incomplete picture given by juridical texts. Finally, the '*lex*' presented in *Contr.* 2.7, developed just for the husband's part by one of the

77. LAMBERTI, *o.c.* (n. 75), p. 135–143.

78. See some of the reasoning expressed by Caracalla in Ulp. 32 *Sab. D.* 24.1.3 pr.-1. In the limited framework of the current considerations, it is impossible to enter into the complex regulations of gifts between husband and wife, invalid as long as the matrimony was lasting. See, for example, SCACCHETTI, *o.c.* (n. 70), p. 293–318.

79. Quint. *inst.* 7.2.52, stresses the presence of gifts, money or love-letters (*munera, pecunia, codicilli*) of unknown origin in the house of a woman as the main proof for her adulterous activities, which can lead to the accusation *incerti adulterii*. See BERTI, *o.c.* (n. 3), p. 54, n. 3. Eventually, '*codicillus*' can also mean 'codicil' or *addendum* in a testament.

most authoritative rhetoricians in Rome, not only recalls the praetorian provisions mentioned above like a veritable code of conduct. Probably the arguments would also fit an accusation on suspicion based on the *lex Iulia de adulteriis*.

The picture drawn by legal sources and historiographic tradition, still widely accepted by modern scholars, is that women acted — if ever — mainly in the domestic sphere⁸⁰. Leo Peppe has pointed out in various occasions that these are fast suggestions and superficial impressions⁸¹. It reveals, one would add, an attitude not far from the rhetorical tendency to reduce topics in terms of bipolar schemes, such as indoor and outdoor contexts.

Texts and Translations

Part I. The Controversy

Sen. *contr.* 2.7⁸² (Peregrinus negotiator)

Quidam, cum haberet formosam uxorem, peregre profectus est. In viciniam mulieris peregrinus mercator commigravit; ter illam appellavit de stupro adiectis pretiis; negavit illa. Decessit mercator, testamento heredem omnibus bonis reliquit formosam et adiecit elogium: "pudicam repperi." Adit hereditatem. Redit maritus, accusat adulteri ex suspitione.

Translation [WINTERBOTTOM, *o.c.* (n. 82), p. 363]: Seneca the Elder, book no. 2, controversy no. 7 (The Foreign Merchant)

A man with a beautiful wife went off abroad. A foreign trader moved into the woman's neighbourhood. He three times made her propositions of a sexual nature, offering sums of money. She said no. The trader died, leaving her all his wealth in his will, to which he added the clause: "I found her chaste." She took the bequest. The husband returned and accuses her of adultery on suspicion.

80. See LENTANO, *o.c.* (n. 19), p. 105–107; ID., *o.c.* (n. 1), p. 24–27.

81. Procreation, raising and education of children were the tasks of a Roman matron. This means that it was the mother who transported values and passed cultural inheritance on to the next generation. In fulfilling these duties, the economic importance of women, acquiring for the *oikos* or the extended household in a wider family-structure, has largely been underestimated, as has been asserted already by PEPPE, *o.c.* (n. 72), p. 35–37, p. 74–78. In the same line, see recent attempts by MCCLINTOCK, *l.c.* ([2013=2014] n. 71), p. 183–200. Breaking with many stereotyped opinions among modern scholars on Roman women, cf. L. PEPPE, *Civis Romana. Forme giuridiche e modelli sociali dell'appartenenza e dell'identità femminili in Roma antica*, Lecce, 2016.

82. The latest critical edition of Sen. *contr.* 2.7 is in L. Annaeus Seneca Maior, *Oratorum et Rhetorum Sententiae, Divisiones, Colores*, L. HÅKANSON (éd.), Stuttgart/Leipzig, 1989, p. 120–125 (text), p. 129–130 (Excerpta); text and translation adopted in the present article come from Seneca the Elder, *Declamations 1, Controversiae 1–6* (transl. by M. WINTERBOTTOM), Cambridge-Massachusetts/London, 1974, p. 362–375. Other translations or divergent interpretations proposed by the writer of these pages are marked with EH. See also L.A. SUSSMAN, *The Elder Seneca and Declamation Since 1900: A Bibliography*, in W. HAASE (éd.), *o.c.* (n. 7), p. 557–577.

§ 1. [...] *Non accuso adulteram nisi divitem factam; ex ea domo ream protraho in qua iam nihil meum est. Cum ego tamdiu peregrinatus sim, nullum periculum terra marique fugerim, plus <ista> intra unam viciniam quam ego toto mari quaesit. [... in] pudicitiae quaestus [...]. Illud, iudices, mihi tormentum est, quod notata iudicio vestro, ut multiplicatam dotem perdat, plus tamen ex quaestu habitura est quam quantum damnatae perdendum est; tantum in istam dives amator effudit ut post poenam quoque expediat fuisse adulteram.*

Translation [WINTERBOTTOM, o.c. (n. 82), p. 365]

§ 1. [...] I am accusing her of adultery only now that she has become rich; I hale her to the courts from a house where nothing any longer belongs to me. Though I was abroad for so long a time, though I have shirked no danger by land or sea, she has acquired more in a single neighbourhood than I did on all the seas there are. [... profits rewarded shamelessness ...]. What tortures me, judges, is that if she is condemned by your judgement, even if she loses [her dowry and the interest on it] <a multiple of her dowry> (i.e. not only a sixth being normally detracted from the *dos* as *retentiones propter mores* destined to the husband in case of a conviction for adultery [EH]), she will still have more as a result of her profiteering than she must forfeit on condemnation; so much has this millionaire lavished on his mistress that even after she has been punished adultery will still have been profitable.

§ 2. [...] *quemadmodum adulescens formosus, dives, ignotus in viciniam formonsae et in absentia viri nimium liberae mulieris commigraverit, quemadmodum adsidua satietate cotidiana per diem noctemque libidinis exhaustis viribus perierit, interrogate rumorem. [...].*

Translation [WINTERBOTTOM, o.c. (n. 82), p. 365]

§ 2. [...] you must apply to rumour for the rest, for the story of how a handsome, rich and unknown young man moved into the neighbourhood of a beautiful woman, one who was all too free in the absence of her husband, how by continually satisfying his lusts night and day he exhausted his strength and died. [...].

§ 3. *Tempus est, iudices, de uxore marito credi mulierem tam formosam amari potuisse pudice; certe sic amari, ne sollicitaretur, potuit; neque est quod dicat: non in meo istud arbitrio positum <erat>. [...] Matrōna, quae <tuta> esse adversus sollicitatoris lasciviam volet, prodeat in tantum ornata quantum ne immunda sit; habeat comites eius aetatis quae in pudicum, si nihil aliud, in verecundiam annorum movere possit; ferat iacentis in terram oculos; adversus officiosum salutatorem inhumana potius quam inverecunda sit; etiam in necessaria resalutandi vice multo rubore confusa <sit>. Sic se in verecundiam pigneret <ut> longe ante in pudicitiam suam ore quam verbo neget. In has servandae integritatis custodias nulla libido inrumpet.*

Translation [WINTERBOTTOM, o.c. (n. 82), p. 367]

§ 3. It is time, judges, that credence is given to the husband on the topic of his wife, when he says that it was possible for so beautiful a woman to be loved chastely — and certainly without being pestered. There is no reason for her to say: “I couldn’t help it”. [...]. A married woman who wants to be safe from the lust of the seducer must go out dressed up only so far as to avoid unkemptness. Let her have companions old enough, at the very least, to make the shameless respect their years. Let her go about with her eyes on the ground. In the face of the overattentive greeting, let her be impolite rather than immodest. Even

where she has to return a greeting, let her show confusion, with many a blush. Let her guarantee her modesty by denying her unchastity with her look well in advance on her words. No lust will be able to force its way past these guardians and preservers of her honour.

§ 4. *Prodit mihi fronte in omne lenocinium composita, paulo obscurius quam posita veste nuda, exquisito in omnes facetias sermone, tantum non ultro blandientes ut quisquis viderit non metuat accedere: deinde miramini si, cum tot argumentis impudicitiam praescripseritis, cultu, incessu, sermone, facie, aliquis repertus est qui incurrenti adulterae se non subduceret.* [...].

Translation [WINTERBOTTOM, *o.c.* (n. 82), p. 367 and p. 369]

§ 4. Very well, go out with your face made up to look utterly seductive, naked hardly less obviously than if you had taken off your clothes, your conversation carefully set to find room for every jest, all but making eyes invitingly to ensure that no-one who sees you is afraid to approach: then be surprised if, having given advance warning of your shamelessness by so many signs — dress, walk, talk, appearance —, you find someone turning up who didn't get out of the way of the adulteress looming up on him. [...].

§ 5. [...]. *Abunde te in argumentum pudicitiae profecturam putas si stuprum tantum negaveris, quod plerumque etiam impudicissima, spe uberius praemi, de industria simulat? Quando de iniuria tua viro scripsisti et, ne in occasionem similis iniuriae solitudo tua pateret, maturiorem reditum rogasti? Et quanto decentius contumeliam penetralium meorum uxoris epistula quam testamento sollicitatoris cognoscerem!* [...].

Translation [WINTERBOTTOM, *o.c.* (n. 82), p. 369]

§ 5. [...] You think you'll prove your chastity quite sufficiently if you merely say no to sex — a refusal that often even the most shameless woman purposely feigns in the hope of a fatter price? When did you write to tell your husband of the wrong done you, ask him to return sooner so that in your solitary state you should not remain open to the possibility of a similar outrage? How much more proper it would have been for me to learn of the insult offered to the inner sanctity of my household from a letter of my wife than from the will of her seducer! [...].

§ 6. *Totiens sollicitata non istam faciem qua placere poteris convenistit? Non omne ornamentum veluti causam talis iniuriae execrata es? Quod proximum est a promittente, rogata stuprum tacet.* [...].

Translation [WINTERBOTTOM, *o.c.* (n. 82), p. 369]

§ 6. If you were so often pestered, did you not veil the beauty which could give the beholder such pleasure? Did you not loathe every ornament as the motive for such an outrage? Asked for sex, she keeps silent — the next thing to promising it. [...].

§ 7. [...]. *Sic etiam qui impudicas quaerunt pudicas honorant? Omnium bonorum meorum, omnis pecuniae meae sola heres esto quia corrumpi non potuit, quia tot sollicitationibus expugnari non potuit, quia tam fideliter pudicitiam custodivit.* [...].

Translation [WINTERBOTTOM, *o.c.* (n. 82), p. 371]

§ 7. [...] Can it be that even men who go in search of unchaste women pay tribute to the chaste ones? “Let her be sole heiress of all my property, all my

money, because she could not be seduced, because she could not be won over despite so many attempts, because she guarded her chastity so faithfully". [...].

§ 8. "*Sola heres esto, quamvis aliena, quamvis ignota; tantum quia pudica, quia incorrupta est*". *Quid? Isti tam censorio adultero non mater est? Non soror? Non propinqua? An nulla earum pudica est? Idcirco scilicet cum tantis divitiis peregrinas urbes in honorem pudicitiae ignotae perambulat. Illic ubi natus est nulla pudica erat, atque illic ubi negotiatus est nulla non prostituta erat; vacuo testamento pudica heres per errorem quaesita est.* [...].

Translation [WINTERBOTTOM, *o.c.* (n. 82), p. 371]

§ 8. "Let her be sole heiress; she may not be my own, she may not be known to me: but she is chaste, and uncorrupted — just that." What, has this censor of an adulterer no mother, no sister, no relative? Is none of them chaste? That, I suppose, is why he wanders round foreign cities with such riches, ready to pay tribute to unknown chastity. Where he was born there were no chaste women, and where he did his business everyone was a prostitute; there was a gap in his will — in his wanderings he was looking for a chaste heir. [...].

§ 9. [...] *A duobus vos testamentis in consilium mitto: utrum secuturi estis? Quo ab adultero absolvitur, an quo damnatur a viro? Unus pudicitiae fructus est pudicam credi, et adversus omnes inlecebras atque omnia delinimenta muliebribus ingeniis est veluti solum <ac> firmamentum in nullam incidisse fabulam.* [...] *Feminae quidem unum pudicitia decus est; itaque ei curandum est esse ac videri pudicam.*

Translation [WINTERBOTTOM, *o.c.* (n. 82), p. 373]

§ 9. [...] You have heard these two wills: I direct you to deliberate on them. Which will you follow? The one where her lover acquits her, or the one where her husband convicts her? The one fruit of chastity is to be believed chaste, and women's nature is such that the ground and bulwark against all snares and all lures is never to have caused gossip. [...] For a woman, in fact, the one glory is chastity; so she must take care to be chaste — and to be seen as chaste.

Excerpta

Muliebrium vitiorum fundamentum avaritia est.

Quae potest non timere adulterii, potest non timere adulterium.

[...] *Infelices ancillarum greges laborant ut adultera tenui veste perspicua sit et nihil in corpore uxoris suae plus maritus quam quilibet alienus peregrinusque cognoverit.*

[...] *Omnes te inpudicam locuntur, pudicam tantum et unus et peregrinus, qui plus laudator quam accusator nocet. Uxorem meam nusquam pudicam audivi nisi in adulteri elogio.*

[...] *Pudicam ille dixit, ego inpudicam: puto, plus credetis civi quam peregrino, marito quam adultero.*

Translation [WINTERBOTTOM, *o.c.* (n. 82), p. 373 and p. 375]

The root of the vices of woman is avarice.

The woman capable of not fearing a reputation of adultery is capable of not fearing adultery.

[...] Wretched flocks of maids labour so that the adulteress may be visible through her thin dress, so that her husband has no more acquaintance than any outsider or foreigner with his wife's body.

[...] Everyone talks of you as unchaste. You are called chaste by only one man, a foreigner; on his lips praise is more harmful than accusation. I have never heard my wife called chaste except in her lover's codicil.

[...] He said she is chaste, I say she is unchaste; doubtless you will prefer to believe a citizen rather than a foreigner, a husband rather than an adulterer.

Pars altera

Formosa est: hoc natura peccavit. Sine viro fuit: hoc maritus peccavit. Appellata est: hoc alius peccavit. Negavit: hoc pudice. Heres relicta est: hoc feliciter. Hereditatem adiit: hoc consulte fecit.

Translation [WINTERBOTTOM, *o.c.* (n. 82), p. 375]

The other side

She is beautiful: that was nature's fault. She was alone: that was her husband's fault. She was tempted: that was the fault of another. She said no: that was done chastely. She was left money: that was a stroke of fortune. She took the bequest: that was only prudent.

Part II. Interpretation

1) Paul. 55 *ed.* D. 47.10.10: *Adtemptari pudicitia dicitur, cum id agatur, ut ex pudico inpudicus fiat.*

Translation [MCGINN, *o.c.* (n. 34), p. 333]: An attempt is said to be made on chastity when this is done so that a chaste person becomes unchaste.

2) Ulp. 77 <57> *ed.* D. 47.10.15.15: *Si quis virgines appellasset, si tamen ancillari veste vestitas, minus peccare videtur: multo minus, si meretricia veste feminae, non matrum familiarum vestitae fuissent. si igitur non matronali habitu femina fuerit et quis eam appellavit vel ei comitem abduxit, iniuriarum tenetur.*

Translation [EH]: If someone approaches young girls, even though they are in slave's clothing, this person is understood to commit a lesser offense; a much lesser offense if the women were dressed as prostitutes and not like *matres familias*. Still, if a woman has not been in a matron's attire and someone has approached her or has abducted her companion, this person will be liable for the action of insult.

3) Ulp. 77 <57> *ed.* D. 47.10.15.19–20: *Tenetur hoc edicto non tantum qui comitem abduxit, verum etiam si quis eorum quem appellavisset adsectatusve est. § 20. Appellare est blanda oratione alterius pudicitiam adtemptare: hoc enim non est convicium, sed adversus bonos mores adtemptare.*

Translation [EH]: The edict applies not only to someone who abducts an attendant but also to someone who approaches or follows one of them. § 20. To address with soft words is to make an attempt upon another's chastity; this is not shouting but an attempt contrary to sound morals.

4) *Edictum de adtemptata pudicitia* (O. LENEL, *Das Edictum perpetuum*, Leipzig, 1927³, p. 400): *Si quis matrifamilias aut praetextato praetextataeve comitem abduxisse sive quis eum eamve adversus bonos mores appellasse adsectatusve esse dicitur, [...].*

Translation [EH]: If someone is said to have abducted an attendant of a *mater-familias* or of a respectable youth, male or female, or to have approached him or her against sound morals or persistently pursued them, [...].

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RIDA

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